

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, which are submitted using non-standardized documents, 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. NIGC estimates that approximately 50% of all respondents use electronic reporting.

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, describe any methods used to minimize burden.

None of the respondents meet the Small Business Administration's definition of a small business. 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.

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.

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 that it is 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.

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:**

N/A.

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:**

N/A.

- **requiring respondents to submit more than an original and two copies of any document:**

N/A.

- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years:**

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.

- **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:**

N/A.

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB:**

N/A.

- **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:**

N/A.

- **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.**

N/A.

- 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 1, 2019, a 60-day notice containing the information collection renewals was published in the Federal Register allowing the public an opportunity to comment on the requirements. See 84 FR 31338 (July 1, 2019). The public comment period closed on August 30, 2019. No public comments were received.

In addition, the Commission reached out to 6 Tribal gaming operations to consult on the submission requirements contained in the regulations. The selected gaming operations are located in Oklahoma, California, Washington, Minnesota, and Alabama. Specifically, the Commission asked tribal gaming financial directors and/or tribal gaming commissioners to

provide annual hourly estimates of the Tribal labor that was required to fulfill the requirements, as well as any added cost estimates. More information from these consultations is provided below.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration 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.**
- **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**

As stated in Item 8 above, the Commission consulted with 6 tribal gaming operations. In order to obtain tribal feedback, tribes were assured that information they provided would be held confidentially. Appropriate tribal gaming commission and/or operation personnel were asked how much time it took to maintain compliance with each information collection regulation requirement. The Commission was able to obtain corresponding wage costs for each operation by multiplying the given hourly time (provided by each consulted Tribe) by the wage rate published in the Bureau of Labor Statistics (when available, using statistics that matched the region of the specific Tribe) that most closely matched the gaming-related job (specific to each collection). With these resultant time and corresponding wage numbers in hand, the Commission was then able to estimate industry-wide time/cost averages and these averages, in turn, were multiplied by the total number of responses to produce updated estimated total hours and costs. The table below reflects these calculations.

ESTIMATED ANNUAL HOURLY BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE HOURS PER RESPONSE	AVERAGE (WAGE) COST PER REPOSE	TOTAL ANNUAL HOURS	TOTAL (WAGE) COST
571.7; 571.14	241	1	241	49	\$1,585	11,809	\$381,985
571.12	241	1	241	476	\$12,764	114,716	\$3,076,124
571.13	241	1	241	4	\$234	964	\$56,934
TOTAL	241		723			127,489	\$3,515,043

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 dollar cost for this information collection (\$35,033,688) is the estimated total amount 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 class II and class III gaming operations. The consulted tribes did not cite any other costs pertaining to these requirements. This estimate is based on the average of the costs submitted by the consulted tribes, which was then multiplied by the number of annual respondents.

ESTIMATED ANNUAL COST TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE ANNUAL COSTS	TOTAL COSTS
571.7; 571.14	241	1	241	\$0	\$0
571.12	241	1	241	\$145,368	\$35,033,688
571.13	241	1	241	\$0	\$0

TOTAL	241		723		\$35,033,688
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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, recording, and analysis of the submissions. The wage rates are based on hourly compensation at the level of a GS-13/1.

ESTIMATED ANNUAL AGENCY BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	ANNUAL FREQUENCY OF RESPONSES	TOTAL ANNUAL RESPONSES	REVIEW HOURS PER RESPONSE	TOTAL HOURS	AVERAGE HOURLY RATE	TOTAL AGENCY COST
571.7; 571.14	12	1	12	67	804	\$36.75	\$29,547
571.12; 571.13	501	1	501	3.3	1,653	\$36.75	\$60,748
TOTAL	513		513		2,457		\$90,295

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

It should be noted at the outset that tribal gaming operations and their business practices are unique to each gaming Tribe and influenced by many local, state, and regional factors.

Tribal gaming facilities vary in size and complexity and range from small truck stops to world-class casino resorts. The amount of time and resources that gaming tribes expend fulfilling regulatory requirements can vary dramatically and is further complicated by their varying levels of investment in, and adoption of, new technologies and technical expertise. For these reasons, estimates provided by a statistically insignificant group of rotating tribal contacts has limited

value and it would be improper to claim to be able to extrapolate from this feedback any definitive trends.

It should also be noted that, in previous years, the NIGC did not include wage costs in its data but it does so now and will continue doing this in all future renewals.

As mentioned in item number 8, the Commission consulted with 6 tribal gaming financial directors and/or tribal gaming commissioners. Consultation with stakeholders is an important source of information on the burdens of information collections. NIGC notes that, due to the heterogeneity of respondents, it is difficult to develop a representative estimate of respondent burden hours. Nevertheless, based on this tribal feedback, the Commission has made the following adjustments to its estimated burdens:

- The method for calculating the total annual responses for §571.12 was changed. In prior years, the NIGC had determined that the number of total annual responses equaled the total number of Indian gaming operations. Because tribes negotiate contracts for an independent audit on a tribal level (and not at the gaming operational level), the number of total annual responses was set as equal to the number of gaming tribes (241). This decrease in the total annual responses was offset by the slight increase in average annual hours as reported by the consulted tribes so that, on net, there was no dramatic change in estimated annual hours for this specific requirement from the last renewal cycle.
- the estimated annual burden hour total has been significantly revised downwards from 406,905 to 127,489. This decrease continues the trend from the last renewal estimate cycle and, as before, is also primarily due to the decrease in the average hours per response for compliance with regulation §571.7. In looking at this trend, it is possible to surmise that, over time, as accounting practices in tribal gaming operations have become

more established, tribal financial directors increasingly attribute their operation’s accounting practices less as a response to any one NIGC regulatory requirement and more as simply part of their customary business practices. NIGC recognizes there are limitations with these modes of estimation and will continue to consider stakeholder consultation in the development of its estimated burden hours.

- the estimated annual total cost has remained fairly stable despite the fact (as noted above) that the total annual responses for compliance with regulation §571.12 was decreased from equaling the total number of operations (501) to equaling the total number of tribes (241).

CHANGES FROM THE PREVIOUS COLLECTION

	Requested in this collection	Previously Approved Collection	Net Change
# of Responses	723	931	-208
Annual Burden Hours	127,489	406,905	-279,416
Burden Hour Wage Cost	\$3,515,043	\$0	\$3,515,043
Non-Burden Hour Cost	\$35,033,688	\$34,349,884	+\$683,804

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.