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Notices

DEPARTMENT OF THE INTERIOR (DOI)

National Indian Gaming Commission

Submission of Information Collection Under the Paperwork Reduction Act; Reinstatement

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77 FR 24730

DATE: Wednesday, April 25, 2012

ACTION: Notice.

SUMMARY: The National Indian Gaming Commission ("NIGC" or "Commission"), in accordance with the Paperwork Reduction Act, is seeking reinstatement of approval from the Office of Management and Budget for collection of information for the following information collection activities: (1) Compliance and enforcement under the Indian Gaming Regulatory Act (IGRA); (2) approval of Class II background Investigation tribal licenses; (3) management contract regulations; (4) National Environmental Policy Act procedures; (5) annual fees payable by Indian gaming operations; (6) issuance of certificates of self regulation to tribes for Class II gaming; (7) minimum internal control standards; and (8) facility license review. These information collections have expired.

DATES: Submit comments on or before May 25, 2012.

ADDRESSES: Comments can be mailed directly to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for the National Indian Gaming Commission, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information, including copies of the proposed collection of information and supporting documentation, contact Michael Hoenig, at (202) 632-7003; fax (202) 632-7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**I. Request for Comments**

You are invited to comment on the following items to the Desk Office at [*24731] OMB at the citation in the **ADDRESSES** section.

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and become a matter of public record. We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

II. Data

Title: Compliance and Enforcement.

OMB Control Number: 3141-0001.

Background: IGRA governs the regulation of gaming on Indian lands. Although IGRA places primary responsibility with the tribes for regulating their gaming activity, § 2706(b) directs the NIGC to monitor Class II gaming conducted on Indian lands on a continuing basis. IGRA authorizes the NIGC to access and inspect all papers, books and records relating to gross revenues of Class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission. IGRA also requires tribes to provide NIGC with annual independent audits of gaming, including contracts in excess of \$ 25,000.00. 25 U.S.C. 2710(b)(2)(c), (d); 25 U.S.C. 2710(d)(1)(A)(ii). In accordance with these statutory responsibilities, NIGC regulations, 25 CFR 571.7, requires Indian gaming operations to keep permanent financial records. NIGC regulations, 25 CFR 571.12 and 571.13, require tribes to annually submit an independent audit of their gaming operations to NIGC. The NIGC uses this information to fulfill its statutory responsibilities under IGRA. Additionally, IGRA, 25 U.S.C. 2713, authorizes the NIGC Chair to issue notices of violation, civil fine assessments, and closure orders for violations of the Act or the Commission's regulations. This authority is implemented through 25 CFR part 575. The full Commission reviews these matters on appeal under 25 CFR part 577.

Brief Description of Collection: This collection is mandatory and allows the NIGC to conduct its statutory duty to regulate Indian gaming. No additional burden is imposed by the requirements to maintain customary business records and to allow NIGC personnel access to those records.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 422.

Estimated Annual Responses: 1,395.

Estimated Time per Response: The range of time can vary from no additional burden hours to 50 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden on Respondents: 6,752.

Title: Approval of Class II and Class III Ordinances, Background Investigations and Gaming Licenses.

OMB Control Number: 3141-0003.

Background: The Act sets standards for the regulation of gaming, including requirements for approval or disapproval of tribal gaming ordinances. IGRA, § 2705(a)(3), requires the NIGC Chair to review all class II and class III tribal gaming ordinances.

In accordance with this provision, NIGC regulations, 25 CFR 522.2, require tribes to submit to the NIGC: (1) A copy of the gaming ordinance to be approved, including a copy of the authorizing resolution by which it was enacted by the tribal government and a request for approval of the ordinance or resolution; (2) a description of procedures the tribe will employ in conducting background investigations on key employees or primary management officials; (3) a description of procedures the tribe will use to issue licenses to primary management officials and key employees; (4) copies of all gaming regulations; (5) a copy of any applicable tribal-state compact; (6) a description of dispute resolution procedures for disputes arising between the gaming public and the tribe or management contractor; (7) identification of the law enforcement agency that will take fingerprints and a description of the procedures for conducting criminal history checks; and (8) designation of an agent for service of process.

Under NIGC regulations, 25 CFR 522.3, tribes must submit any amendment to the ordinance or resolution for approval by the NIGC Chair. In this instance, the tribe must provide a copy of the authorizing resolution. The NIGC will use the information collected to approve or disapprove the ordinance or amendment.

Section 2710 of the Act requires tribes to conduct background investigations on key employees and primary management officials involved in class II and class III gaming. NIGC regulations, 25 CFR 522.4(b)(4), require a tribe's ordinance to provide that the tribe will perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in NIGC regulations, 25 CFR parts 556 and 558. 25 CFR parts 556 and 558 require tribes to perform each investigation using information such as name, address, previous employment records, previous relationships with either Indian tribes or the gaming industry, licensing relating to those relationships, any convictions, and any other information a tribe feels is relevant to the employment of the individuals being investigated. 25 CFR 556.4. Tribes are then required to submit to the NIGC a copy of the completed employment applications and investigative reports and licensing eligibility determinations on key employees or primary management officials before issuing gaming licenses to those persons. 25 CFR 556.5. The NIGC uses this information to review the eligibility and suitability determinations tribes make and advises them if it disagrees with any particular determination.

Brief Description of Collection: This collection is mandatory and allows the NIGC to carry out its statutory duties and gives the respondents standards for compliance.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 282.

Estimated Annual Responses: 112,677.

Estimated Time per Response: The range of time can vary from .5 burden hours to 80 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours on Respondents: 36,973 hours.

Title: Management Contract Regulations.

OMB Control Number: 3141-0004.

Background: Subject to the approval of the NIGC Chair, an Indian tribe may enter into a gaming management contract for the operation and management of tribal gaming activity. 25 U.S.C. 2710(e) and 2711. In approving a management contract, the Chair shall require and obtain the following: Name, address, and other [*24732] pertinent background information on each person or entity having a financial interest in, or management responsibility for such contract, and in the case of a corporation those individuals who serve on the board of directors of such corporation and certain stockholders; a description of previous experience that each person has had with other Indian gaming contracts or with the gaming industry including any gaming licenses which the person holds; and a complete financial statement of each person listed. 25 CFR 533.3; 25 CFR 537.1(b).

Under NIGC regulations, 25 CFR part 533, the Chair requires the submission of the contract to contain the following: original signatures; any collateral agreements to the contract; a tribal ordinance or resolution authorizing the submission and supporting documentation; a three-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, related matters, income statements, sources and use of funds statements for the previous three years; and, for any contract exceeding five years or which includes a management fee of more than 30 percent, justification that the capital investment required and income projections for the gaming operation require the longer duration or the additional fee.

Under NIGC regulations, 25 CFR part 535, the Chair may approve a modification to a management contract or an assignment of that management contract based on information similar to that required under part 533. Part 535 also specifies that the Chair may void a previous management contract approval and allows the parties the opportunity to submit information relevant to that determination.

25 CFR part 537 specifies the requirements for submission of background information in amplification of the statutory requirement for obtaining information on persons and entities having a direct financial interest in or management responsibility for a management contract. Finally, 25 CFR part 539 permits appeals to the Commission from a decision of the Chair to disapprove a management contract and allows the Indian tribe and the management company an opportunity to provide information relevant to that appeal. The NIGC will use the information collected to either approve or disapprove the contract or, in the case of an appeal, to grant or deny the appeal.

Brief Description of Collection: This collection is mandatory, and the benefit to the respondents is the approval of Indian gaming management contracts.

Respondents: Tribal governing bodies and management contractors.

Estimated Number of Respondents: 183 (submission of contracts, contract amendments, and background investigation submissions).

Estimated Time per Response: The range of time can vary from no added burden hours to 50 burden hours for one item.

Frequency of Response: Usually no more than once a year.

Estimated Total Annual Hourly Burden to Respondents: Up to 3,890.

Title: NEPA Procedures.

OMB Control Number: 3141-0006.

Background: NEPA requires federal agencies to analyze proposed major federal actions that significantly affect the quality of the human environment. The NIGC has identified one type of action it undertakes that requires review under NEPA--approving third-party management contracts for the operation of gaming activity under IGRA, 25 U.S.C. 2711. Depending on the nature of the subject contract and other circumstances, approval of such management contracts may be categorically excluded from NEPA, it may require the preparation of an Environmental Assessment ("EA"), or it may require the preparation of an Environmental Impact Statement ("EIS"). In any case, the proponents of a management contract will be expected to submit information to the NIGC and assist in the development of the required NEPA documentation.

Brief Description of Collection: This collection is mandatory under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., and White House Council on Environmental Quality regulations, 40 CFR 1500-1508.

Respondents: Tribal governing bodies, management companies, and environmental consultants.

Estimated Number of Respondents: 6 per year.

Estimated Time per Response: The range of time can vary from 1,300 to 4,500 hours per response. This variation depends on whether the response is an EA or EIS.

Frequency of Response: Annually.

Estimated Total Annual Burden on Respondents: 12,300 (6 EAs x 1,300 hours) + 1 EIS at 4,500 hours for EIS.

Title: Annual Fees Payable by Indian Gaming Operations.

OMB Control Number: 3141-0007.

Background: IGRA 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 NIGC regulations, 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 C.F.R. 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. When the Office of Management and Budget last approved the collection of information for annual fees, the NIGC required quarterly submissions of fees and worksheets. Although the Commission later changed part 514 to require biannual submissions of fees and fee worksheets, the Agency has published a final rule in the **Federal Register** restoring the submission requirements to quarterly. That rule goes into effect on October 1, 2012, and the implementation date for quarterly submissions is January 1, 2013. The final rule can be found at 77 FR 5178 and on the NIGC's web site. 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.

Brief Description of Collection: This collection is mandatory and allows the NIGC to both set and adjust fee rates and to support the computation of fees paid by each gaming operation.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 446.

Estimated Annual Responses: 892.

Estimated Time per Response: 2 hours.

Estimated Annual Burden Hours per Respondent: 4.

Frequency of Response: Twice per year.

Estimated Total Annual Burden on Respondents: 1,784 hours.

Title: Issuance of Certificates of Self Regulation to Tribe for Class II Gaming, 25 CFR part 518.

OMB Control Number: 3141-0008.

Background: IGRA allows any Indian tribe that has conducted class II gaming for at least three years to petition the NIGC for a certificate of self-regulation for its class II gaming operations. The NIGC will issue the certificate if it determines from available information that the tribe has conducted its gaming activity in a manner which has resulted in an effective and honest accounting of all revenues, a reputation for safe, fair, and honest operation of the gaming activity, and an enterprise free of evidence of criminal or dishonest activity. The tribe must also have adopted and implemented proper accounting, licensing, and enforcement [*24733] systems and conducted the gaming operation on a fiscally or economically sound basis. The implementing regulation at 25 CFR part 518 requires a tribe interested in receiving the certificate to file a petition with the NIGC describing, generally, the tribe's gaming operations, its regulatory process, its uses of net gaming revenue, and its accounting and recordkeeping systems for the gaming operation. The tribe must also provide copies of various documents in support of the petition. Submission of the petition and supporting documentation is voluntary. The NIGC will use the information submitted by the respondent tribe in determining whether to issue the certificate of self-regulation.

Those tribes who have been issued a certificate of self-regulation are required to submit annually a report to the NIGC. Such report shall set forth information to establish that the tribe has continuously met the eligibility requirements of 25 CFR 518.2 and the approval requirements of 25 CFR 518.4 and shall include a report with supporting documentation which explains how tribal gaming revenues were used in accordance with the requirements of IGRA, 25 U.S.C. 2710(b)(2)(B).

Brief Description of Collection: This collection is voluntary for those tribes petitioning for a certificate of self-regulation and mandatory for those tribes who hold a certificate of self-regulation according to statutory regulations, and the benefit to the respondents is a reduction of the amount of fees assessed on class II gaming revenue by the NIGC.

Respondents: Tribal governments; tribes who hold certificates of self-regulation; petition submission is voluntary; annual report submission is mandatory.

Estimated Number of Voluntary Respondents: 0.

Estimated Time per Voluntary Response: 0.

Frequency of Response: At will.

Estimated Total Annual Hourly Burden to Voluntary Respondents: 0.

Number of Mandatory Respondents: 2.

Estimated Time per Mandatory Response: 50.

Frequency of Mandatory Response: Annual.

Estimated Total Annual Hourly Burden to Mandatory Respondents: 100.

Title: Minimum Internal Control Standards.

OMB Control Number: 3141-0009.

Background: IGRA governs the regulation of gaming on Indian lands. Although the IGRA places primary responsibility with the tribes for regulating Class II gaming, Section 2706(b) of IGRA directs the NIGC to monitor Class II gaming conducted on Indian lands on a continuing basis. IGRA authorizes the NIGC to access and inspect all papers, books and records relating to gross revenues of Class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission. In accordance with these statutory responsibilities, NIGC regulations require tribal gaming regulatory authorities to establish and implement tribal internal control standards that provide a level of control that equals or exceeds those set out in part 543, establishing internal control standards. NIGC regulations, 25 CFR 543.3 require each affected gaming operation to develop and implement an internal control system that, at a minimum, complies with the tribal internal control standards established by the tribal gaming regulatory authority. Section 543.3(f) requires tribes with gaming operations to engage a certified public accountant (CPA) to perform an agreed-upon-procedures report to confirm compliance with the standards contained therein. The CPA is then required to report its findings to the tribe, tribal gaming regulatory authority, and management.

Brief Description of Collection: This collection is mandatory according to statutory regulations, and allows the NIGC to confirm tribal compliance with the standards contained in the Agreed-Upon-Procedures report.

Respondents: Tribal governing bodies.

Estimated Number of Respondents: 422.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Annually.

Estimated Total Annual Hourly Burden to Respondents: 211 hours.

Title: Facility License Standards.

OMB Control Number: 3141-0012.

Background: IGRA states that "a separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II [and class III] gaming is conducted." 25 U.S.C. 2710(b)(1) and (d)(1)(A)(iii). Further, IGRA requires "the construction and maintenance of the gaming facilities, and the operation of that gaming is conducted in a manner which adequately protects the environment and public health and safety." 25 U.S.C. 2710(b)(2)(E).

NIGC regulations, part 559 requires that a tribe submit a notice to the NIGC that it is considering issuing a facility license, including applicable Indian lands information, at least 120 days before a new class II and/or class III gaming facility is opened. The amount of Indian lands information depends, in part, on whether the Bureau of Indian Affairs maintains the necessary records. The Indian lands information will continue to be utilized by the NIGC to ensure that its records are complete for internal purposes, such as assessing the NIGC's jurisdiction to regulate the gaming on the parcel, as well as responding to inquiries from government agencies and Congress as to the statuses of lands where Indian gaming is proposed or occurring.

Part 559 also requires that tribes submit copies of each newly issued or renewed facility license to the NIGC within 30 days of issuance, as well as notices of facility closures. This information will enable the NIGC to maintain accurate, up-to-date records of the Indian gaming facilities that are operating on Indian lands in the United States at any given point in time. Currently, facility licenses must be renewed every three years. With each new facility license, the Tribe

must submit an attestation that it has identified and enforces environment and public health and safety laws and that the tribe is in compliance with those laws. Part 559 also requires tribes to submit a document listing all environmental and public safety laws, resolutions, codes, policies and standards applicable to its gaming facility. If the submitted laws, resolutions, etc. do not change, the tribe need only certify that fact when submitting a renewed facility license. Finally, the NIGC Chair has the discretion to request environmental and public health and safety documentation on occasions when there is an identified, substantial concern. Through these submissions, the NIGC can ensure that the tribes have determined that the construction, maintenance, and operation of their gaming facilities are conducted in a manner that adequately protects the environment and the public health and safety.

This information collection serves two purposes: (i) To receive up-to-date information from tribes regarding the number of licensed Indian gaming facilities and the Indian lands status of the site of each gaming facility; and (ii) to obtain certifications from the tribes that the construction, maintenance, and operation of the gaming facilities are conducted in a manner that adequately protects the environment and the public health and safety.

Brief Description of Collection: This collection is mandatory and enables the NIGC to conduct its statutory duty to regulate Indian gaming by ensuring that [*24734] tribal gaming facilities are properly licensed by the tribes.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 565.

Estimated Annual Responses: 75.

Estimated Time per Response: The range of time can vary from 2 burden hours to 10 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden on Respondents: \$ 13,125.

Paxton Myers,

Chief of Staff.

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