SUPPORTING STATEMENT FOR RECORDKEEPING AND REPORTING REQUIREMENTS 25 C.F.R. § 559.2

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) establishes that Indian gaming may be conducted only on Indian lands. 25 U.S.C. §§ 2703(4), 2710(a)(1), 2710(b)(1), 2710(d)(1). The IGRA further contains a general prohibition against gaming on Indian lands outside of a tribe's reservation boundaries as of the effective date of the IGRA, October 17, 1988, or on lands acquired into trust by the United States for the tribe or tribal member(s) after that date; if those conditions are not met, the site must meet one of the exceptions laid out in 25 U.S.C. § 2719 to be eligible for IGRA gaming. To carry out its regulatory requirements, the National Indian Gaming Commission (NIGC) must know the status of lands where tribal gaming is occurring. Without the required showing that gaming is conducted on "Indian lands," it is unclear whether the NIGC or the State exercises jurisdiction over the gaming.

In addition, a September 2005 report by the Office of Inspector General (OIG) for the United States Department of the Interior (DOI) recommended that the NIGC establish a process by which tribes that have taken land into trust since 1988 certify the lands' status and establish and maintain a database containing eligibility information and/or lands determinations for all Indian gaming operations. The NIGC has established an Indian lands database and seeks to populate the database with information on new gaming facilities. The data will be utilized for internal reporting and recordkeeping purposes; to determine jurisdiction and legality of Indian gaming; and to respond to inquiries from other government agencies and Congress regarding where Indian gaming is occurring and proposed. Any public requests for information contained in the database will be subject to the Freedom of Information Act, 5 U.S.C. § 552, Privacy Act, 5 U.S.C. § 552a, and 25 U.S.C. § 2716.

Proposed section 559.2 requires that a tribe submit a notice to the NIGC at least 120 days before a new gaming facility will be opened, alerting the agency that a facility license is under consideration. The notice will contain the name and address of the property; the legal description of the property; a copy of any deeds or other trust documents to the property if not maintained by the Bureau of Indian Affairs, Department of the Interior (BIA), or a short explanation as to why no deed exists; and documentation on the property's ownership if not maintained by the BIA. If the trust documentation is maintained by the BIA, the NIGC requests the tract number to the parcel(s) as assigned by the BIA, Land Title and Records Office (LTRO) when the property is recorded.

The notice and its information provide necessary data without which the NIGC is unable to easily identify the property or verify that a gaming site will be on eligible Indian lands pursuant to the IGRA and enter the relevant lands information into the agency's Indian lands

database.

First, the name and address of the future facility are needed by the NIGC in order to identify the site and are needed for the agency's Indian lands database. Second, the NIGC is constrained in its attempts to research the gaming eligibility status of a site under the IGRA without a legal description. Although many deeds and ownership documentation are maintained at BIA Land Title & Records Offices, without information from a tribe regarding the address, legal description and LTRO tract number, where gaming is to be conducted, the NIGC cannot reliably or efficiently know which deeds to request. Previous requests to the BIA indicate that the BIA is often unable to assist the NIGC without a legal description and tract number of the land. The legal description and LTRO tract number also allows the NIGC to work with the BIA to verify, for example, whether land is within or contiguous to 1988 reservation boundaries, is within an Oklahoma former reservation, or is within the last reservation boundaries not in Oklahoma. See 25 U.S.C. §§ 2703(4), 2719. Third, the NIGC is requesting that tribes submit deeds or other trust documents not maintained by the BIA. Tribes often operate their own real estate offices and maintain their trust deeds themselves. If no deed was ever issued for the property, the tribe must write a short explanation of why no deed exists. If the deed or other trust document is maintained by the BIA, the NIGC requests the Tribe provide the tract number, if available, to ensure accurate information about the parcel where gaming will occur. Moreover, if land is owned in fee, the tribe should have obtained a copy of the deed in the course of developing the new project. Documentation of ownership indicates that the land is owned by the tribe or a tribal member and is an indication of jurisdiction. A tribe is required to have jurisdiction and exercise governmental power over its gaming lands. See 25 U.S.C. §§ 2703(4), 2710(b)(1). The Commission presumes that a tribe has both jurisdiction and exercises governmental power on its reservation lands but needs to verify these two elements for all off-reservation sites as they are threshold requirements for tracts to be considered Indian lands. 25 U.S.C. §§ 2703(4), 2710, and 2719.

Second, the NIGC needs to obtain information on a tribe's environmental and public health and safety laws to oversee the implementation of approved tribal gaming ordinances. Before opening a gaming operation, a tribe must adopt an ordinance governing gaming activities on its Indian lands. 25 U.S.C. § 2710. The Act specifies a number of mandatory provisions to be contained in each tribal gaming ordinance and subjects such ordinances to agency review and the NIGC Chairman's approval. Id. Approval by the Chairman is predicated on the inclusion of each of the specified mandatory provisions in the tribal gaming ordinance. Id. Among these is a requirement that the ordinance must contain a provision ensuring that "the construction and maintenance of the gaming operation, and the operation of that gaming is conducted in a manner that adequately protects the environment and the public health and safety," 25 U.S.C. § 2710(b)(2)(E). Since 1993, when the Commission became operational, the Chairman has required each tribal gaming ordinance submitted for approval to include the express environmental and public health and safety statement set out in 25 U.S.C. § 2710(b)(2)(E).

The Commission believes that tribes must have some form of basic laws in the following environmental and public health and safety areas: (1) emergency preparedness, including but not limited to fire suppression, law enforcement and security; (2) food and potable water; (3) construction and maintenance; (4) hazardous materials; and (5) sanitation (both solid waste and wastewater). Accordingly, in 2002 the Commission issued an interpretive rule for environment, public health, and safety, 67 Fed. Reg. 46,109 (Jul.12, 2002). (Interpretive Rule).

The NIGC has conducted many environment and public health and safety inspections since the issuance of the interpretive rule and has worked with a consultant to allow the agency to gain expertise in this area. Through this inspection process, the NIGC has identified weaknesses in tribal laws or enforcement thereof and has worked with tribes to fix deficiencies.

In the years since adoption of the interpretive rule, the Commission has identified several deficiencies in that rule. The interpretive rule does not assist the Commission in identifying what environmental and public health and safety laws apply to each specific gaming operation or ensure that tribal gaming regulatory authorities are enforcing those laws. There is a need for a submission to the Commission of a certification by the tribe that it has identified laws applicable to its gaming operation and is in compliance with those laws together with a document listing those laws. A certification process would help tribes and the Commission to identify problem areas where laws are needed so that the NIGC may offer technical advice and encourage adoption and enforcement of appropriate laws. New part 559 would not replace the interpretive rule but would work in conjunction with it.

Proposed part 559 requires that each gaming facility license be renewed at least once every three years and that a tribe must submit a copy of each new facility license to the NIGC within 30 days of issuance. Documentation to be submitted with the facility license are a tribal certification that a tribe has identified and enforces the environmental and public health and safety laws applicable to its gaming operation and a document listing the applicable laws or stating that the list has not been substantially modified. The certification and list would allow the Commission to rely on a tribe's assertion that it is in compliance with applicable laws.

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.

This is a new collection. The Indian lands information will be utilized by the NIGC to ensure that its records are complete as to the status of lands where tribal gaming is occurring. The information obtained from the tribe will be analyzed by NIGC, used to obtain further documentation as necessary, and entered into an Indian lands database that will be maintained by the Commission. The data will be utilized for internal reporting and recordkeeping purposes, to determine jurisdiction and legality of Indian gaming, as well as to respond to inquiries from other government agencies and Congress regarding where Indian gaming is occurring, where Indian gaming is proposed and the applicable IGRA land categories.

The environmental and public health and safety (EPHS) information will be used by the Commission to ensure that the tribe has identified applicable laws and is enforcing them. The NIGC field investigators will use the list of EPHS laws to request copies of tribal laws and use them in conjunction with the EPHS inspections conducted through the EPHS interpretive rule. The Commission will also be able to identify where technical assistance and training is needed. The Commission believes that creation of a list will encourage tribes to closely examine their EPHS compliance and will enable them to determine whether they need to take corrective action to bolster safety where necessary. The list of applicable laws will also allow the Commission to identify situations that might lead to imminent jeopardy and take action to rectify the situation through enforcement measures if a tribe is unwilling or unable to correct the situation itself. In

addition, the proposed rules will allow the Commission to track the opening and closing of tribal gaming facilities.

Any public requests for information contained in the information collection will be subject to the Freedom of Information Act, 5 U.S.C. § 552, Privacy Act, 5 U.S.C. § 552a, and 25 U.S.C. § 2716.

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 collection does not require the use of automated, electronic, mechanical, or other technologic techniques; however, the proposed rule does allow for electronic submission of responses.

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.

The Bureau of Indian Affairs, Department of the Interior (BIA) Land Title & Records Offices maintains deeds and tracks ownership of many acres of lands held in trust for the tribes by the United States. The NIGC plans to utilize the BIA to obtain Indian lands documentation where possible. However, the BIA tracks its trust lands by legal description and tract number. Without information from a tribe regarding the legal address where gaming is to be conducted, along with the tract number assigned by the LTRO, the NIGC cannot reliably or efficiently know which deeds to request and the BIA often cannot match the gaming operation's mailing address with the legal site description before providing a response. The legal description and LTRO tract number also allows the NIGC to work with the BIA to verify, for example, whether land is within or contiguous to 1988 reservation boundaries, is within a Oklahoma former reservation, or is within the last reservation boundaries not in Oklahoma. See 25 U.S.C. §§ 2703(4), 2719.

Further, documentation of ownership indicates that the land is owned by the tribe or a tribal member and is an indication of jurisdiction. A tribe is required to have jurisdiction and exercise governmental power over its gaming lands. See 25 U.S.C. §§ 2703(4), 2710(b)(1). The Commission presumes that a tribe has jurisdiction on its reservation lands, but needs to ensure that the tribe both has jurisdiction and exercises present-day governmental power are met for all off-reservation sites as they are threshold requirements for tracts to be considered Indian lands. 25 U.S.C. §§ 2703(4), 2710, 2719.

In addition, as a result of agreements between tribes and the BIA, tribes often operate their own real estate offices and maintain their trust deeds themselves. In that case, the proper entity to ask for the trust deed and documentation of ownership is the tribe itself. If no deed or other trust document was ever issued for the property, the tribe is in the best position to explain why no deed was issued.

There is no other Federal or state agency that collects or tracks the tribal laws applicable to each gaming operation. Some tribes have adopted state laws through tribal-state compacts under 25 U.S.C. § 2710(d), however, many compacts do not address EPHS issues. Further, tribes operating only class II operations are not required to enter into tribal-state compacts, and therefore, tribal laws apply. It is important for the Commission to know what laws apply in an emergency situation, such as whether BIA, tribal, or local police will respond to any incidents at a tribe's gaming operation.

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.

The collection of information does not involve any small entities. The only respondents affected by the information collection are Indian tribes operating tribal gaming facilities. Indian tribes are not small entities as defined by OMB instructions.

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 NIGC is requiring the Indian lands information to be collected on new tribal gaming facilities on a one-time basis. If this information is not received by the NIGC, the NIGC will not immediately know whether a tribe has the right under IGRA to game on a site when a new gaming operation opens (as referenced in the OIG report dated September 2005). The NIGC will be hindered or delayed in its ability to carry out core agency functions or take enforcement action, if necessary, if the Commission is unsure whether it or the state has jurisdiction over the gaming operation.

The NIGC is requiring the EPHS information be submitted with the issuance of each new gaming facility license, which would be at least once every three years under the proposed rule for a facility license term. The laws applicable to the gaming operation may change over time and three years is a reasonable period for update; to wait longer would risk reliance on an inaccurate list. Moreover, the Commission feels it is unwise to rely on a tribe's certification of compliance with its EPHS laws that is over three years old. If the NIGC does not require and collect information on the enforcement of tribal EPHS laws, there is a potential for uncorrected EPHS issues to develop into situations of imminent jeopardy. The issuance and termination of facility licenses is necessary for the Commission to accurately track Indian gaming operations.

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.

Not applicable.

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 NIGC is submitting a Notice Proposed Rulemaking (NPRM) to the Federal Register at the same time as the collection of information request. The NPRM contains the information required by 5 C.F.R. Part 1320 and provides for a 30-day comment period to receive feedback from the affected public regarding the cost and burden to gaming tribes related to complying with this request.

The NIGC has engaged in preliminary consultation with over 113 gaming tribes on previous drafts of the proposed rule and has incorporated

those comments into the proposed rule. Many of the provisions in the previous drafts are not contained in the proposed rule published in the NPRM as the Commission has modified its drafts to minimize the burden on tribal respondents in response to comments received by affected tribes and tribal entities.

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

Not applicable. The NIGC will not provide any payment 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 lands information requested consists primarily of public documents. The environmental and public health and safety certification and list of laws should also consist primarily of public documents. To the extent any information provided is requested by a member of the public, the Commission would make a decision on whether to release the information based on compliance with the Freedom of Information Act, 5 U.S.C.A. §552, the Privacy Act, 5 U.S.C. § 552a, and 25 U.S.C. § 2716(a).

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. No sensitive questions are asked.

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.

This information request is specific to tribal governments that operate gaming facilities and to tribal governments considering opening new gaming facilities in accordance with the IGRA, 25 U.S.C. § 2701 et seq.

(a) The Indian lands information collection in the proposed rule would apply only to new gaming operations. Based on the trends of the past few years, it is expected that 10 to 15 new gaming operations open each year. This portion of the information request will not be recurring and tribes will only be required to comply with the information request if they plan on opening a new tribal facility. It is rare that a single tribe will open more than one facility once every few years.

The proposed rule requires tribes opening new gaming facilities to submit: (1) the facility name; (2) mailing addresses and legal descriptions for the proposed gaming site; (3) a copy of the trust deed(s) and documentation on site ownership if not maintained by the Bureau of Indian Affairs, Department of the Interior (BIA); (4) the LTRO tract number if the trust or deed information is maintained by the BIA. If a tribe maintains its real property deeds through contract with the BIA, it will have ready access to the legal description, as well as the LTRO tract number. There could be some burden on the tribe to learn the legal description of the property. The legal description can be obtained from the county recorder's office, through working with the BIA, or from the tribe's own realty office. There would also be a minimal burden on the tribe to locate a copy of a deed or to write a brief explanation that no deed was ever issued for the property in the rare instances where this is the case on tribal reservation lands. Likewise, there would be a burden on tribes to provide documentation of ownership if not maintained by the BIA. Such documentation can be obtained from the county recorder's office or from the tribe's own realty office if it maintains such information. In general, the NIGC believes tribes planning to open gaming establishments on fee lands would need to obtain this information as part of the normal course of business. Therefore, the Indian lands portion of the rule would add only limited additional expense to Indian gaming operations.

Over the past year, the Commission has requested Indian lands information from several tribes for existing facilities. The information collection there was substantially greater than that contained in the proposed rule. The NIGC had asked tribes to provide a legal description, a copy of the trust deed, a map of the property, documentation from the BIA on its decision to take the land into trust, and a legal analysis of why each open tribal gaming site qualified as Indian lands eligible for gaming under the IGRA. Tribes reported that the collection took approximately 4 hours if the information had already been compiled at a cost of approximately $70 (4 hours x $17.50). Tribes conducting gaming on pre-IGRA trust lands estimated 20 hours of response time to collect the information at a cost of approximately $350 (20 hours x $17.50). Tribes gaming

under an exception in 25 U.S.C. § 2719 estimated up to 80 hours of response time at a cost of approximately $1,400 (20 hours x $17.50). Therefore at that time, the NIGC estimated that the range of costs for each new gaming facility to gather the required information then requested was approximately $70 to $1,400. The Commission expects that the most of the response time and cost will be removed under the current information request as the NIGC is not requesting a legal analysis, deed, map, or documentation on the BIA decision to acquire land into trust for new facilities under this proposed rule. The Commission estimates that the hour burden will drop to 2 hours at a cost of $35 (2 x $17.50) under the proposed rule if the BIA maintains the deed and documentation of site ownership, going up to 10 hours at a cost of $175 (10 x $17.50) if the BIA does not maintain such information.

(b) The proposed rule further requires an EPHS information collection in association with the issuance of each facility license. The maximum number of potential respondents is approximately 562, the number of federally recognized Indian tribes. See Notice, Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs 72 FR 13648 (Mar. 22, 2007). Currently there are approximately 226 gaming tribes that operate approximately 419 gaming operations.

Once every three years, a tribe would be required to submit for each of its gaming operations: (1) a copy of each gaming site's facility license; (2) a tribal certification that it has identified and is in compliance with applicable environment and public health and safety laws; and (3) and a document listing the titles of those laws other than Federal laws.

The NIGC believes that there will be minimal burden for a tribe to identify the laws applicable to its gaming operation, other than federal laws, in the areas of emergency preparedness, food and water, construction and maintenance, hazardous materials, and sanitation. Tribes should already be aware of and enforcing laws applicable to their gaming operations so time and cost associated with a certification and list of laws should be minimal. The estimated hour burden of assembling EPHS laws and creating a list is 3-8 hours, or approximately $52.50 (3 x 17.50) to $140 (8 x $17.50) depending on whether the tribe already maintains such a list.

The annual hour burden to respondents for the EPHS collection comes mostly from outside inspectors rather than employee hour costs. Operations with full-time EPHS employees pay for them as part of the overall cost of the tribe's EPHS program rather than as costs associated with inspection and certification. The costs associated with the customary and usual business practice of maintaining EPHS and fixing code violations is not a direct result of a certification requirement, but rather required already by tribal laws, including the tribal gaming ordinance, which requires a tribe to construct, maintain, and operate its gaming facilities in a manner that protects the public pursuant to 25 U.S.C. § 2710(b)(2)(E). The hour cost of having the appropriate tribal entity create a certification after the inspections is estimated at 2 hours for a cost of $35 (2 x $17.50).

(c) The proposed rule also requires an information collection if a facility license is terminated or not renewed or if a gaming place, facility, or location closes. The NIGC believes the tribe will create documentation for this through governmental meeting minutes or through a notification to the gaming operation and need only forward that information to the Commission. The estimated

hour burden of forwarding this information to the Commission is a half hour for approximately $8.75 (.5 x $17.50).

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.

(a) There should be no capital or start-up costs for the Indian lands portion of the information collection other than discussed in question 12.

(b) There should be no initial start-up costs for the EPHS portion of the information collection other than as listed in question 12. Once every three years, capital costs of hiring consultants, attorneys, engineers, or inspectors to certify compliance with applicable EPHS laws is estimated to be $1,000 to $7,000 for inspection and certification. One estimate was for a series of inspectors over 3-5 days at a total cost of $5,000-$7,000. Other estimates ranged from $40,000 to $250,000 and included ongoing compliance costs in addition to inspection costs.

Potentially, a few tribes will have to make significant changes to their infrastructure before a certificate of compliance can be issued. In such cases the costs may be estimated as ranging from $40,000 to $250,000 and include ongoing compliance costs in addition to inspection costs. The wide range of costs depends on whether a tribe has already developed and identified applicable EPHS laws and has an ongoing program aimed at assuring the public health

and safety. The higher cost estimates came from operations with full-time EPHS employees and represent the overall cost of the tribe's EPHS program rather than simply costs associated with inspection and certification. Operations with full-time EPHS employees pay for them as part of the overall cost of the tribe's EPHS program rather than as costs associated with inspection and certification. As noted in the answer to question 12, the costs associated with the customary and usual business practice of maintaining EPHS and fixing code violations are not a direct result of a certification requirement, but rather required already by tribal laws, including the tribal gaming ordinance, which requires a tribe to construct, maintain, and operate its gaming facilities in a manner that protects the public pursuant to 25 USC 2710(b)(2)(E). The hour cost of having the appropriate tribal entity create a certification after the inspections is estimated at 2 hours for a cost of $35 (2 x $17.50).

Also, if a tribe does not have laws in one of the enumerated areas, it will have to hire an attorney to research applicable laws in this area and may need to have the attorney draft tribal law if the tribe opts not to adopt a uniform code or law of another jurisdiction. The NIGC estimates the cost for this as approximately $5,000-$10,000.

(c) The proposed rule also requires an information collection if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens. There are no expected capital or start-up costs for this portion of the information collection.

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 estimated total annualized cost of the proposed information collection to the Federal Government is $11,510.00

Total cost to the Federal Government of receiving and processing Indian lands information is estimated at $3,600.00 for the first year. This calculation is based upon an estimated processing time of 1 to 40 hours per response at a cost of $40.00 per hour. The Commission estimates that, based on past experience, approximately 10 to 15 new facilities have opened in each of the last few years. The Commission is using the high estimate of 15 new facilities for this calculation. Generally, the submissions will be quickly identified by an attorney as compliant with the Indian Gaming Regulatory Act and will be added to the Indian lands database by a legal staff assistant. Consequently, most will require only 1 hour of response time. One or two facilities will be located on lands that are not readily identified as qualifying as Indian lands under the Act. These may require a legal opinion which might take up to 40 hours to complete. There will be nominal operation expenses because the NIGC already maintains an Indian lands database. Therefore, 13 responses at one hour would cost $400 and 2 responses at 40 hours would cost $3,200, equaling a total cost of $3,600.00.

Total cost to the government of receiving and processing the environmental and public health and safety certification and list of laws will be a high of $7,910.00 in the first year. This is based on an estimated processing time of 1 hour per response at a cost of $35.00 per hour. The estimate is based on a review for completeness by an environmental professional and input into the office tracking system by a data analyst. The first year all tribes that game, totaling approximately 226, will submit the certification and list. Therefore, the initial cost will be 226 times 35, which equals $7,910.00. Subsequent costs will be greatly reduced because tribes are required to submit new certifications every 3 years and notification if the list of laws is revised.

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

This is a new program.

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 is an ongoing information collection with no ending date and no plans for publication. The NIGC does not plan to use any complex analytical techniques. Information will be processed as it arrives.

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. The Commission certifies compliance with 5 C.F.R. ' 1320.9.

B. Collection of Information Employing Statistical Methods.

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