

# Supporting Statement A

## Class III Gaming Procedures, 25 CFR 291

OMB Control Number 1076-0149

**Terms of Clearance:** None.

### General Instructions

A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question "Does this ICR contain surveys, censuses, or employ statistical methods?" is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

### Specific Instructions

#### Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, an Indian tribe may request that the Secretary of the Interior approve Class III gaming procedures if the tribe was unable to voluntarily enter into a compact with a State to govern its gaming operations and the tribe's suit against the State was dismissed based on an Eleventh Amendment immunity defense. Interior has prescribed, in consultation with the Indian tribes, a process for the submission, review and approval of Class III gaming procedures in these cases, pursuant to IGRA section 2710(d)(7)(B). The process is set out in 25 CFR part 291. Section 291.4 sets out specifically what the Indian tribe must provide in its proposal for the Secretary's approval of Class III gaming procedures.

- 2. Indicate how, by whom, and for what purpose 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. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.**

The Department uses the information collected to ensure that the provisions of IGRA, the relevant provisions of State laws, Federal law and the trust obligations of the United States are met. The following table lists the actual use the agency has made of each item in the

information collection.

<b>Information Collection Requirement</b>	<b>Department's Use of Information</b>
The full name, address, and telephone number of the Indian tribe submitting the proposal;	Uses this information to contact the appropriate tribal representative regarding the proposal
A copy of the authorizing resolution from the Indian tribe submitting the proposal;	Ensures that the tribe has authorized the submission
A copy of the Indian tribe's gaming ordinance or resolution approved by the NIGC in accordance with 25 U.S.C. 2710, if any;	Ensures that the tribe is authorized to conduct gaming
A copy of the Indian tribe's organic documents, if any;	
A copy of the Indian tribe's written request to the State to enter into compact negotiations, along with the Indian tribe's proposed compact, if any;	Ensures that the prerequisites under IGRA for the Secretary to issue Class III gaming procedures have been met
A copy of the State's response to the tribal request and/or proposed compact, if any;	
A copy of the tribe's Complaint (with attached exhibits, if any); the State's Motion to Dismiss; any Response by the tribe to the State's Motion to Dismiss; any Opinion or other written documents from the court regarding the State's Motion to Dismiss; and the Court's Order of dismissal;	
The Indian tribe's factual and legal authority for the scope of gaming specified in paragraph (j)(13) of this section;	
Regulatory scheme for the State's oversight role, if any, in monitoring and enforcing compliance; and	
Proposed procedures under which the Indian tribe will conduct Class III gaming activities	Ensures that the proposed procedures meet all applicable legal requirements.

**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.**

This collection of information does not involve the use of automated, electronic, mechanical, or other technological collection techniques. Automated submission is not feasible because the

information contained in proposed Class III gaming procedures is unique to each tribe. Tribes may use electronic means to prepare their responses. Nothing precludes the tribe from using any electronic system to submit via e-mail; however, tribes choose to submit in hard copy because it is easier to include the signed tribal resolution and other attachments in hard copy than to convert them to an electronic format.

**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.**

In accordance with IGRA, each submission for proposed Class III gaming procedures contains information unique to a particular tribe and the tribe does not otherwise provide this information to the Department of the Interior or any other Federal agency. No other Federal Agency has authority under IGRA to approve Class III gaming procedures.

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

This information is being collected from tribal governments, who are not considered to be small entities.

**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 contained in this information collection, the Department cannot ensure that the provisions of IGRA, the relevant provisions of State laws, Federal law and the trust obligations of the United States are met. The information is collected one time only. Any other submission will be at the request of the respondent to amend the procedures.

**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 document;**
- \* **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.**

There are no special circumstances that would require us to collect the information in a manner inconsistent with OMB guidelines.

- 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.**

A 60-day notice for public comments was published in the Federal Register on July 31, 2012 (77 FR 45370). There were no comments received in response to this notice.

**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 in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

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:

- Kurt Bluedog, Attorney, Southgate Office Plaza, Suite 500, 5001 American Boulevard West, Minneapolis, MN 44537, telephone (952) 893-1813 and
- Mark Anderson, Attorney, 335 Atrium Office Building, 1295 Bandana Blvd., St. Paul, MN 55108, telephone (651) 644-4710.

In summary, the above persons felt the purpose of the information collection for Class III procedures was necessary and concurred with the estimated burden time to complete the information collection. Both individuals had no issues with the frequency in which it is collected.

- 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.

**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 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.**

Approximately 12 tribes submit a proposal for Class III gaming procedures each year. The annual reporting and record keeping burden for this collection of information is estimated to average 320 hours for each of approximately 12 respondents. This 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 onetime submission.

$$320 \text{ hours} \times 12 \text{ respondents} = 3,840 \text{ hours}$$

Therefore, the total annual reporting and record keeping burden for this collection is estimated to be 3,840 hours or the amount equivalent to \$190,428.

It is estimated that tribal staff compiling the information are paid a base salary of \$35.42 per hour, based on the Bureau of Labor Statistics, Employer Costs for Employee Compensation – June 2012, Table 1, estimate for civilian workers in the Management, Professional, and Related category (see <http://www.bls.gov/news.release/pdf/ecec.pdf>).

The estimated base salary of \$35.42 per hour including a 1.4 multiplier for benefits results in a salary cost of approximately \$49.59 per hour.

$$\$35.42 \text{ per hour base salary} \times 1.4 \text{ benefits} = \$49.59 \text{ per hour}$$

The salary cost for each tribe to spend the 320 hours to complete its submission is \$15,869.

$$\$49.59 \text{ per hour} \times 320 \text{ hours} = \$15,869 \text{ salary cost per tribe}$$

The total salary cost for all 12 tribal respondents is therefore \$190,428.

$$\$15,869 \times 12 \text{ respondents} = \$190,428 \text{ equivalent dollar amount}$$

Record maintenance cost for each respondent is estimated to be minimal, as tribes maintain records as part of their usual course of business.

Public Burden						
Respondents, annually	Responses per respondent, annually	Hours per response	Total annual hour burden (respondents x responses x hours)	Cost per hour	Total Cost (Total annual hour burden x cost per hour)	Start-up and O&M
12	1	320	3,840 (12 x 1 x 320)	\$49.59	\$190,428 (3,840 x \$49.59)	\$0

**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 already reflected in item 12.)**

- \* 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 for form processing). 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 capital, operation, start-up costs, or maintenance and purchase of services costs incurred. Tribes that choose to use any equipment, such as computers, to prepare their submissions may do so where they routinely use electronics for normal tribal business functions; however, no new equipment is required to prepare this information submission

**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.**

Cost to the Federal government is associated with the review and approval of the Class III gaming procedures. The average time for Federal government review of a Class III gaming procedure submission is 320 hours. This includes clerical assistance, reviewing staff, supervisor, attorneys, and approving official. The average grade and step level for all these staff is estimated at a GS-14/6.

The cost to the Federal government is estimated at a base salary of \$58.81, the hourly rate for a GS-14/6 in the Baltimore/Washington, D.C./Northern Virginia area according to the 2012 Pay Table and Schedule. Including a multiplier of 1.5 for benefits equals approximately \$88.22.

$$\$58.81 \text{ base salary} \times 1.5 \text{ benefits} = \$88.22 \text{ per hour}$$

Given that Federal staff spends approximately 320 hours reviewing each tribal revenue allocation plan submission, the total salary cost per submission is approximately \$28,230.

$$\$88.22 \text{ per hour} \times 320 \text{ hours} = \$28,230 \text{ salary cost per submission}$$

The total estimated annualized cost to the Federal government for all 12 submissions is:

\$ 28,230 salary cost per submission x 12 submissions = \$338,760 total cost.

Federal Government Cost				
Submissions annually	Hours per submission	Cost per hour	Cost per submission (hours per submission x cost per hour)	Total Cost (submissions x hours x cost per hour)
12	320	\$88.22	\$28,230 (320 x \$88.22)	\$338,760 (12 x 320 x \$88.22)

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

There are no changes or adjustments.

**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.**

We will display the OMB Control Number and expiration date on all appropriate materials.

**18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

Not applicable. There are no exceptions to the certification statement.