

SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENTS
25 CFR PART 571

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 (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701, *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC or Commission) and set out a comprehensive framework for the regulation of gaming on Indian lands. The Act sets standards for the regulation of Indian gaming, including certain auditing, recordkeeping, and reporting requirements. Specifically, 25 U.S.C. 2706(b)(4) authorizes the Commission to “demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission.” Section 2710(b)(1)-(b)(2) authorizes tribes to engage in gaming only if they have an ordinance approved by the NIGC Chair, and amongst other things, only if the ordinance provides that the tribe will cause an annual outside audit to be conducted on their gaming activities, including an audit on all contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming. The Act also authorizes the Commission to “promulgate such regulations and guidelines as it deems appropriate to implement” IGRA. 25 U.S.C. 2706(b)(10). Part 571 of title 25, Code of Federal Regulations, implements these statutory requirements.

25 CFR §§ 571.7, 571.14

Section 571.7(a) of title 25, Code of Federal Regulations, requires Indian gaming operations to keep/maintain permanent books of account and records sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other relevant financial information. Section 571.7(c) requires that these records be kept for at least five years. Under § 571.7(b), the Commission may require a gaming operation to submit statements, reports, accountings, and specific records that will enable the NIGC to determine whether or not such operation is liable for fees payable to the Commission (and in what amount), and that the gaming operation has properly and completely accounted for all transactions and other matters monitored by the Commission. Lastly, § 571.7(d) requires a gaming operation to keep copies of all enforcement actions that a tribe or a state has taken against the operation.

The Act requires the Commission to establish a schedule of fees that the tribes must pay to fund the NIGC. These fees are computed based on quarterly fee reports submitted under 25 CFR Part 514. Because fee payments are based on “assessable gross revenues” that represent a formula developed by the NIGC and not readily reflected in the financial statements, a reconciliation is necessary to provide proof of payment. Section 571.14 requires tribes to reconcile quarterly fee reports with audited financial statements and to keep/maintain this information to be available to the NIGC upon request in order to facilitate the performance of compliance audits.

25 CFR §§ 571.12, 571.13

Section 571.12 requires tribes to prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe’s Indian lands, and to engage an independent certified public accountant (CPA) to provide an annual audit of the

financial statements of each class II and class III gaming operation. The financial statements prepared by the CPA must conform to generally accepted accounting principles (GAAP) and the annual audit must conform to generally accepted auditing standards.

Section 571.13 requires tribes to prepare and submit to the Commission two paper copies or one electronic copy of the aforementioned financial statements and audits, together with management letter(s) and other documented auditor communications and/or reports as a result of the audit, setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of the fiscal year of each gaming operation, including when a gaming operation changes its fiscal year or when gaming ceases to operate.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Commission receives and analyzes the required filings for a variety of purposes. The regulatory requirement that Indian gaming operations keep/maintain permanent books of account and records sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other relevant financial information; and the receipt and review of the audited financial statements, inclusive of management letters, is essential to effectively evaluate the risk posed to the Indian gaming industry by others. To the trained NIGC analyst, the information in these financial-type records can reveal gaming operations that possess dysfunctional internal control systems. Because the financial data is often the first indicator that an organization is being victimized by corrupting influences, this information helps the Commission identify gaming operations that are noncompliant. In short, the NIGC uses this information to ensure that tribes are adequately shielded from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming

operation revenue, and to assure that the gaming activities are conducted fairly and honestly by both the operator and players. Thus, the receipt and maintenance of these financial records is vital for the Commission to efficiently and effectively fulfill its statutory responsibilities.

In addition, obtaining reliable and timely financial information in the form of audited financial statements is necessary for the Commission to accurately forecast the future gross gaming revenue of the tribal gaming industry, as Commission funding is derived from the assessment of fees on the gaming tribes based on a determination of gross gaming revenue. The reconciliation of the quarterly fee reports is necessary for the NIGC to verify the accuracy of the fee payments. The Commission first forecasts the gross gaming revenue and then sets a fee rate necessary to generate sufficient funding for the agency's budget for the upcoming year. Without the reconciliation, it would be difficult for the agency to verify compliance with part 514 of its regulations.

Lastly, the Commission collects data from the gaming operations, aggregates it, and disseminates the information to the general public. These submissions provide information about the Indian gaming industry to Congress and the general public, and identify trends and industry norms.

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

Under NIGC regulations, tribes may maintain and/or submit this information to the Commission by compatible automated, electronic, and/or mechanical means.

- 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 information required to be maintained and/or annually submitted to the Commission is unique to each Indian tribe and each gaming operation. No similar information pertaining to gaming on Indian lands is collected by the Commission or by any other federal agencies.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

Not applicable. Nonetheless, the Commission's regulations require operations to submit the minimum amount of information that the Commission requires to fulfill its statutory responsibilities. The audit requirements apply to all Indian gaming operations, regardless of size. The burden is directly proportional to the economic activity conducted.

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.

Amongst other purposes, Congress enacted IGRA and established the Commission to ensure that:

- the industry is shielded from organized crime and other corrupting influences;
- the tribe is the primary beneficiary of its gaming revenue; and
- fairness and honesty are the hallmarks of Indian gaming.

Accordingly, the Commission has determined necessary that basic accounting and recordkeeping be employed by the gaming operators to provide for a methodology that would produce reliable financial data in a timely manner, and reconciliations to ensure timely and accurate payment of fees to the agency. The specific recordkeeping, accounting, and auditing requirements of these information collections represent long-established norms of conducting business and are essential to the NIGC being able to fulfill its statutory obligations. Without the information required to be kept for review or provided by the submissions, the Commission would be hampered in the fulfillment of its mission.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
- requiring respondents to report information to the agency more often than quarterly;
 - requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
 - requiring respondents to submit more than an original and two copies of any document;
 - requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
 - in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
 - requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
 - that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
 - requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Under 25 CFR § 571.7(c), gaming operations are required to maintain financial books and records for no less than 5 years. This requirement corresponds to financial-type records retention mandated by other federal agencies, such as the implementing regulations for the Bank Secrecy Act, found at 31 CFR chapter X.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and 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 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 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On July 8, 2013, a notice containing the information collection renewals was published in the Federal Register allowing the public an opportunity to comment on the requirements. (78 FR 40766, July 8, 2013). The public comment period closed on September 6, 2013. No public comments were received.

In addition, the Commission consulted with 18 tribal gaming regulatory commissions and/or tribal gaming operators, and laid out the recordkeeping and submission requirements contained in its regulations, but did not provide its own estimates to the tribes. The Commission asked the tribal gaming commissions and/or tribal gaming operators to provide annual hourly estimates required to perform the tasks, as well as any cost estimates. The average burden hours per response and average annual costs in this information collection were provided by these 18 tribes. The Commission has upwardly adjusted its previous estimates accordingly.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration 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.

The Act requires the Commission to keep confidential trade secrets, privileged or confidential, commercial or financial information, or information related to ongoing law enforcement investigations. Section 2716 of title 25, United States Code, 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.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the

explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

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 in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

As mentioned in Item 8 above, the Commission consulted with 18 tribal regulatory gaming commissions and/or tribal gaming operators to gather the burden estimates for these information collections. The sizes of tribal gaming operations in the United States vary from small, truck stop-sized facilities to one of the largest gaming operations in the world. More specifically, the sizes of the gaming operations consulted included six Tier A gaming operations (annual gross gaming revenues of more than \$1 million but not more than \$5 million), four Tier B gaming operations (annual gross gaming revenues of more than \$5 million but not more than \$15 million), and eight Tier C gaming operations (annual gross gaming revenues of more than \$15 million). Depending on market forces, a gaming operation can fall into one tier during one year, and into another tier the following year.

Because the estimates provided by the tribal gaming commissions and/or tribal gaming operators sometimes varied dramatically for an information collection even amongst gaming operations in the same tiers (e.g., one Tier A operation reported 10,410 burden hours for a specific collection while another Tier A operation reported 16 burden hours for the same collection), the Commission averaged the estimates received only after dropping the highest and lowest estimates for each aspect of the information collection. Another example of the dramatic variances in reported estimates include one Tier C operation reporting a \$2 million cost estimate for an outside firm to perform an independent annual audit, while another Tier C operation reported a \$27,000 cost estimate.

These are mandatory information collections, as each tribe is required to create and maintain certain permanent financial books and records, cause an annual independent audit to be performed, and submit certain financial statements, reports, and accounting records to the Commission once per year (two respondents are self-regulating, and thus those burden estimates are recorded under another OMB control number). The table below shows the Commission’s estimated hourly burdens and the hourly cost burdens for respondents. The average hours per response and average hourly rates were provided by the tribal gaming commissions and/or tribal gaming operators.

ESTIMATED ANNUAL BURDEN HOUR TOTALS

| CFR CITE/ COLLECTION | NUMBER OF ANNUAL RESPONDENTS | FREQUENCY OF RESPONSES PER YEAR | TOTAL ANNUAL RESPONSES | AVERAGE HOURS PER RESPONSE | AVERAGE HOURLY RATE | TOTAL HOURS | TOTAL WAGES |
|---------------------------------|---|--|---------------------------------------|---|------------------------------------|------------------------|------------------------|
| 571.7; 571.14 | 239 | 1 | 239 | 994.0 | \$20 | 237,566 | \$4,751,320 |
| 571.12 | 422 | 1 | 422 | 1506.75 | \$23 | 635,848.5 | \$14,624,516 |
| 571.13 | 237 | 1 | 237 | 20.5 | \$28 | 4,858.5 | \$136,038 |
| TOTAL | 898 | 1 | 898 | | | 878,273 | \$19,511,874 |

13. Provide an estimate for 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 descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

The majority of the dollar cost for this information collection (\$44,438,710) is the estimated total amount that the tribes will have to pay to engage independent CPA firms to provide an annual independent audit of the financial statements of each of the 422 class II and class III gaming operations. The remaining, unspecified total costs were provided by the tribes.

ESTIMATED ANNUAL COST TOTALS

| CFR CITE/ COLLECTION | NUMBER OF ANNUAL RESPONDENTS | FREQUENCY OF RESPONSE PER YEAR | TOTAL ANNUAL RESPONSES | AVERAGE ANNUAL COSTS (if any) | TOTAL COSTS |
|-------------------------|------------------------------------|--------------------------------------|------------------------------|--|----------------|
| 571.7; 571.14 | 239 | 1 | 239 | \$14,618 | \$3,493,702 |
| 571.12 | 422 | 1 | 422 | \$105,305 | \$44,438,710 |
| 571.13 | 237 | 1 | 237 | \$67 | \$15,879 |
| TOTAL | 898 | 1 | 898 | | \$47,948,291 |

14. Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Commission determined its cost and burden hour estimates, inclusive of operational expenses, based on the workflows of the agency, and the functions specific to the receipt, recordation, and analysis of the submissions. As a general matter, the cost rate was based upon the hourly rate of personnel assigned to task. Support services are included in cost estimates.

ESTIMATED ANNUAL AGENCY BURDEN TOTALS

| CFR CITE/ COLLECTION | NUMBER OF ANNUAL RESPONDENTS | FREQUENCY OF RESPONSES PER YEAR | TOTAL ANNUAL RESPONSES | REVIEW HOURS PER RESPONSE | TOTAL HOURS | HOURLY RATE | TOTAL AGENCY COST |
|---------------------------|------------------------------------|--|------------------------------|------------------------------------|----------------|----------------|-------------------------|
| 571.7; 571.14 | 424 | 1 | 424 | 16 | 6,784 | \$44 | \$298,496 |
| 571.12; 571.13 | 422 | 1 | 422 | 24 | 10,128 | \$44 | \$445,632 |
| TOTAL | 846 | 1 | 846 | | 16,912 | | \$744,128 |

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

The Commission has made several program changes:

- (i) the Commission did not previously include the hourly burden estimates for certain recordkeeping functions (§ 571.7), as it previously considered them customary and usual business practices. However, the Commission is now including the burdens for these recordkeeping and administrative functions because, while most gaming operations would probably maintain certain of these records, it is possible that not every operation would do so according to the standards set forth in the NIGC regulations;

- (ii) the Commission has changed the manner in how it reports some of the burden estimates for this collection. Specifically, the Commission previously reported how many hours it might take an outside CPA firm to provide an annual independent audit of the financial statements. However, tribes are not allowed to submit audits that they have performed themselves but are instead required by IGRA to engage outside CPA firms. Thus, the Commission is now only reporting the estimated total amount that the tribes will have to pay to engage independent CPA firms to provide an annual independent audit of the financial statements of each of the 422 class II and class III gaming operations; and
- (iii) the Commission previously included burden estimates for certain submission requirements (§§ 575.5, 575.6, 577.3, 577.8, 577.12, 577.14), but has determined that, under 44 U.S.C. 3518(c)(1)(ii), these estimates were erroneously included because tribes are not required to make these submissions unless and until the Commission has begun an administrative action or investigation against the specific tribes.

The Commission has made the following adjustments:

- the Commission has increased the number of estimated annual responses from 877 to 898. This is based on a combination of the above-mentioned program changes;
- the Commission has increased the number of estimated burden hours from 192,690 to 878,273. The Commission believes that the large increase in burden hours is due to estimation errors in the previous request for renewal. For example, some of the biggest drivers of this increase include:
 - §§ 571.7 and 571.14, which require tribes to submit to the Commission financial statements, reports, accountings, and other specific records, and to keep and/or

maintain: permanent books of account and records for at least five years; copies of enforcement actions issued by tribe or state against the gaming operation for at least five years; and reconciliations of Commission fee assessment reports with audited or reviewed financial statements. Based on tribal feedback, 239 tribal operators each annually spend approximately 994 hours performing these tasks. That quickly adds up to 237,566 burden hours; and

- § 571.12, which requires tribes to engage an outside CPA firm to provide an audit of financial statements in conformance with § 571.12(c)-(e), and to prepare and keep and/or maintain comparative financial statements. Based on tribal feedback, 237 tribal operators each annually spend approximately 1,506.75 hours performing these tasks for each one of the 422 gaming operations. That quickly adds up to 635,848.5 burden hours.

These estimates are based on feedback from the 18 tribal regulatory gaming commissions and/or tribal gaming operators. The Commission believes that these new estimates more accurately reflect the actual burden hours for these information collections; and

- the Commission has increased the estimated dollar cost burden from \$0 to \$47,948,291. The main driver of this increase in dollar cost is the estimated total amount (\$44,438,710) that the tribes will have to pay to engage independent CPA firms to provide annual independent audits of the financial statements of all of the 422 class II and class III gaming operations.

This increase in burden is based on a combination of the above-mentioned program changes, and on feedback from 18 tribal regulatory gaming commissions and/or tribal gaming operators.

In 2012, the Indian gaming industry generated \$27.9 billion in gross gaming revenue. Since 2008 when the previous burden estimates were approved, the Indian gaming revenues in the U.S. have increased by approximately \$1.2 billion. This growth in the Indian gaming industry may account for the dramatic increase in the burden hour and cost estimates as provided by the 18 tribal regulatory gaming commissions and/or tribal gaming operators.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

These are ongoing information collections with no ending date and no plans for publication.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

Not applicable. The NIGC certifies compliance with 5 CFR § 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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