

SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENTS
FOR 25 CFR PART 559

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 issue “a separate license ... 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), (d)(1), and ensure that “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). 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 559 of title 25, Code of Federal Regulations, to implement these requirements.

25 CFR § 559.2

Section 559.2 of title 25, Code of Federal Regulations, requires a tribe or a tribal gaming regulatory authority (TGRA) to submit a notice to the Commission that a facility license is under consideration for issuance, at least 120 days before opening any new facility on Indian lands where class II and/or class III gaming will occur. The tribe or TGRA must include the following information in the notice: (i) the name and address of the property; (ii) a legal description of the

property; (iii) the tract number for the property as assigned by the Bureau of Indian Affairs (BIA), Land Title and Records Offices (LTRO), if any; (iv) if not maintained by the BIA LTRO, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist; and (v) if not maintained by the BIA LTRO, documentation of the property's ownership.

25 CFR §§ 559.3 – 559.5

Section 559.3 requires a tribe or TGRA to submit a copy of each newly issued or renewed facility license within 30 days of issuance. With each copy of a newly issued or renewed facility license, § 559.4 requires a tribe or TGRA to submit an attestation certifying that by issuing the facility license, the tribe has determined that the construction, maintenance, and operation of that gaming facility is conducted in a manner that adequately protects the environment and the public health and safety (EPHS), meaning that the tribe has identified and enforces laws, resolutions, codes, policies, standards, or procedures applicable to each gaming place, facility, or location that protect the environment and the public health and safety, including standards under a tribal-state compact or Secretarial procedures. Section 559.5 requires a tribe or TGRA to submit a notice to the Commission within 30 days if a facility license is terminated or expires, or if a gaming operation closes or reopens.

25 CFR § 559.6

Section 559.6 requires a tribe or TGRA to maintain and provide applicable Indian lands or EPHS documentation, if requested by the Commission.

- 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.**

To carry out its statutory mandates, the Commission must have up-to-date information on the statuses of all lands where tribal gaming is proposed or is operating in order to assess whether the NIGC has jurisdiction over a particular parcel and gaming facility. A September 2005 report by the Office of Inspector General, U.S. Department of the Interior, recommended that the Commission establish a process by which tribes whose lands have been taken into trust since 1988 certify the statuses of their trust lands, and that the NIGC establish and maintain a database containing Indian lands eligibility information and/or determinations for all Indian gaming operations. The Commission established an Indian lands database and populates the database with information submitted by the tribes on new gaming facilities. The Commission uses the notice (that a facility license is under consideration for issuance) and the Indian lands information to ensure that its database records are complete as to the statuses of lands where tribal gaming is proposed or is occurring.

In addition, tribal submissions of copies of each newly issued or renewed facility license, or information regarding facility closings or license expirations, allow the Commission to maintain an accurate record of the Indian gaming facilities that are currently operating within Indian lands in the United States. This information collection continues to be utilized: (i) for internal reporting and recordkeeping purposes; (ii) to assess the NIGC's jurisdiction; and (iii) to respond to inquiries from other government agencies and from Congress regarding where Indian gaming is proposed or occurring.

The Commission uses an EPHS certification submission to rely on a tribe's assertion that it is in compliance with applicable EPHS laws. However, NIGC regulations also provide the Chairman with the discretion to request EPHS and Indian lands documentation, if necessary – a discretion that is not utilized without an identified substantial concern.

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 and/or maintain information via 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 BIA LTROs maintain deeds and track ownership of lands held in trust for the tribes by the United States, and the Commission utilizes the BIA LTROs to obtain such information whenever possible. However, the BIA LTROs track their trust lands by legal description and tract number. Without information from a tribe regarding the legal site description where gaming is to be conducted, along with the tract number assigned by the BIA LTROs, the NIGC cannot reliably or efficiently determine which deeds to request from the BIA LTROs, and the BIA LTROs often cannot match a gaming operation's mailing address with a legal site description. In addition, as a result of agreements between the tribes and the BIA LTROs, tribes often operate their own real estate offices and maintain their own trust deeds and ownership documentation. Under those circumstances, the proper entities from whom to request such information is the tribe itself. If no deed or other trust documents exist, the tribe is often in the best position to explain why that is the case.

With regard to the remainder of the information collection, 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.**

Without this information collection, IGRA's mandate (that each facility be separately licensed and that a tribe determine that the construction, maintenance, and operation of a gaming facility is conducted in a manner that adequately protects the environment and the public health and safety) would be violated. In addition, the Commission would be unable to efficiently identify the property where gaming is being proposed or is occurring and thereafter determine its jurisdiction over the gaming operation. This would result in the Commission being unable to accurately track Indian gaming operations currently operating on Indian lands, and being hindered or delayed in its ability to carry out core agency functions.

- 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.**

Not applicable.

- 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 12, 2018, 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 27344 (June 12, 2018). The public comment period closed on August 13, 2018. No public comments were received.

In addition, the Commission surveyed tribal gaming operators and/or TGRAs regarding the submission and recordkeeping 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 proposed facility license issuance notices, copies of newly issued or renewed licenses, EPHS attestations, and license expirations or closure notices that it receives per calendar year. To arrive at the estimates below, the Commission averaged the number of annual submissions that it received from calendar years 2015 – 2017 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. The unspecified total 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
559.2	31	Varies	66	22	1,452	\$0
559.3	160	Varies	328	1.5	492	\$0
559.4	104	Varies	204	7	1,428	\$0
559.5	5	Varies	5	0.5	3	\$0
559.6	244	Varies	244	4	976	\$0
TOTAL	544		847		4,351	\$0

- 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
559.2	31	Varies	66	5.0	330	\$58	\$19,140
559.3	160	Varies	328	0.5	164	\$38	\$6,232
559.4	104	Varies	204	0.5	102	\$38	\$3,876
559.5	5	Varies	5	0.5	3	\$38	\$114
TOTAL	300		603		599		\$29,362

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 the following adjustments to its estimated burdens:

(a) the Commission has increased the number of estimated annual responses from 269 to 847.

The reason for this dramatic increase appears to be due to the fact that previous estimates that were provided last renewal cycle were likely not accurate. The previous estimate was derived from interviews of NIGC Regional Directors and it appears that they were only giving rough estimates. Since the last renewal cycle, regions have been directed to track responses on spreadsheets and estimates presented here are based on the numbers compiled in these spreadsheets over the last three years and they have been verified as accurate;

(b) the significant increase in burden hours is largely due to the increase in the estimated annual responses, as explained above; and,

(c) the Commission has decreased the estimated annual cost burden from \$6,663 to \$0. This marks a total reversal of this estimate from the last renewal cycle at which time the Commission increased this estimate from \$0 to \$6,663. At that time, the Commission justified the increase on the basis of “tribal feedback, with many tribes specifying that their charges were commercial

shipping charges.” At this point, it appears that nearly all submissions are being made via electronic mail and therefore these shipping costs are no longer applicable.

- 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.