

**SUPPORTING STATEMENT FOR RECORDKEEPING
AND REPORTING REQUIREMENTS FOR
CERTIFICATES OF SELF REGULATION**

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 (the Act), at 25 U.S.C. §2710(c), establishes a framework for the issuance, to tribe's that qualify, of certificates of self-regulation for class II gaming operations. The National Indian Gaming Commission (the Commission) issued a final rule on August 6, 1998, to implement this statutory provision. The required information is needed to determine whether a tribe has met the criteria for the issuance of a certificate of self-regulation and also to monitor a tribe's continuing ability to meet the criteria in order to maintain its certificate.

In accordance with this statutory provision, 25 C.F.R. part 518 requires a tribe petitioning for a certificate of self-regulation must submit the following to the Commission: 1) two copies of a petition, approved by the governing body of the tribe and certified as authentic by an authorized tribal official, which includes a brief history of the gaming operation(s); an organizational chart; a description of the process for filling positions of the tribal regulatory body; a description of the process for funding, and the funding level, of the tribal regulatory body for the three years immediately preceding the petition; a list of the current regulators and employees of the tribal regulatory body, their titles, and dates they began employment and if serving limited terms, the date of expiration of the terms; a list of the current gaming operation division heads and a report which explains how tribal net gaming revenues were used; 2) a list of documents, together with assurance that the documents are available for Commission review, which includes but is not limited to: (a) tribe's constitution; (b) tribe's revenue allocation plan; (c) description of tribal and gaming operation accounting systems; (d) manuals of the gaming operation internal controls; (e) description of record keeping system for all allegations of criminal or dishonest activity for three year period and measures taken to resolve allegations; (f) description of record keeping system for investigations, enforcement actions, and prosecutions of tribal gaming laws; (g) description of personnel record keeping systems for gaming operation; (h) dates of issuance and criteria for issuance of tribal gaming licenses; and (i) set of tribe's current gaming regulations; and 3) a copy of a public notice advising that the tribe has petitioned for a certificate of self-regulation and soliciting comments; and 4) a copy of an audit report which shows the use to which tribal net gaming revenues were put.

In addition, a tribe that received a certificate of self-regulation will be required to prepare and submit an annual report to the Commission, setting forth information, with supporting documentation, to establish that the tribe has continuously met the criteria for self-regulation.

Sections of the statute and the final rule authorizing the submission of the above information are appended to this statement.

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.

The information submitted petitioning for a certificate of self-regulation is used to determine whether a tribe has met the criteria for the issuance of a certificate of self-regulation. The annual reports submitted by those tribes who have received a certificate of self-regulation are used to monitor a tribe's continuing ability to meet the criteria in order to maintain its certificate of self-regulation.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection, techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collections. Also describe any consideration of using information technology to reduce burden.

The Commission minimized the reporting burden on petitioning tribes by requiring the submission of a list of the documents maintained by the tribe instead of requiring the tribe to submit all those documents. An on-site investigation is performed, reviewing all documents required to be listed as part of the petition. *[Submission by e-mail or other compatible means is perfectly acceptable].*

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

The required information is unique to each Indian tribe. No similar information pertaining to gaming on Indian lands is collected by the Commission or by any other federal agency.

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 to reducing burden.

The collection of the bulk of the information will be done only once and only for those tribes that petition for a certificate of self-regulation. If a tribe is successful in obtaining a

certificate of self-regulation, the tribe will be required to submit an annual report to justify the continuation of the certificate of self-regulation. If this collection is not conducted, the Commission will not be able to effectively ascertain a tribe's ability to self-regulate and thus not be able to fulfill its statutory obligation to issue certificates of self-regulation. That said, the Commission has issued only two certificates of self-regulation in the 10 years since it began the program. The Commission does not anticipate that any more tribes will petition for self-regulation.

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 few than 30 days after receipt of it;**
- **requiring respondent 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.**

To ensure adequate self-regulation, the Commission must require the maintenance and reporting of certain confidential information. The Commission has established a system of records for maintaining and protecting confidential information. However, the Commission will not reveal any personal information of individuals received in connection with a self-regulation petition under the Privacy Act, 5 U.S.C. § 552(a). Further, the Commission will not reveal information that constitutes a trade secret, privileged or confidential commercial or financial information, or information connected to an ongoing law enforcement investigation. 25 U.S.C. §

2716 removes from the Commission any discretion it would otherwise have to disclose information that falls within FOIA exemptions b4 and b7 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 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 the 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.

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

Not applicable. The Commission 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.

The Act (25 U.S.C. §2716) provides:

- (a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provision of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.
- (b) The Commission shall, when such information indicates a violation of Federal, State or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

The Commission is bound by the above requirements.

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 take 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 responses, 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 the explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval cover 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 annuals 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.**

The Commission estimates that the reporting burden is approximately 20 hours per year for each petitioning tribe. The Commission believes that it takes approximately seven hours to complete the petition for self-regulation, and approximately 13 hours to compile the list of documents required to be submitted to the Commission along with the petition, for a total of 20 hours. The Commission has not received a petition for self-regulation since the year 2000. The Commission does not anticipate that it will be receiving any petitions in the near future. Therefore, the annual reporting burden for petitioning for a certificate of self-regulation is zero.

The Commission issued two (2) certificates of self-regulation in 2000. The Commission does not anticipate issuing any additional certificates of self-regulation in the near future. The total annual reporting burden for the annual reports is estimated to be 100 hours (2 annual reports at 50 hours per report).

The annual cost per self-regulating tribe for the hour burden of the annual report will be approximately \$1,200. This figure is based on 30 hours of skilled labor multiplied by an hourly wage rate of \$20, and 20 hours of managerial or professional labor multiplied by an hourly wage rate of \$30.

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 costs 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 part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (few than 10), utilize the 60-day, pre-OMB submission public comment process and use existing economics or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**
 - (a) There are no required capital and start-up costs.
 - (b) There may be an annual cost for purchase of services. The information collection requires respondents to purchase several reports that they may not otherwise generate. The proposed regulations require the tribe to have, for the three-year period immediately preceding the date of the petition, a report on internal controls, an audit report of the tribal regulatory body, and an audit report of net gaming revenues which shows how tribal net gaming revenues were used. Many tribes have these reports prepared, others do not and will be required to purchase the services of an auditor in order to prepare these reports. In addition, for those two tribes with certificates of

self-regulation, an annual report is required that shows they have continuously met the requirements for self-regulation.

Because the Commission does not anticipate any tribes applying for a certificate of self-regulation, we are not estimating the annual cost for this submission. The annual report required by those tribes who hold certificates of self-regulation is prepared internally and will not incur any additional outside costs to the tribes.

14. Provide estimate of annualized cost to the Federal Government. Also, provide a description of the method used to estimate costs, which should include quantification of hours, operation 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 costs estimates from Items 12, 13, and 14 in a single table.

Because the Commission does not anticipate any petitions for self-regulation, there will be no annual costs for this portion of the program.

Annual cost to the Federal government of receiving, reviewing, and processing an annual report is estimated at \$550, for a total annual cost of \$1,100 for 2 annual reports.

3 hours of clerical time per response at \$20/hour = \$60

2 hours of attorney time at \$45/hour = \$90

10 hours of auditor time at \$40/hour = \$400

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

Petitioning for a certificate of self-regulation is voluntary. The Commission anticipated the interest in this program to be much higher than the actuality. The differences are a result of adjustments to the estimated figures.

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 a voluntary 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 Commission certifies compliance with 5 C.F.R. §1320.9.

B. Collection of Information Employing Statistical Methods.

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