

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS
Class III Tribal State Gaming Compact Process, 25 CFR 293
OMB Control Number 1076-0172

The Department submitted this request for a new collection in conjunction with the July 2, 2008 publication in the Federal Register of the proposed rule (73 FR 37907). OMB filed comments and withheld approval of the information collection, directing that, prior to publication of the final rule, the Department provide all comments on the information collections in the proposed rule, the agency response to these comments, and a summary of any changes to the information collection. A summary of the comments and responses are in the response to no. 8, below.

Terms of Clearance: None.

A. JUSTIFICATION

- 1. Explain the circumstances make the collection 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. [Be specific. If this collection is a form or a questionnaire, every question needs to be justified.]**

IGRA, 25 U.S.C. 2710(d)(8)(A), (B) and (C), authorizes the Secretary to approve, disapprove or “consider approved” (i.e., deem approved) a tribal state gaming compact or compact amendment and publish notice of that approval or considered approval in the Federal Register. The submission process for the tribal state gaming compact or compact amendment is not clear. The final rule establishes procedures for submitting tribal state gaming compacts and compact amendments.

The authority is set forth in 5 U.S.C. 301, 25 U.S.C. 2, 25 U.S.C. 9 to prescribe regulations and in accordance with 25 U.S.C. 2701 the Indian Gaming Regulatory Act [IGRA], authorizes Class III gaming activities on Indian lands when authorized by an approved ordinance, located in a State the permits such gaming and conducted in conformance with a tribal state gaming compact.

- 2. Indicate how, by whom, and for what purpose is the information 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 will provide a process for Indian tribes and State governments to submit tribal state compacts or compact amendments to the Secretary for review, approval, disapproval or considered approved. Specific requirements are listed in Section 293.8. The requirements are: (a) Documentation submitted with a Tribal-State compact or compact amendment must include:

- (1) At least one original Tribal-State compact or compact amendment executed by both the tribe and the state;

(2) A tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies that the tribe has adopted the Tribal-State compact or compact amendment in accordance with applicable tribal law;

(3) Certification from the Governor or other representative of the State that he or she is authorized under State law to enter into the compact or amendment; and

(4) Any other documentation requested by the Secretary that is necessary to determine whether to approve or disapprove the compact or amendment.

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 collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements.] Does the collection involve the use of electronic technology to reduce the burden?

During December, 2001, Indian Affairs (IA) was forced to disconnect from the internet by a court order issued by the judge in the Cobell litigation. Hence, IA cannot implement GPEA until reconnection to the internet is completed.

The information contained in a proposed class III tribal state gaming compact or amendment is unique to each tribe. Electronic submission is not practical at this time. Storage of class III tribal state gaming compacts and amendments is located at Central Office because authority has been delegated to the Assistant Secretary – Indian Affairs by part 290 of the Departmental Manual.

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.

Duplication of a class III tribal state gaming compact or compact amendment cannot be identified. Each class III tribal state gaming compact or compact amendment submission will contain information unique to a particular tribe and state. No other Federal Agency has authority under IGRA to approve class III tribal state gaming compacts or compact amendments for Indian tribes.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This rule is not a major rule under 5 U.S.C. 804(20), the Small Business Regulatory Enforcement Act. No information is required from the tribes except that which is required by IGRA. This is a one time information collection for only those tribes seeking approval of a class III tribal state gaming compact or compact amendment by the Secretary of the Interior.

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.

Without the information we cannot ensure that the provisions of IGRA, State law, Federal law and the trust obligations of the United States are met. Therefore, we cannot reduce the burden. The information is collected when the class III tribal state gaming compact or compact amendment is submitted.

7. Explain any special circumstances that would cause an information collection to be conducted in certain manners. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d)(2)? Describe the frequency of reporting, the speed of reporting, the copies required, the use of statistics, confidential information, or proprietary trade secrets.

Final sections of the regulations do not require any exceptions to 5 CFR 1320.5(d)(2), as explained below.

- *Requiring respondents to report information to the agency more often than quarterly—None;*
- *Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it—None;*
- *Requiring respondents to submit more than an original and two copies of any document—None;*
- *Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years—None;*
- *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—None;*
- *Requiring the use of a statistical data classification that has not been reviewed and approved by OMB—None;*
- *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—None;*
- *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—None.*

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 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] 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. [Please list here the names, titles, addresses, and phone number of persons contacted. One or two should be sufficient.]

The Department has conducted two tribal consultation sessions with tribal representatives; on April 9, 2008, in Albuquerque, NM and on April 23, 2008, in San Diego, California. Conversations with two attorneys revealed that the time varies greatly from as little as 10 hours to thousands. One attorney said the 360 hours was an acceptable compromise since compacts when others are already in place are much easier and more quickly done. The following persons outside the agency were contacted 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: Neil Peyron, Chairman, Tule River Indian Tribe, P.O. Box 589, Porterville, California 93258, telephone (559) 781-4271 and Ron Suppah, Chairman, Confederated Tribes of the Warm Springs Reservation, Warm Spring, Oregon 97761, telephone (541) 553-1161. "As a general matter, the Warm Springs Tribe believes it is a good idea to have regulations that spell out the procedures to be followed when tribes and state submit compacts and compact amendments to the Secretary for review and approval under Section 11 of the Indian Gaming Regulatory Act (25U.S.C. 2710(d)(8)(c). In the past, the lack of regulations specifying the process for submission, review and approval, or disapproval, of compacts and compact amendments has led to confusion, uncertainty and uneven treatment of submitted compacts and compact amendments."

During the public comment period on the proposed rule, the Department received two public comments on the information collection.

One public comment requested that we add a request for some evidence that the State is authorized to enter into a compact or amendment. In response, the Department added a requirement for a certification that the State official is authorized under State law to enter into the compact or amendment in section 293.8 of the final rule. Because the State would have to determine this authority even without submission of this statement of fact, this certification does not increase the annual burden hours.

One public comment addressed the portion of the information collection stating that the Secretary may request additional documentation as required for the approval determination (section 293.9 of the proposed rule and section 293.8 of the final rule). This comment requested that BIA narrow the scope of what documents it may request as part of the submission. Section 293.8 of the final rule lists specific documents that should be submitted and includes a catch-all provision at subsection (d) allowing the Secretary to request any additional documentation needed for a determination as to compliance with IGRA. BIA has retained this catch-all provision to avoid defining a universe of documents that inadvertently omits documents that

may otherwise support a determination as to IGRA compliance merely because BIA cannot anticipate all the circumstances or documents that may be appropriate. As such, BIA has not made any changes to the information collection as a result of this comment.

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

No payments or gifts will be provided to respondents.

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

No assurances of confidentiality are provided as part of the FOIA/Privacy Act.

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.

No sensitive or private information is requested.

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 then aggregate the hour burdens.**
- * Provide estimates of annualized cost 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 13.**

Annual reporting and record keeping burden for this collection of information is estimated to average 360 hours for each of approximately 32 respondents. The number of respondents is based on an average of 385 compacts/amendments, since October 17, 1988, the enactment of IGRA. The annual hour burden is estimated on the number of days required to review and approve a tribal-state compact/compact amendment, which is 45 days or 360 hours. This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This is a one time submission by the respondent and will not need renewal. The total annual reporting and record keeping burden for this collection is estimated to be 11,520 hours. There are no specific forms to be completed by respondents. Estimated cost to respondent is estimated at a base salary of \$59.42 including 1.4 for benefits to equal approximately \$83.188 per hour. The total annual cost burden is 11520 hrs X \$83.188 = \$958,325.76. Indian Tribes and other outside parties are hired for information collection activities. These figures are based on the "Salary Table 2008-GS Incorporating the 2.50% General Schedule Increase" for a GS-15/10 because these are prepared by attorneys who are well-experienced in gaming issues.

- 13. Provide an estimate of the total annual [non-hour] 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 [including filing fees paid]. Include descriptions 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 economic 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.**

There are no additional total capital, total operation, start-up cost component or maintenance and purchase of services components costs incurred that are not previously discussed Item 12 above. Tribes that choose to use any electronic means may do so because they routinely use electronics for normal tribal business functions.

- 14. Provide estimates 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.**

Cost to the Federal government is associated with the review and approval of the class III tribal state gaming compacts and compact amendments. The average time for review of a class III tribal state gaming compact or amendment is 360 hours per response with an estimated 32 respondents. This includes clerical assistance, reviewing staff, supervisor, attorneys and approving official. As with the tribal/state officials, this work must be handled by very experienced professionals. Estimated cost to respondent is estimated at a base salary of \$54.80 including 1.5 for benefits to equal approximately \$82.20 per hour. This is the hourly rate for GS-14/6 in the Baltimore, Washington DC, Northern Virginia area for 2008.

Approximate annual cost is: 32 class III tribal state gaming compact/compact amendment x 360 hours = 11,520 hours x \$82.20 = \$946,944.00. Record maintenance cost is minimal

Number of respondents, annually	Hours per response	Public Hours x salary = cost burden	Start-up and O&M	Hour burden for Federal Gov't for 32 compacts	Cost per hr x 32 = fed'l gov't cost
32	360	360 x \$83.188 = \$29,947.68 x 32 = \$958,325.76	0	360 hrs x 32 = 11,520 total hrs.	\$82.20/hr x 11,520 hrs. = \$946,944.00

- 15. Explain the reasons for any program changes or adjustments reported in reporting and record keeping burden, and in capital start-up costs or O&M.**

This is a new collection; therefore, it is all program change.

- 16. For collections of information whose results will be published, outline plans for tabulation 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.**

A notice in the federal register will publicize any approvals but will not be detailed.

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

The OMB number and expiration date will be displayed in the record along with the required Paperwork Reduction Act statements.

- 18. Explain each exception to the certification statement identified in 5 CFR 1320.9 (hourly and cost burden) and 5 CFR 1320.8(b)(3) (the questions we ask commenters to address).**

Not applicable. We will display the OMB Control Number and the Expiration Date.