

SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENTS
25 CFR PART 518

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 the standards for the regulation of Indian gaming, including a framework for the issuance of certificates of self-regulation for class II gaming operations to tribes that meet certain qualifications. Specifically, 25 U.S.C. 2710(c) authorizes the Commission to issue a certificate of self-regulation if it determines that a tribe has: (i) conducted its gaming activity in a manner that has resulted in an effective and honest accounting of all revenues, in a reputation for safe, fair, and honest operation of the activity, and has been generally free of evidence of criminal or dishonest activity; (ii) adopted and is implementing adequate systems for the accounting of all revenues from the activity, for the investigation, licensing, and monitoring of all employees of the gaming activity, and for the investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations; and (iii) conducted the operation on a fiscally and economically sound basis. 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 518 of title 25, Code of Federal Regulations, implements these statutory requirements.

25 CFR §§ 518.3(e) and 518.4

Amongst other conditions, in order for a tribe to be eligible to petition the Commission for a certificate of self-regulation of class II gaming, 25 CFR § 518.3(e) requires a tribe's gaming operation(s) and the tribal regulatory body (TRB) to have kept all records needed to support the petition for self-regulation for the three years immediately preceding the date of the petition submission.

In addition, 25 CFR § 518.4 requires a tribe petitioning for a certificate of self-regulation to submit the following to the Commission, accompanied by supporting documentation: (i) two copies of a petition for self-regulation approved by the tribal governing body and certified as authentic by an authorized tribal official; (ii) a description of how the tribe meets the eligibility criteria in § 518.3; (iii) a brief history of each gaming operation, including the opening dates and periods of voluntary or involuntary closure(s); (iv) a TRB organizational chart; (v) a brief description of the criteria that individuals must meet before being eligible for employment as a tribal regulator; (vi) a brief description of the process by which the TRB is funded, and the funding level for the three years immediately preceding the date of the petition; (vii) a list of the current regulators and TRB employees, their complete resumes, their titles, the dates that they began employment, and if serving limited terms, the expiration date of such terms; (viii) a brief description of the accounting system(s) at the gaming operation that tracks the flow of the gaming revenues; (ix) a list of the gaming activity internal controls at the gaming operation(s); (x) a description of the recordkeeping system(s) for all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, for the three-year period immediately preceding the date of the petition; and (xi) the tribe's current set of gaming regulations, if not included in the approved tribal gaming ordinance.

25 CFR § 518.10

Section 518.10 requires each Indian gaming tribe that has been issued a certificate of self-regulation to submit to the Commission the following information by April 15th of each year following the first year of self-regulation, or within 120 days after the end of each gaming operation's fiscal year: (i) an annual independent audit; and (ii) a complete resume for all TRB employees hired and licensed by the tribe subsequent to its receipt of a certificate of self-regulation.

- 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 uses the records maintained and the information submitted with a tribe's petition to determine whether a tribe has met the statutory criteria for the issuance of a certificate of self-regulation. In addition, the Commission uses the annual independent audits and the resumes for all TRB employees in order to monitor a tribe's ability to continue to meet the criteria for maintaining its certificate of self-regulation.

- 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.**

Although the tribes are required to submit the petition in paper form, Commission regulations do not prohibit tribes from using automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

- 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 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.

None of the respondents meet the Small Business Administration's definition of a small business. Nonetheless, Commission regulations require operations to submit the minimum amount of information that the Commission requires to fulfill its statutory responsibilities.

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.

However, Congress also recognizes that Indian tribes are sovereign entities, capable of self-government. Thus, the reason that IGRA provides a framework for the issuance of certificates of self-regulation to tribes that meet certain conditions and if the Commission makes certain determinations that a tribe has: (i) conducted its gaming activity in a manner that has resulted in an effective and honest accounting of all revenues, in a reputation for safe, fair, and honest operation of the activity, and has been generally free of evidence of criminal or dishonest activity; (ii) adopted and is implementing adequate systems for the accounting of all revenues from the activity, for the investigation, licensing, and monitoring of all employees of the gaming activity, and for the investigation, enforcement and prosecution of violations of its gaming

ordinance and regulations; and (iii) conducted the operation on a fiscally and economically sound basis.

Petitioning the Commission for a certificate of self-regulation is voluntary. Once a certificate of self-regulation has been issued, however, the submission of the annual independent audits and resumes become mandatory. If these information collections are not conducted, the Commission will not be able to effectively determine a tribe's ability to self-regulate and thus not be able to fulfill its statutory duty to issue certificates of self-regulation to tribes that qualify, or to ascertain a tribe's continued ability to maintain a certificate of self-regulation.

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:**

N/A

- **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.

Currently there are five Tribes that are self-regulating and, within the past three years, three Tribes have submitted applications for approval to self-regulate. The Commission reached out to 2 Tribal gaming operations that are currently self-regulating and 2 Tribal gaming operations that

have recently undergone the approval process in order to consult on the submission requirements contained in the regulations. The selected gaming operations are located in California, Oregon, and Michigan. Specifically, the Commission asked tribal gaming directors 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.

In addition, pursuant to the Privacy Act, the Commission has established a system of records for maintaining and protecting personal information of individuals received in connection with a self-regulation petition. The Privacy Act prevents the Commission from revealing such personal information.

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**

As stated in Item 8 above, the Commission consulted with a total of 4 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 hourly time spent by the appropriate regional Bureau of Labor Statistics wage rate. Using the time and cost numbers provided by the consulted tribes, 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 BURDEN HOUR TOTALS

	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE HOURS PER RESPONSE	AVERAGE (WAGE) COST PER RESPONSE	TOTAL HOURS	TOTAL (WAGE) COST
518.3(e); 518.4	1	1	1	202	\$11,316	202	\$11,316
518.10(a)	5	1	5	1	\$52	5	\$260
518.10(b)	5	1	5	10	\$558	50	\$2,790
TOTAL			11			257	\$14,366

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 vast majority of the total annual cost for this information collection (\$203,750) is the estimated total amount that the tribes will pay to engage independent CPA firms to provide an annual audit of the financial statements of each of their class II and class III gaming operation.

Consulted tribes also cited some minor costs (“copying and postage”) involved in the petition process that amounted to approximately \$75 annually.

ESTIMATED ANNUAL COST TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSE PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE ANNUAL COST	TOTAL COSTS
518.3(e); 518.4	1	1	1	\$75	\$75
518.10(a)	5	1	5	\$40,750	\$203,750
518.10(b)	5	1	5	\$0	\$0
TOTAL			11		\$203,825

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. The wage rates are based on hourly compensation at the level of a GS-14/1.

ESTIMATED ANNUAL AGENCY BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSE PER YEAR	TOTAL ANNUAL RESPONSES	REVIEW HOURS PER RESPONSE	TOTAL HOURS	HOURLY RATE	TOTAL AGENCY COSTS
518.3(e); 518.4	1	1	1	216	216	\$43.42	\$9378.72
518.10(a)	5	1	5	.5	2.5	\$43.42	\$7,598.50
518.10(b)	5	1	5	1	5	\$43.42	\$108.55
TOTAL			11		223.5		\$17,085.77

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 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 2 Tribal gaming operations that are currently self-regulating and 2 Tribal gaming operations that have recently undergone the approval process. 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:

- Estimates of the total number of annual respondents for § 518.10(a) and § 518.10(b) have both been changed to 5 (reflecting the fact that there are currently 5 self-regulated tribes).
- the estimated annual burden hour total has been significantly revised downwards from 2,092 to 257. This decrease continues the trend from the last

renewal estimate of this collection and, as before, is also primarily due to the decrease, based on tribal consultation, in the average hours per response for compliance with regulations § 518.3(e) / § 514.4.

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.

CHANGES FROM THE PREVIOUS COLLECTION

	Requested in this collection	Previously Approved Collection	Net Change
Annual Number of Responses	11	7	4
Annual Time Burden (Hr)	257	2,092	-1,835
Annual Cost Burden (\$)	203,825	821,545	-617,720

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 Commission 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.