

NEPA Procedures Manual: Material for Paperwork Reduction Act

Preamble Language for Publication of Proposed Manual

Paperwork Reduction Act

The proposed NEPA Procedures Manual requires information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is subject to review by the Office of Management and Budget. The title, description, and respondent categories are discussed below, together with an estimate of the annual information collection burden.

With respect to the following collection of information, the Commission invites comments on:

- (1) Whether the proposed collection of information is necessary for proper performance of its functions, including whether the information would have practical utility;**
- (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;**
- (3) ways to enhance the quality, utility, and clarity of the information to be collected;**
- (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information collection.**

**SUPPORTING STATEMENT FOR RECORDKEEPING
AND REPORTING REQUIREMENTS OF THE NATIONAL INDIAN GAMING
COMMISSION'S NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE
ACTIVITIES**

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Indian Gaming Regulatory Act (IGRA) governs the regulation of gaming on Indian lands. 25 U.S.C. § 2701 *et. seq.* IGRA established the National Indian Gaming Commission (NIGC or the Commission) as federal regulatory agency with authority to oversee Indian gaming. Among the responsibilities of the Chairman is the review and approval of third-party management contracts that involve the operation of tribal gaming facilities. Under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et. seq.*, and the implementing regulations of the Council on Environmental Quality (CEQ), Federal agencies are required to prepare or cause to be prepared environmental documents for actions taken by the Commission that may have significant impacts on the environment.

The NEPA process is triggered when a tribe (or applicant) and management contractor seek approval of a management contract under 25 U.S.C. § 2711; 25 C.F.R. part 533. Under NEPA, an Environmental Assessment (EA) must be prepared when the action (approval of a management contract) cannot be categorically excluded or the environmental consequences of the action will not result in a significant impact or the environmental impacts are unclear and need to be further defined. An Environmental Impact Statement (EIS) must be prepared when the action will likely result in significant impacts to the environment. Normally, an EA or EIS and its supporting documents are prepared by an environmental consultant and submitted to the Commission through the applicant. In the case of an EA, the Commission must independently evaluate the document, verify its content, and assume responsibility for the accuracy of the information contained therein. In the case of EIS, the Commission directs and is responsible for the preparation of the document, but the applicant or management contractor is responsible for paying for the preparation of the document.

2. Indicate how, by whom, and for what purposes 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.

The information contained in a NEPA document (EA or EIS) is used to fulfill the Commission's NEPA compliance responsibilities. The Chairman uses a NEPA document to determine whether there is a significant impact on the environment as a

consequence of the proposed action. The Chairman then uses that determination as part of his/her decision-making process regarding approval of a management contract.

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 collections. Also describe any consideration of using information technology to reduce burden.

The information normally collected includes, but is not limited to, maps, charts, technical studies, correspondence from other agencies (federal, tribal, state, and local), and comments from the public. In order to reduce the number of paper copies of NEPA documents prepared, the Commission posts its final NEPA documents on its website (www.nigc.gov). The Commission also encourages other agencies and the public to accept the document in electronic form. However, many agencies specifically request or mandate the documents be in paper form. Comments on draft NEPA documents may be submitted electronically to an e-mail address published in the official notice of availability (NOA).

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.

To the extent that previously submitted information is applicable to another submission, the Commission will not require resubmission. Furthermore, CEQ regulations encourage the reuse of information “to reduce duplication and paperwork.” 40 C.F.R. § 1506.4. Due to the highly individualized nature of the analysis conducted for NEPA compliance, most information will not be transferable. However, where information in studies, such as regional impact studies (water, traffic, air), is relevant in another project, the Commission does not require that an additional study be conducted but will encourage that the appropriate and all readily existing information be included as part of the NEPA document being prepared.

5. If the collection of information impacts small business or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize the burden.

Not Applicable

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 collection of a NEPA document is required by law. If the information is not collected, the Commission would be subject to legal challenge under the NEPA and the Administrative Procedures Act if it were to approve a management contract and did not document and consider

the environmental consequences of that action. Normally, information collected for a NEPA document is only collected once. Collection of this information a second time will only occur when the time period between when the information was collected and Commission action are so great as to render the information stale or unreliable.

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 documents;
- 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.

In order to satisfy the Commission's NEPA responsibilities, more than one copy of a prepared NEPA document is always required. Normally, the Commission requires the document be made available to the public in several locations. Other agencies that may be required to rely on the document for their current or future actions will also require at least one copy of the document.

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 C.F.R. § 1320.8(d), soliciting comments on the information collection prior to submission to OMB.

Summarize public comment received in response to that notice 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 prior periods. There may be

circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Commission contacted two entities that routinely conduct EAs and EISs on behalf of tribes. Both indicated that the Commission requirements parallel NEPA requirements of other agencies. Each offered observations on the Commission's information collection activity in the area and the estimates of hourly burden and cost imposed. Their comments resulted in modification to the previous estimates. A notice seeking comments on the reinstatement of this information collection has been published in the Federal Register.

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

Not Applicable. Payments or gifts to respondents are not provided.

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

In accordance with the National Historic Preservation Act (NHPA), some information collected and used in a NEPA document may be considered confidential and is withheld from public disclosure. See 36 C.F.R. § 800.11(c).

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.

Not Applicable.

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 on Item 13 of OMB Form 83-I.
- Provide estimates of annualized costs 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. Instead, this cost should be included in Item 14.

The NIGC anticipates that all respondents will contract with outside parties to provide the required information. Therefore, the hour burden on subject tribes will be nominal. See the response to question #13.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- 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. Include description 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 economics 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.

An Indian tribe that submits a gaming management contract for approval will also typically contract for the preparation of a NEPA document that is submitted to the Commission as part of the management contract review. Below is the estimated dollar

burden for the preparation of both types of NEPA documents, as incurred with a standard hourly consulting fee. The cost and time estimates were generated through discussion with contractors that perform these functions for tribes. The costs are all operational or purchase-of-service in nature.

The NIGC estimates six (6) annual EA responses at 1300 hours per response/\$110 per hour.

The NIGC estimates one (1) annual EIS response at 4500 hours per response/\$110 per hour.

	Frequency of Reporting	Total Annual Responses	Hours per Report	Cost per Burden Hour	Total Cost per Respondent
EA	1	6	1300	\$110	\$143,000
EIS	1	1	4500	\$110	\$495,000

14. Provide estimate 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. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Commission estimates that 120 and 1000 hours will be needed to review an EA and EIS, respectively. This will involve discussions with the tribe, contractor(s), other federal, tribal, state, and local agencies, analysis of submission(s), review and comment on document(s), involvement in public participation activities, and correspondence with various entities. The cost estimates reflect direct staffing cost, overhead, and miscellaneous expenses such as travel. The Commission estimates 6 EA and 1 EIS annual responses to be reviewed.

	Frequency of Reporting	Total Annual Responses	Hours per Report	Cost per Burden Hour	Total Cost per Respondent
EA	1	6	120	\$90	\$10,800
EIS	1	1	1000	\$90	\$90,000

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of OMB Form 83-I.

The estimates provided in Items 13 and 14 represent some changes from previous estimates. Previously, the NIGC estimated that it would collect and review 15 EAs annually, which has been reduced to six (6) annually. This estimate was reduced because the Commission has seen a reduction in the number of third-party management contracts submitted for approval, and the new estimate reflects recent trends. At the same time,

the cost per burden hour estimate has increased from previous estimate of \$90 per hour to \$110 per hour, due to an increase in standard industry cost. Furthermore, the Commission is increasing its estimate for hours per response with regard to preparation of an EIS. The previous estimate of 1800 hours is being increased to 4500 hours because of the increased complexity of EISs being prepared today in order to address more complex and comprehensive environmental issues and survive judicial scrutiny.

16. For collections of information whose results will be published, outline plans for tabulations 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.

This information is collected and published at the conclusion of the NEPA process. The publication of information collected for NEPA documents is always done by making the EA or EIS available to the public by placing paper and electronic versions in places easily accessible to the public. An EIS and in some cases an EA are also made available on the internet. As NEPA documents usually contain complex analytical techniques, the Commission uses public information workshops to explain these techniques. The schedule for an EIS is normally established during the scoping process which includes consultation with other agencies and the public. The schedule for an EA is developed in consultation with the consultant preparing the EA and the tribe.

17. If seeking approval to not display the expiration date for OMB approval of information collection, explain the reasons that display would be inappropriate.

Not Applicable.

18. Explain each exception to the certification statement in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB Form 83-I.

Not Applicable.

19. Collection of Information Employing Statistical Methods.

This section is not applicable. Statistical methods are not employed.