

**SUPPORTING STATEMENT FOR RECORD KEEPING
AND REPORTING REQUIREMENT
25 CFR Part 514**

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administration 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.*, requires the NIGC to set an annual funding rate. The annual funding rate is the primary mechanism for NIGC funding under 25 U.S.C. § 2717 and 25 CFR part 514 implements the requirement. Fees are computed on the basis of the assessable gross revenues of each gaming operation using rates set by the NIGC. The total of all fees assessed annually cannot exceed 0.08 percent of gross gaming revenue. Under its implementing regulation for the fee payment program, 25 CFR part 514, the NIGC relies on a quarterly statement of gross gaming revenues provided by each gaming operation that is subject to the fee requirement. The required information is needed for the NIGC to both set and adjust fee rates and to support the computation of fees paid by each gaming operation.

On February 2, 2012, the NIGC amended 25 CFR Part 514 to include a process for submission of fingerprint cards to the NIGC for processing. 77 FR 5178, Feb. 2, 2012. Tribes submit fingerprint cards to the NIGC and the NIGC forwards them to the Federal Bureau of Investigation (“FBI”) for criminal background checks. IGRA does not require the NIGC to process fingerprints and not all tribes utilize the service. The service is charged as a separate fee only to those tribes that utilize the NIGC’s fingerprint processing service.

- 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 furnished by each Class II and Class III gaming operation details the components of assessable gross revenues – money wagered, prizes/awarded for each type of game, admission fees, and allowance for capital expenditures. The information is used by the Commission to set and adjust fee rate so that the total fees assessed each year meet the needs of the Commission and at the same time do not exceed the maximum amount the Commission is authorized to collect. Without this information, the Commission would not be able to do so.

The fingerprint cards are voluntarily submitted to the NIGC, who then processes the cards for submission and review by the FBI for criminal background checks. The result of the FBI’s review is then communicated to the NIGC, who conveys the results to the tribe that submitted the fingerprints for review. The information is used by the tribe or tribal gaming regulatory authority in deciding whether to grant a gaming license to an applicant. The NIGC collects a fee for this service. The fee is limited to the processing fee charged by the FBI and the

actual costs to the NIGC for processing the fingerprint cards and conveying the results to the requesting tribe or tribal gaming regulatory authority.

- 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 considerations of using information technology to reduce burden.**

The Commission has minimized the burden on tribes and gaming operations by allowing them to self-administer the fee assessments and then submit to the Commission their computations and the information used. The Commission can receive quarterly reports via email and facsimile but this is almost never done. Less than 2% of reports received come from facsimile or email sources.

The majority of fingerprint submissions are sent to the NIGC electronically.

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

No similar information pertaining to gaming on Indian lands is collected by the Commission or any other federal agency. Further, IGRA mandates payment of fees by every gaming operation. Thus, the gross gaming revenue—and the fees owed by each operation—is unique.

Each tribe is required by IGRA to perform a background investigation, including criminal history, of any key employee or primary management official (“PMO”) before granting a license. NIGC regulations further require that the criminal history check include a check of criminal history records information maintained by the FBI. Therefore, before a tribe can grant a gaming license to any applicant for a PMO or key employee, it must submit fingerprint cards to the FBI. A tribe may utilize the NIGC to process those fingerprint cards, if it wishes.

- 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 minimized 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 this information is being done in conjunction with the payment of fees by the gaming operations. The failure to collect fees would prevent the Commission from making timely adjustment to the fee rates and withhold from the Commission resources they need to operate.

The NIGC processes fingerprint cards for tribes as a service. If the requirement to submit fingerprints for a criminal history check was reduced or withdrawn, the Indian gaming industry would become vulnerable to crime.

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;**
- **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;**
- **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.**

With regard to confidential information, the NIGC is bound by requirements of the Indian Gaming Regulatory Act (25 U.S.C. 2716), which 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.

Paragraph (4) of 5 U.S.C. 552 (b) applies to trade secrets, privileged or confidential, commercial or financial information and paragraph (7) pertains to information related to ongoing law enforcement investigations.

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 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 record keeping, 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.

This information collection has a long history. The NIGC originally published these information collection requirements in the Federal Register on August 15, 1991. They were approved by OMB at that time and assigned clearance number 3200-0001. On August 4, 1997, and on October 31, 1997, the NIGC published notices in the Federal Register relating to renewal of its clearance and invited public comment. No comments were received. OMB clearance was received in January 1998, and clearance number 3141-0007 was assigned.

The NIGC published a proposed rule modifying the annual fee requirements in the Federal Register on December 16, 1997. Comments were invited and one relating to the information collection requirement was received. It was discussed in the preamble to the final rule published in the Federal Register on March 12, 1998. Information collection authority was approved through June 30, 2001. On May 2, 2001, the NIGC published a notice in the Federal Register (66 FR 22017), and no comments were received.

On June 18, 2008, the NIGC published a notice in the Federal Register that it was seeking reinstatement of the approval for collection of information for Annual Fees Payable by Indian Gaming Operations. No comments were received.

On December 22, 2008, the Commission published a notice of proposed rulemaking in the Federal Register proposing to change the fee collection and reporting requirement from four times a year to two times a year. The NPRM stated that the proposed rule did not require any significant changes in information collection and did not seek comments for purposes of the Paperwork Reduction Act.

On February 2, 2012, the NIGC published a final rule in the Federal Register amending 25 CFR Part 514. 77 FR 5178, Feb. 2, 2012. The amended regulation restored the fee collection and reporting requirement to four times a year and added provisions for the voluntary submission of fingerprint cards for NIGC processing. The NPRM for the rule noted that the PRA control number for part 514 had expired and that the NIGC was in the process of reinstating it. To that end, on February 16, 2012, the NIGC published notice in the Federal Register that it was seeking to reinstate part 514's control number and sought public comment. 77 FR 9261, Feb. 16, 2012. The NIGC did not receive any comments. On April 25, 2012, published a second notice in the Federal Register giving an additional 30 days to comment. 77 FR 24730, April 25, 2012. The second notice stated comments could be submitted directly to OIRA.

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 Indian Gaming Regulatory 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 specifics 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 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.

Gaming operators already compile and maintain the information in financial books and records in the ordinary course of business. Therefore, the reporting burden on the respondents is minimal, only requiring approximately two hours per submission for four total annual burden hours. There are 422 gaming operations that will be reporting quarterly, producing a total 1688 responses and payments a year. Annual cost is estimated at \$35 per hour for a total annual cost of \$280 per respondent (4 annual responses x 2 hours per response x \$35/hour = \$280). This represents a total hourly burden of 3,376 hours and a total burden cost of \$118,160. The change from the previous submission is based on a decrease in the number of respondents.

For the fingerprint card submissions, the burden on the submitting tribes is also minimal. The NIGC estimates that it will receive approximately 64,512 fingerprint cards for processing from approximately 192 tribes, with an average of 336 submissions per tribe. This estimate is based on an average number of submissions from the past three years. It takes tribes approximately 0.3 hours (18 minutes) to prepare and submit the fingerprints and fees to the NIGC. This results in a total hourly burden of 19,353.6 hours across the Indian gaming industry per year. The total average cost to the submitting tribe is \$15.00 per hour, resulting in a total cost of \$290,304.00 per year. These estimates are based on information provided by certain tribes that submit their prints electronically or manually.

SUMMARY OF INFORMATION COLLECTION BURDEN						
COLLECTION	RESPONDENTS	TOTAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS	HOURLY RATE	TOTAL COSTS
Quarterly Fee Statements	422	1,688	2.0	3,376	\$ 35.00	\$118,160.00
Fingerprint Cards and Fees	192	64,512	0.3	19,353.6	\$ 15.00	\$290,304.00

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 reason 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 purchase of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirement 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 required capital and start-up costs. Information is already maintained by the operation as part of their normal course of business and needs only to be verified, summarized and subjected to a few calculations.

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 estimate from Items 12, 13, and 14 in a single table.

Total cost to the federal government for receiving and processing fee payment reports is estimated at \$75,960. This calculation is based upon 1.5 hours per response at a cost of \$30.00 per hour (422 respondents x 4 annual responses x 1.5 hours per response x \$30.00/hour = \$75,960).

Fingerprint card processing costs the federal government \$0.00. Although it takes an agency employee 0.1 hours to process each card at \$20.00 per hour, this cost is recouped by the NIGC through a fee charged to the tribe for processing each fingerprint card.

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

With regard to the quarterly fee statements, the change is based on a decrease in the number of respondents.

With regard to the fingerprint cards, the fingerprint card and fee submission is a new information collection based on agency discretion.

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 applicable. The Commission certifies compliance with 5 CFR 1320.9.

19. Collection of Information Employing Statistical Methods.

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