

**SUPPORTING STATEMENT FOR RECORDKEEPING
AND REPORTING REQUIREMENTS UNDER
25 CFR §§ 533.3, 533.5, 535.1, 537, and 539**

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) (the Act) governs the regulation of gaming on Indian lands. The Act establishes the National Indian Gaming Commission (NIGC or the Commission) as a federal regulatory agency with authority to oversee Indian gaming. The Act sets standards for the regulation of gaming, including requirements for the approval or disapproval by the Chairman of management contracts concerning Indian gaming operations. Section 2710 (d) (9) and 2711 require the Chairman of the Commission to review all class II and class III management contracts for the operation and management of gaming operations. This requirement is to ensure that Tribes are the primary beneficiaries of their gaming operations and that gaming is shielded from organized crime and undesirable influences.

25 CFR § 533.3

In accordance with the statutory provision, § 533.3 requires tribes to submit to the Commission: 1) a contract with original signatures of an authorized official of the tribe and management contractor, a representation that the contract is the entirety of the agreement, and all of the required provisions listed in § 531; 2) a letter setting out the authority of an authorized tribal official to act for the tribe concerning the contract; 3) copies of documents evidencing the authority of the tribal official; 4) a list of all persons with a direct or indirect financial interest in the contract or with management responsibility for the contract; 5) a justification for the term limit of the contract if the term is greater than five years and; 6) a justification for the fee if the fee is greater than thirty percent. If the management contract is a new contract, a three-year business plan must be included in the submission package. If the management contract is an existing one, income statements, and sources and use of funds statements covering the previous three years must be included in the submission package.

25 CFR § 533.5

Section 2711 (f) of the Act authorizes the Chairman to require modifications to previously approved Secretarial management contracts if the Chairman determines that provisions of the Act have been violated. Section 533.5 implements this statutory provision. In 2009, the Commission published revised regulations and the prior regulations under this subsection were deleted because they were no longer applicable. The subsection is now listed as “Reserved.”

25 CFR § 535.1

Although there is no specific statutory language concerning the approval or disapproval of modifications to management contracts, 25 U.S.C. § 2706(d)(10) authorizes the Commission to promulgate regulations it deems appropriate to implement the Act. The approval or disapproval of modifications to management contracts is necessary to implement the Act. Section 535.1 implements this statutory provision. Under this section, if a tribe and management contractor modify an existing management contract, they must submit the applicable information required under 25 CFR § 533.3.

25 CFR § 537

The Act requires the Chairman to conduct background investigations of persons with direct or indirect financial interests in and management responsibility for management contracts. Section 2711 (a) of the Act authorizes the Chairman to obtain background information on these persons.

Section 537 requires management contractors to submit to the Chairman: 1) background information including name, date and place of birth, and citizenship; 2) business and employment history for the previous five years; 3) personal references; 4) a description of any previous business relationships with Indian tribes or the gaming industry; 5) the names and addresses of any licensing or regulatory agencies with which the person has filed an application for a license or permit relating to gaming; 6) information regarding any felonies or misdemeanors for which there is an ongoing prosecution or conviction; 7) financial statements for the previous three years; 8) fingerprints; 9) responses to questions asked by the Chairman; 10) a statement concerning Privacy Act disclosure; and 11) a statement regarding false statements contained in the materials submitted.

Entities, such as partnerships and corporations, with indirect or direct financial interest or management responsibility for a management contract must submit to the Chairman: 1) documents establishing the existence of the entity; 2) documents designating the person charged with acting on behalf of the entity; 3) bylaws or other documents that provide operating rules for the entity; 4) a description of previous business relationships with Indian tribes or the gaming industry; 5) the names and addresses of any licensing or regulatory agencies with which the entity has filed an application for a license or permit relating to gaming; 6) information regarding any felonies or misdemeanors for which there is an ongoing prosecution or conviction; and 7) financial statements for the previous three years.

As part of a comprehensive regulatory review that began in November of 2010, the Commission held several tribal consultations during which tribes recommended that the Commission search for ways to streamline background investigations for management contractors, especially those who are already required to undergo a background investigation because they are a federally regulated entity or pursuant to a tribal-state gaming compact. On December 21, 2011, after receiving comments on preliminary draft amendments to part 537, the Commission issued a Notice of Proposed Rulemaking for proposed changes to part 537. 76 FR 79565, Dec. 22, 2011. The proposed changes had the potential to reduce the burden of the

information collection relative to former part 537. After considering all public comments, the Commission published the final rule on August 8, 2012. 77 FR 47514, Aug. 8, 2012.

Amended part 537 allows the Chair reduce the scope of the above information that must be furnished and the background investigation for entities with a direct or indirect financial interest or management responsibility for a management contract, if the entity is also a tribe, a wholly owned tribal entity, national bank, or institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state gaming compact. Such a reduction in the scope of information to be furnished and the background investigation to be conducted is wholly at the discretion of the Chair.

25 CFR § 539

Section 2705(a) of the Act provides a right of appeal to the Commission from certain actions of the Chairman, including, the Chairman's approval or disapproval of a management contract or modification to a management contract. Section 539 provides respondents with the right to an appeal to the Commission. This section provides that a respondent may exercise that right by filing an appeal to the Commission containing a concise statement setting forth reasons that the Chairman's action was erroneous. This appeal must be filed with the Commission within 30 days after notice of the Chairman's action on a management contract or a modification of a management contract.

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.

25 CFR § 533.3

The NIGC requires tribes to submit financial statements, work experience, and the background information of persons/entities having a financial interest, or management responsibility for, the gaming operation. This information allows the Chairman to determine if the management contract meets IGRA's statutory requirements for approval. These include provisions ensuring that the tribe has adequate accounting procedures in place, a minimum guaranteed payment for itself, and contract terms that typically do not exceed a term of 5 years and a contract fee of no greater than 30% net revenue payment to the management company. The Chairman continually uses this information to ensure the management contract's compliance with IGRA.

25 CFR § 533.5

The information submitted in a management contract review is used by the Commission for the purpose of ensuring that Tribes are the primary beneficiaries of their gaming operations and that gaming is shielded from organized crime and undesirable influences. Due to the length of time since the Act was passed, there appears to be no management contracts previously approved by the Secretary still in effect. In 2009, the Commission published revised regulations

and the prior regulations under this subsection were deleted because they were no longer applicable. The subsection is now listed as “Reserved.”

25 CFR § 535.1

The information has been and will be used by the Commission for the purpose of approving or disapproving modifications to existing management contracts. This information will enable the Commission to determine whether the modifications comply with the stated purposes of the Act.

25 CFR § 537

The information has been and will be used by the Chair to determine whether to approve or disapprove a management contract. The information will enable the Chair to determine whether individuals or entities directly or indirectly involved in the financial or management aspects of the gaming operation meet the suitability criteria established in the Act. In accordance with a recent rulemaking that concluded on August 8, 2012, the Chair also now has the discretion to reduce the scope of information to be furnished and the background investigation to be conducted for those entities who are also a tribe, wholly owned tribal entity, national bank, or institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state gaming compact.

25 CFR § 539

The information has been and will be reviewed by the Commission for the purpose of providing an appeal under 25 U.S.C. § 2705. The information contained in the appeal will assist the Commission in framing the issues and providing a proceeding that will be expeditious yet provide a full review of the issues.

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.

Under the regulations of the NIGC, tribes can submit information via compatible automated, electronic, and/or mechanical means. However, tribes typically submit information in hardcopy form and sometimes follow up initial submissions with electronic revisions. More management contractors are using pdf fillable forms when submitting background information resulting in less time to compile the information.

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

The required information is unique to each Indian tribe. No similar information pertaining to gaming on Indian lands is collected by the Commission or by other federal agencies. Similar information that could be used or modified for use for the purposes described in item 2 is not available.

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.

Not applicable.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles reducing burden.

The NIGC requires tribes to submit the following:

- financial statements,
- work experience, and
- the background information of persons/entities having a financial interest, or management responsibility for, the gaming operation.

This information allows the Chairman to determine if the management contract meets IGRA's statutory requirements for approval. Prior to a management contract's approval, the Chairman must be sure that the tribe has the following:

- adequate accounting procedures in place,
- a minimum guaranteed payment for itself, and
- contract terms that typically do not exceed a term of 5 years and a contracted fee greater than 30% net revenue payment to the management company.

The Chairman continually uses this information to ensure management contract's compliance with IGRA.

Further, the Commission imposes the collection requirements as infrequently as possible. The submission requirements apply to a one-time approval or disapproval of a management contract. Thus tribes need only submit the information one time unless new contracts are entered into or amendments to existing contracts are made. In that case, the new contract or amendment would have to be submitted to the Chairman.

The Commission would be unable to effectively monitor Indian gaming operations as required by the Act if the collection of information were not conducted as described. Further, the Commission is already imposing the collection requirements as infrequently as possible. The submission requirements apply only when the Chairman determines that a previously approved management contract is not in compliance with the Act and must therefore be modified.

25 CFR § 537

The Commission would be unable to effectively monitor Indian gaming operations as required by the Act if the collection of information were not conducted as described. Further, the Commission is already imposing the collection requirements as infrequently as possible. The submission requirements apply to the authority of the Chairman to conduct background investigations. Thus, management contractors need only submit the information when changes are made in persons with indirect and direct financial and management interests. In that case, background investigations must be conducted on the individuals and the information listed above must be submitted to the Chairman.

25 CFR § 539

The Commission would be unable to effectively monitor Indian gaming operations as required by the Act if the collection of information were not conducted as described. Further, the Commission is already imposing the collection requirements as infrequently as possible. The opportunity to file an appeal is inextricably linked to each disapproved of a management contract or modification to a management contract by the Chairman from which an appeal is taken.

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.

IGRA requires the NIGC to ensure that Tribes are the primary beneficiaries of their gaming operations and that gaming is shielded from organized crime and undesirable influences. 25 U.S.C. § 2703. To that end, the Commission will request respondents to retain bank statements and other information that they would normally keep within the ordinary course of tax

record retention. The Commission does not ask respondents to retain any additional information that would be out of the ordinary.

IGRA, 25 U.S.C. § 2716, requires the Commission to keep confidential trade secrets, privileged or confidential, commercial or financial information, or information related to ongoing law enforcement investigations. 25 U.S.C. § 2716 removes from the Commission any discretion it otherwise would have to disclose information that falls within FOIA exemptions 4 and 7 and requires the Commission to disclose such information only to other law enforcement agencies for law enforcement purposes.

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 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 collections, 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 February 16, 2012, a notice containing the information collections requirement was published in the Federal Register allowing the public an opportunity to comment on the requirements. The public comment period closed on April 16, 2012. No public comments were received.

In addition, as part of a comprehensive regulatory review that began in November of 2010, the Commission on December 21, 2011 proposed changes that had the potential to reduce the burden of the information collection with regard to part 537. As part of its rulemaking, the Commission received comments overwhelmingly in support of the Commission's proposed change to streamline the background investigations process. Specifically, some commenters noted that providing the Chair with this discretion to reduce background investigations is a reasonable change that would eliminate unnecessary or duplicative investigations and duplicative reporting requirements. Other commenters noted that this change would result in not duplicating efforts and wasted money and resources, and would help alleviate some of the administrative burdens of the management contract approval process. After considering these comments, the Commission published the final rule on August 8, 2012. 77 FR 47514, Aug. 8, 2012.

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

Not applicable. The NIGC does not provide any payment or gift 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 Freedom of Information Act. 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 belief, 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 of paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

25 CFR § 533.3

The Commission estimates the total annual cost to the tribes and management contractors to compile and submit the required information to be \$90,000. This figure was calculated after

the Commission estimated, based on available information, that the burden would be about 50 hours. Further, the average cost per hour was estimated to be approximately \$150. There are over 400 Indian gaming operations of which approximately 12 may be subject to there requirements each year.

25 CFR § 533.5

Due to the deletion of this subsection, information collection is not applicable.

25 CFR § 535.1

The Commission estimated the total annual cost to the tribes and management contractors to compile and submit the required information to be \$30,000. This figure was calculated after the Commission estimated, based on available information, that the burden would be about 10 hours. Further, the average cost per hour was estimated to be approximately \$150. There are over 400 Indian gaming operations of which approximately 20 may be subject to this requirement each year.

25 CFR § 537

The Commission estimated the total annual cost to the management contractors to compile and submit the required information to be \$270,000. This figure was calculated after the Commission estimated, based on available information, that the burden would be about 20 hours. Further, the average cost per hour was estimated to be approximately \$90. The Commission estimates that will be approximately 150 persons and entities with a financial interest in, or management responsibility for, a management contract that will need to submit this information.

25 CFR § 539

The Commission estimated the total annual cost to the tribes and management contractors to file a notice of appeal under this provision will be \$7,000. This figure was calculated after the Commission estimated, based on available information, that the burden would be about 40 hours. Further, the average cost per hour was estimated to be approximately \$175. Based on past experience it is estimated that appeals may be taken by only 1 tribes or management contractors.

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 of 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 practice.

Not applicable. All estimated costs and hour burdens are shown in Items 12 and

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 § 533.3

The total cost of the federal government of collecting the information is estimated to be \$54,000 (12 contracts x 60 hours per contract x \$90 per hour = \$64,800). Estimated hourly rate includes operational expenses.

25 CFR § 533.5

Due to the deletion of this subsection, information collection is not applicable

25 CFR § 535.1

The total cost of the federal government of collecting the information is estimated to be \$22,250 (20 modification x 15 hours per modification x \$90 per hour = \$27,000). Estimated hourly rate includes operational expenses.

25 CFR § 537

The total cost of the federal government of collecting the information is estimated to be \$405,000 (150 individuals and entities x 30 hours per individual or entity x \$90 per hour = \$405,000). Estimated hourly rate includes operational expenses.

25 CFR § 539

The total cost of the federal government of collecting the information is estimated to be \$3,600 (1 appeals x 40 hours per appeal x \$90 per hour = \$3,600). Estimated hourly rate includes operational expenses.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of OMB Form 83.1

The current OMB inventory includes burden hours projected by the NIGC before it became operational. The NIGC now has 14+ years experience collecting the information and as in a much better position to project the burden hours required. In preparing the document, the NIGC reviewed the original projections and the information received. Adjustments have been made to better reflect the reporting burden.

25 CFR 533.3

The burden hours have been reduced from 1,050, and the cost has been decreased to \$90,000. These are the result of fewer management contracts for new gaming operations and more management contract submissions for existing gaming operations. This resulted in a reduction of the number of hours, and increasing the cost per hour from \$125 to \$150.

25 CFR § 533.5

Due to the deletion of this subsection, information collection is not applicable.

25 CFR § 535.1

The burden hours have been reduced from 200, and the cost has remained the same. This is the result of increasing the submissions from 10 to 20 due to additional modifications as a result of changes to the list of persons and entities with a financial interest in, or management responsibility for, management contracts. The changes in persons and entities also resulted in reducing the hours for the respondents from 20 to 10. The cost per hour increased from \$125 to \$150.

25 CFR § 537

The burden hours have been reduced from 5,250 and the cost has been decreasing from \$393,750 to \$240,500. These are the result of reducing the number of respondents from 200.

25 CFR § 539

The burden hours have been reduced from 80, and the cost has been increasing from \$12,000 to \$6,000. These are the result of reducing the number of respondents from 2 to 1.

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.

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 application. The NIGC certifies compliance with 5 CFR § 1320.9.

B. Collection of Information Employing Statistical Methods.

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