

**SUPPORTING STATEMENT FOR RECORDKEEPING AND
REPORTING REQUIREMENTS UNDER 25 CFR Part 517**

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 (25 U.S.C. § 2701 *et seq.*, 102 Stat. 2467, Pub. L. 100-497) (IGRA, or the Act) governs the regulation of gaming on Indian lands. The Act established the National Indian Gaming Commission (NIGC, or the Commission) as a federal regulatory agency with authority to oversee Indian gaming. The Freedom of Information Act, as amended, 5 U.S.C. 552 (FOIA), requires federal agencies to promulgate regulations regarding access to information compiled, created, and maintained by that agency.

25 CFR § 517.4

The NIGC recordkeeping and reporting requirements provide procedures that individuals should use when requesting information. Requests for information must reasonably describe the records requested and be specific enough to enable NIGC employees to locate the requested information with reasonable effort. Without this information, NIGC staff would not be able to properly identify responsive documents to fulfill requests for information maintained by the agency.

25 CFR § 517.7

Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information (3 CFR 235 (1987)), requires federal agencies to give notice to submitters of such information whenever it is determined that disclosure may be necessary. Submitters are then given an opportunity to object to disclosure of the requested information. 25 CFR § 517.7(c) allows a submitter a reasonable time to provide the NIGC with a detailed written statement of any objection to disclosure.

25 CFR § 517.8

Section 552 of the Freedom of Information Act (FOIA) provides a right of appeal to federal agencies from certain actions involving access to information collected, created, and maintained by the agencies. 25 CFR § 517.8 provides requesters with the right to an appeal to the NIGC for adverse agency decisions or failure by the NIGC to make an initial determination regarding access within a specified time frame. This right may be exercised by filing an appeal with the NIGC within 30 days after notification of denial of access or after the specified time has expired under which the NIGC must make an initial

determination.

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 collation.

25 CFR § 517.4

The requests will be used by the NIGC to determine if a requested record exists and whether the record, in whole or in part, must be released to the requester. An individual seeking access to records must request such access so that the NIGC has a record of such requests and can be sure to answer the requests in the order received. It would be impossible for the NIGC to implement the provisions of FOIA if the collection of information were not conducted.

25 CFR § 517.7

The information provided by submitters of information in response to NIGC notification under Executive Order 12600 will be reviewed by the NIGC's FOIA Officer. The information will assist the FOIA Officer in determining whether to disclose the information requested. Without this information, the FOIA Officer would be unable to ascertain whether the submitter objects to disclosure and if he/she does object, the grounds for the objection.

25 CFR § 517.8

The information provided by requesters outlining the grounds for appeal will be reviewed by the NIGC for the purpose of providing an appeal of adverse determination or failure to comply. The information contained in the appeal will assist the NIGC in framing the issues and providing a proceeding that will be expeditious, yet provide a full review of all issues. If the collection of information were not conducted, the NIGC would be unable to provide the appeal required under FOIA.

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.

25 CFR § 517.4

This section allows for the submission of requests via facsimile machine. The Act itself requires all requests for information to be submitted in written format.

25 CFR § 517.7

Because Executive Order 12600 requires pre-disclosure notice and allows the submitter the opportunity to object to disclosure of information considered confidential, written submission is necessary to expedite review so that the FOIA Officer may make a determination on disclosure. Submitters of information may submit objections via electronic mail and/or facsimile machine.

25 CFR § 517.8

Because FOIA provides a right of appeal for certain actions of the Chairman, the NIGC in implementing the statute, must require submission of an appeal. The submission of a statement of the reasons for appeal via electronic mail or facsimile machine will help the NIGC to provide an expeditious, yet thorough proceeding.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in item 2 above.

To the extent that objections to the release of confidential information apply to multiple FOIA requests, objections need not be resubmitted for the purposes described in item 2 under 25 CFR § 517.7

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 burden.

25 CFR § 517.4

The collection of information will not have a significant impact on a substantial number of small businesses or other small entities when submitting a FOIA request. All requesters must submit the minimum information that the NIGC requires to fulfill its statutory responsibilities.

25 CFR § 517.7

The collection of information will not have a significant impact on a substantial number of small businesses or other small entities because they only need to submit objections to disclosure of confidential commercial information that they have already submitted to the NIGC.

25 CFR § 517.8

The collection of information will not have a significant impact on a substantial number of small businesses or other small entities when submitting an appeal. All requesters must submit the minimum information that the NIGC requires to fulfill its statutory

responsibilities.

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 frequency of the need to provide relevant information to consider withholding confidential information or to provide an appeal is inextricably linked to the desire of individuals to obtain access to information collected, created, or maintained by the NIGC and can only be done in response to requests from the public.

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.**

Due to the nature of FOIA requests, it is possible that the NIGC could, under Executive Order 12600, send pre-disclosure notices to the same entities that would require the entities to respond more than once a quarter and submit a written response in fewer than 30 days after receipt of the pre-disclosure notice. In those instances, the information that is the subject of the pre-disclosure notices could contain proprietary, trade secrets, or other confidential business information. Under 25 USC § 2716, the NIGC is required to preserve any and all information received pursuant to the Act as confidential under exemptions four and seven to the FOIA, which includes information involving ongoing investigations and proprietary information.

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.

On October 18, 2005, a proposed amendment to the regulation that contains the information collection requirements for the FOIA was published in the Federal Register for public comment (70 Fed. Reg. 60,470). The proposed amendment invited the regulated community to comment on the form and content of the regulation. The final rule, published April 19, 2006, 71 Fed. Reg. 20,006, included a discussion of the requirements of the rule, along with a response to the public comments received.

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

Not applicable. The NIGC does 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.

25 U.S.C. § 2716 requires NIGC to preserve all information received pursuant to the Act as confidential. Such information is protected from disclosure under the FOIA, 5 U.S.C. § 552(b)(4). Further, 25 U.S.C. § 2716 removes from the NIGC any discretion it would otherwise have to disclose information that falls within FOIA exemptions 4 and 7 and requires NIGC to disclose such information only to other law enforcement agencies for law enforcement purposes.

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.

25 CFR § 517.4

The NIGC estimates the average annual cost to a requester will be negligible. The number of requests received varies from year to year, as does the information being requested. The cost to each requester is determined by the amount of time spent drafting a request letter.

25 CFR § 517.7

The NIGC estimates the cost for a submitter to be \$1,000.00 (an average of 10 hours x \$100.00 per hour). This estimate was based on each submitter using an attorney to perform the review of submitted material for release by the NIGC. Based on available information, the burden would be approximately the same for each requester.

25 CFR § 517.8

The NIGC estimates the average annual cost to a requester will be negligible as few requesters submit appeals. The cost to those requesters that do submit appeals will again be determined by the amount of time spent drafting an appeal letter.

13. Provide an estimate of the total annual cost burden to respondents or record keepers 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 past of customary and usual business or private practices.

25 CFR § 517.4

As described in 12 above, the NIGC estimates the cost to a requester to be negligible.

25 CFR § 517.7

As describes in 12 above, the NIGC estimates the cost for a submitter to be \$1,000.00 per submitter of information.

25 CFR § 517.8

As described in 12 above, the NIGC estimates the cost to a requester to be negligible.

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.

25 CFR § 517.4

The total cost to the federal government of reviewing the request, searching for the records, duplicating the records and providing access to the records of requests for information will vary. An average of 100 requests are received per year, with the total estimated cost to the federal government \$ 48,800.00 (100 requests x an average of 10

hours at \$31.00 per hour for compilation and review plus an average of 10 hours at \$17.80 per hour to search, compile, and copy the information = \$ 48,800.00). Estimated hourly rates include operational expenses.

25 CFR § 517.7

The total cost to the federal government will vary. If 50 requests per year require the serving of a submitter notice, the estimated cost to the federal government would be \$15,500 (50 requests x an average of 10 hours at \$31.00 per hour = \$ 15,500). This includes the cost of serving notice to the submitter, reviewing the written objections, searching for the records, and making a determination on disclosure of information. Estimated hourly rates include operational expenses.

25 CFR § 517.8

The cost to the federal government will vary by appeal. The initial cost of this information collection requirement is estimated to be \$465.00 per appeal (15 hours x \$31.00 per hour = \$465.00). If 10 appeals are filed, the total cost to the federal government will be \$4,650.00 (10 x \$465.00). Estimated hourly rates include operational expenses.

In the likelihood that the appeal results in litigation and legal counsel is required, this requirement could be potentially costly. It is estimated that the cost in a given case will be \$2,000.00 (20 hours x \$100.00 per hour = \$2,000.00). If two appeals are filed each year, the annual burden would be an estimated \$4,000.00 (two actions x \$2,000.00 per action = \$4,000.00). With the recent amendments to the FOIA, agencies in litigation are now responsible for any attorney fees awarded to plaintiff. The NIGC has not had any occurrences where attorney fees were awarded to the plaintiff. Based on this information, the NIGC cannot estimate with any certainty the number of actions that would result in the awarding of fees to the plaintiff and what the cost would be to the NIGC.

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

Hours on the OMB inventory for this collection have been adjusted to reflect current requests numbers and fees assessed.

16. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, 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.

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 NIGC certifies compliance with 5 CFR § 1320.9.

B. Collection of Information Employing Statistical Methods.

This is not applicable. Statistical methods are not employed.