

¹Supporting Statement A

Gaming on Trust Lands Acquired After October 17, 1988, 25 CFR 292

OMB Control Number 1076-0158

Terms of Clearance: None.

General Instructions

A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked “Yes,” then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, Section 2710 (d)(7)(B)(vii) requires that the Department of the Interior (Interior) prescribe a process, in consultation with the Indian Tribes, for the submission and consideration of applications from Indian Tribes seeking to conduct class II or class III gaming activities on lands acquired in trust after October 17, 1988. The implementing regulations, at 25 CFR part 292, establish what information Tribal respondents must submit in support of a determination by the Secretary that gaming is in the best interest of the Tribe (“Secretarial determination”) and the criteria that must be met for the various exceptions to the general ban on class II and III gaming.

Specifically, the following regulatory sections establish what information must be submitted as part of the application for a Secretarial determination:

- Section 292.16 establishes what general information the application for a Secretarial Determination must contain.
- Section 292.17 establishes what information the application must include to describe the benefits and impacts of a proposed gaming establishment to the Tribe and its members.
- Section 290.18 establishes what information the application must include to

describe the detrimental impacts of a proposed gaming establishment to the surrounding community.

The following regulatory sections state the criteria that apply for each exception:

- Section 292.4 states what criteria the trust land must meet for gaming to be allowed under the exceptions.
- Section 292.5 states what criteria must be met under the “settlement of a land claim” exception.
- Section 292.6 states what criteria must be met under the “initial reservation” exception.
- Section 292.7 states what criteria must be met under the “restored lands” exception.

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. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

Interior uses the information submitted to determine whether the Indian Tribe (respondent) has complied with IGRA and meets the criteria applicable to an exception.

The following table shows the information collection requirements under 25 CFR 292.16 through 292.18 (applications for Secretarial Determination).

Information Collection Requirement	Department’s Use of Information
The full name, address, and telephone number of the Indian Tribe submitting the proposal;	Uses this information to contact the appropriate Tribal representative regarding the proposal
A description of the location of the land, including a legal description supported by a survey or other document;	Identifies the land at issue
Proof of identity of present ownership and title status of the land;	Ensures that the Tribe has title to the land at issue
Distance of the land from the Tribe's reservation or trust lands, if any, and Tribal government headquarters	Allows Secretary to determine whether IGRA criteria are met and whether the enterprise would be in the Tribe’s “best interest”
Information required by § 292.17 (projected economic effects on Tribe) to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the Tribe and its members;	Allows Secretary to assess the potential benefits and impacts of the proposed establishment and determine whether IGRA criteria are met
Information required by § 292.18 (projected environmental, economic, social, historical impacts to surrounding community) to assist the Secretary in determining whether the	Allows Secretary to assess the potential detrimental impacts to the surrounding community and determine whether IGRA criteria are met

proposed gaming establishment will not be detrimental to the surrounding community;	
A copy of the authorizing resolution from the Indian Tribe submitting the proposal;	Ensures that the Tribe has authorized the submission
A copy of the Indian Tribe's gaming ordinance or resolution approved by the NIGC in accordance with 25 U.S.C. 2710, if any;	Ensures that the Tribe is authorized to conduct gaming
A copy of the Indian Tribe's organic documents, if any;	
The Tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated	Ensures that the proposal meets State requirements
If the Tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the Tribe's proposed scope of gaming, including the size of the proposed gaming establishment; and	Ensures that the proposal meets State requirements
A copy of the existing or proposed management contract required to be approved by the National Indian Gaming Commission under 25 U.S.C. 2711 and part 533 of this title, if any.	Ensures that the proposed procedures meet all applicable legal requirements.

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 and specifically how this collection meets GPEA requirements.

This collection of information does not involve the use of automated, electronic, mechanical, or other technological collection techniques. Automated submissions are not feasible because the information contained in an application submitted by an Indian Tribe to conduct gaming on trust lands acquired after October 17, 1988, is unique to each Tribe. Tribes may use electronic means to prepare their responses. Nothing precludes the Tribe from using any electronic system to submit via e-mail; however, Tribes choose to submit in hard copy because it is easier to include the signed Tribal resolution and other attachments in hard copy than to convert them to an electronic format. Decision documents approving an application to conduct gaming on trust lands after October 17, 1988, are approved and stored at the Office of Indian Gaming.

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.

Each application for a Secretarial determination will contain information unique to a particular Tribe, and the Tribe does not otherwise provide this information to the Department of the Interior or any other Federal agency. No other Federal Agency has authority under IGRA to approve an application from an Indian Tribe seeking to conduct gaming on lands acquired after October 17, 1988.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Although tribes are not considered small businesses, to the extent allowable by the regulations, the BIA has attempted to reduce the burden on tribes.

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, the Interior personnel cannot ensure that the provisions of IGRA and implementing regulations are met. The information is collected one time only, when a Tribe requests that the Secretary make a determination that gaming is in the Tribe's best interest.

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.**

There are no special circumstances that would require us to collect the information in a manner inconsistent with OMB guidelines.

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 in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A 60-day notice for public comments was published in the Federal Register on August 12, 2021 (86 FR 44401). No comments were received.

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 three 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.

The following persons outside the agency were contacted 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:

- Attorney, St. Paul, MN, 55108
- Attorney, Washington DC, 20005
- Attorney, Washington DC, 20037

In summary, all the individuals felt the purpose of the information collection for gaming on trust lands acquired after October 17, 1988, was necessary, felt the information requested was no more than was necessary, and concurred with the estimated burden time. All three individuals had no issues with the frequency in which it is collected.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No assurances of confidentiality are provided.

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.

No sensitive or private information is requested.

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.**
- * 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.**

Approximately 2 Tribes provide the information each year. Annual reporting and record keeping burden for this collection of information is estimated to average approximately 1,000 hours for each respondent. This includes the number of hours that will be spent by legal staff to review the regulations, research existing data sources, gathering and maintaining the data needed, compilation by clerical staff and submission to Tribal council for review, revision and approval.

$$2 \text{ respondents} \times 1,000 \text{ hours per application} = 2,000 \text{ hours}$$

Therefore, the total annual hours for submission of an application by the respondents are estimated to be 2,000 hours or the amount equivalent to \$79,100.

There are no specific forms to be completed by respondents.

It is estimated that Tribal staff compiling the information are compensated \$39.55 per hour, based on the Bureau of Labor Statistics, Employer Costs for Employee Compensation – December 16, 2021, USDL-21-2146, Table 2, civilian workers: see <http://www.bls.gov/news.release/pdf/ecec.pdf>. This wage includes a multiplier for benefits.

The salary cost for each Tribe to spend the 1,000 hours to complete its submission is \$53,000.

$$\$39.55 \text{ per hour} \times 1,000 \text{ hours} = \$39,550 \text{ salary cost per Tribe}$$

The total salary cost for both Tribal respondents is therefore \$79,100.

$$\$39,550 \times 2 \text{ respondents} = \$79,100 \text{ equivalent dollar amount}$$

Record maintenance cost for each respondent is estimated to be minimal, as Tribes maintain records as part of their usual course of business.

Respondents, annually	Responses per respondent, annually	Hours per response	Total annual hour burden (respondents x responses x hours)	Cost per hour	Total Cost (Total annual hour burden x cost per hour)
2	1	1,000	2,000	\$39.55	\$79,100

13. Provide an estimate of the total annual non-hour cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

- * **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 (including filing fees paid for form processing). 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 collection 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.**

There are no additional capital, operation, start-up costs, or maintenance and purchase of services costs incurred. Tribes that choose to use any equipment, such as computers, to prepare their submissions may do so where they routinely use electronics for normal Tribal business

functions; however, no new equipment is required to prepare this information submission.

14. Provide estimates of annualized cost 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.

Cost to the Federal government is associated with the review of the submitted applications to ensure completeness and compliance with IGRA. The average time for Federal government review of a Secretarial determination application is 2,000 hours. This includes clerical assistance, reviewing staff, supervisor, attorneys, and approving official. The average grade and step level for all these staff is estimated at a GS-14/6.

The cost to the Federal government is estimated at a base salary of \$67.82, the hourly rate for a GS-14/6, see 2022 Schedule published at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf . Including a multiplier of 1.6 for benefits equals approximately \$108.51.

Given that Federal staff spends approximately 2,000 hours reviewing each submission, the total salary cost per submission is approximately \$180,000.

$$\$108.51 \text{ per hour} \times 2,000 \text{ hours} = \$217,020 \text{ salary cost per submission}$$

The total estimated annualized cost to the Federal government for both submissions is:

$$\$217,020 \text{ salary cost per submission} \times 2 \text{ submissions} = \$434,040 \text{ total cost.}$$

Federal Government Cost				
Submissions annually	Hours per submission	Cost per hour	Cost per submission (hours per submission x cost per hour)	Total Cost (submissions x hours x cost per hour)
2	2,000	\$108.51	\$217,020	\$434,040

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

Changes in burden estimates were due to salary increases from the Bureau of Labor and Statistics and the Federal government.

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.

A notice will not be published in the Federal Register and is not required by regulation.

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.

The expiration date will not be displayed because this information collection does not include any forms.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the certification statement.