

SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENT
25 CFR PART 514

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 the requirement that Indian tribes that conduct class II and/or class III gaming activities must pay annual fees to the Commission on the basis of their respective assessable gross gaming revenues, using rates established by the Commission. 25 U.S.C. 2717. These fees are used to fund the Commission’s performance of its statutory duties. 25 U.S.C. 2717a. The Commission is authorized to “promulgate such regulations and guidelines as it deems appropriate to implement” IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 514 of title 25, Code of Federal Regulations, to implement these statutory requirements.

25 CFR § 514.6

Section 514.6 of title 25, Code of Federal Regulations, requires a tribe to submit quarterly fee statements (worksheets) showing its assessable gross gaming revenues from the previous fiscal year in order to support the computation of fees paid by each gaming operation.

25 CFR § 514.7

Section 514.7 requires a tribe to submit a notice within 30 days after a gaming operation changes its fiscal year. Because a tribe’s quarterly fee payments are based on a gaming

operation's assessable gross gaming revenues from the previous fiscal year, the Commission must have up-to-date information on a gaming operation's current fiscal year.

25 CFR § 514.15

Section 514.15 allows a tribe to submit fingerprint cards to the Commission for processing by the Federal Bureau of Investigation (FBI), along with a fee payment to cover the NIGC's and FBI's administrative costs to process such fingerprint cards on behalf of the tribes.

- 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 quarterly fee worksheets furnished by each class II and/or class III gaming operation details the components of assessable gross gaming revenues – money wagered, prizes awarded for each type of game, admission fees, and allowance for capital expenditures. This information is used by the Commission to set and adjust fee rates so that the total fees assessed each year meet the Commission's funding needs. The quarterly fee worksheets support the computation of fees paid by each gaming operation.

Quarterly fee payments paid by each gaming operation are based on that gaming operation's assessable gross gaming revenues from the previous fiscal year. If a gaming operation changes its fiscal year, the Commission must have up-to-date information on that gaming operation's fiscal year in order to determine the computation of fees that are received from it. A notice submission after a gaming operation has changed its fiscal year meets this need.

The voluntary submission of fingerprint cards to the Commission allows a tribe to conduct statutorily mandated background investigations on applicants for key employee and primary management official (PMO) positions. Pursuant to an agreement with the FBI, tribes submit fingerprint cards to the NIGC and the NIGC forwards them to 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 fingerprint cards for processing. The information is used by the tribe or tribal gaming regulatory authority (TGRA) in deciding whether to grant a gaming license to an applicant for a key employee or PMO position. The Act does not require the NIGC to process fingerprints cards 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 card processing service.

- 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 and/or TGRAs can submit information via compatible automated, electronic, and/or mechanical means. The majority of fingerprint card submissions are sent electronically to the NIGC.

- 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 and/or gaming operation. No similar information pertaining to gaming on Indian lands is collected by the Commission or by 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.

- 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 quarterly fee worksheets are used to verify the computation of fees paid by each gaming operation. The failure to collect this information would prevent the Commission from making timely adjustments to its fee rates, and could result in depriving the Commission from having the funding resources necessary for it to carry out its statutory duties.

Each tribe is required by IGRA to perform a background investigation of any applicant for a key employee or PMO position (including a criminal history check) before granting a gaming license. Commission regulations further require that the criminal history check include a check of criminal history records maintained by the FBI. The NIGC processes fingerprint cards for tribes as a service of which tribal gaming operations can voluntarily take advantage. Tribes are not required to submit fingerprint cards to the Commission, but do so voluntarily.

- 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.**

Commission regulations require the submission of fee worksheets on a quarterly basis, and the submission of fiscal year change notices and fingerprint cards as needed, based on a tribe's own actions.

The Act requires the Commission to ensure that tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2703. To that end, Commission regulations require tribes to submit their assessable gross gaming revenue numbers, which the Commission treats as confidential information. The Act requires tribes to conduct background investigations of applicants for key employee and PMO positions. The Commission and the FBI offer this fingerprint card processing service to tribes to facilitate a background investigation into an individual's criminal history. This requires the submission of information (fingerprints) that can be considered privileged or confidential in nature. The Act removes from the Commission any discretion that it would otherwise have to disclose such 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. 25 U.S.C. 2716.

- 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 June 5, 2015, a 60-day notice containing the information collection requirements was published in the Federal Register allowing the public an opportunity to comment on the requirements. *See* 80 FR 32176 (June 5, 2015). The public comment period closed on August 4, 2015. No public comments were received.

In addition, the Commission surveyed tribal gaming operators and/or TGRAs regarding the submission requirements contained in its regulations. The Commission asked the tribal gaming operators and/or TGRAs to provide annual hourly estimates required to perform each of the activities, as well as any cost estimates. The Commission has adjusted its previous estimates accordingly.

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 mandates the Commission to preserve any and all information received pursuant to IGRA as confidential and removes from the Commission any discretion that it would otherwise have to disclose any information that falls within FOIA exemptions 4 and 7. 25 U.S.C. 2716(a). The Commission may disclose such information only to other law enforcement agencies for law enforcement purposes. 25 U.S.C. 2716(b).

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.**

The Commission tracks the number of quarterly fee worksheets, fiscal year change notices, and fingerprint card submissions that it receives per calendar year. To arrive at the estimates below, the Commission averaged the number of submissions that it received from calendar years 2012 – 2014 in order to determine the total estimated number of annual respondents and total estimated annual responses.

As mentioned in Item 8 above, the Commission consulted with tribal gaming operators and/or TGRAs to gather the burden estimates for these information collection activities. Because the estimates provided by the tribal gaming operators and/or TGRAs varied (sometimes dramatically), the Commission averaged the estimates received only after dropping the highest and lowest estimates for each aspect of the information collection.

Commission regulations require tribes to pay a fee to process fingerprint cards on behalf of the tribes. The NIGC currently charges a \$21 fee per fingerprint card that covers the

processing fee charged by the FBI and the administrative costs incurred by the Commission. The majority of the dollar cost for this information collection (\$1,462,377) is the estimated total amount that the tribes are required to pay to the NIGC in order for the FBI to process these fingerprint cards. The remaining, unspecified costs were provided by the tribes.

ESTIMATED ANNUAL BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE HOURS PER RESPONSE	TOTAL HOURS	TOTAL ANNUAL COST
514.6	434	4	1,736	2.0	3,472	\$5,208
514.7	2	Varies	2	1.0	2	\$0
514.15	215	Varies	69,637	0.5	34,818.5	\$1,462,377
TOTAL	651		71,375		38,292.5	\$1,467,585

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 10/95 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.

All estimated costs and hour burdens are shown in Item 12.

- 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 AGENCY ANNUAL 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
514.6	434	4	1,736	2.0	3,472	\$37	\$128,464
514.7	2	Varies	2	0.5	1	\$37	\$37
514.15	215	Varies	69,637	0.1	6,964	\$24	\$0
TOTAL	651		71,375		10,437		\$128,501

The processing of fingerprint cards costs the federal government \$0. Although it takes an agency employee 0.1 hours to process each card at \$24 per hour, this cost is recouped by the Commission through the 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 the OMB Form 83-I.**

The Commission has made one program change. Since 2012 (when the previous burden estimates were approved), the Commission has amended its regulations to require a tribe to submit a notice within 30 days after a gaming operation changes its fiscal year. This program

change, however, did not significantly impact the Commission's estimated burdens, as it only increased the estimated annual responses by two responses, and the estimated burden hours by two hours.

The Commission has made the following adjustments to its estimated burdens:

- (a) the Commission has increased the number of estimated annual responses from 66,200 to 71,375. This current estimate is based on the average number of annual submissions to the Commission for the past three years, after a review of the Commission's own records. The Commission believes that the large increase in estimated annual responses is market-driven. Since 2012, Indian gaming revenues in the U.S. have increased by approximately \$0.6 billion. This growth in the Indian gaming industry has resulted in more gaming facilities opening throughout the country (e.g., the number of respondents for § 514.6 increased from 422 to 434) and more tribes using the NIGC's voluntary fingerprint card processing services (e.g., the number of respondents for § 514.15 increased from 192 to 215). The NIGC received an average of 5,125 more fingerprint cards per year than the 2012 estimates;
- (b) the Commission has increased the number of estimated burden hours from 22,730 to 38,292.5. The biggest factor for this increase was the result of tribal feedback. Although the NIGC has not changed its fingerprint card submission requirements since 2012 (when the previous burden estimates were approved), based on tribal survey responses, the average hours per response for submitting fingerprint cards rose from 0.3 hours to 0.5 hours. Combine that increase with the fact that the NIGC received 5,125 more fingerprint cards than the 2012 estimates, it quickly adds up to 34,818.5 burden hours just for the fingerprint card submissions; and

(c) the Commission has increased the estimated annual cost burden from \$0 to \$1,467,585. The Commission believes that the large increase in annual cost burden is due to estimation errors in the previous request for renewal. While tribes have always paid a fee to the NIGC and FBI to process fingerprint cards, those costs were inadvertently omitted in 2012.

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.

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 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 Commission certifies compliance with 5 CFR § 1320.9.

B. Collection of Information Employing Statistical Methods.

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