

2SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENTS
25 CFR PARTS 533, 535, and 537

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 sets 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 the NIGC Chairman review and approve all management contracts for the operation and management of class II and/or class III gaming activities, and to conduct background investigations of persons with direct or indirect financial interests in, and management responsibility for, management contracts. 25 U.S.C. 2710, 2711. These requirements are intended to ensure that tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue. 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 parts 533, 535, and 537 of title 25, Code of Federal Regulations, to implement these statutory requirements.

25 CFR § 533.3

Section 533.3 of title 25, Code of Federal Regulations, requires a tribe or management contractor to submit a management contract for review within 60 days of execution, and to submit the following information to the Commission: (i) a contract containing the original signatures of an authorized tribal official and the management contractor, as well as a

representation that the contract as submitted is the entirety of the agreement amongst the parties; (ii) a letter signed by the tribal chairman setting out the authority of an authorized tribal official to act for the tribe concerning the management contract, as well as copies of documents evidencing this authority; (iii) a list of all persons and entities with a direct or indirect financial interest in the contract or with management responsibility for the contract; (iv) for new contracts and new operations, a three-year business plan that sets forth the parties' goals, objectives, budgets, financial plans, and related matters; for new contracts for existing operations, the same three-year business plan but must also include income statements and sources, and uses-of-funds statements for the previous three years; (v) if applicable, a justification for a contract term limit in excess of five years, but not exceeding seven years; (vi) if applicable, a justification for a fee in excess of 30 percent, but not exceeding 40 percent; and (vii) a legal description for the site on which the gaming operation to be managed is or will be located.

25 CFR §§ 535.1-535.2

Section 535.1 requires a tribe or a management contractor to submit an amendment or modification to a management contract within 30 days of execution, and to submit the following information to the Commission: (i) an amendment containing the original signatures of an authorized tribal official and the management contractor; (ii) a letter signed by the tribal chairman setting out the authority of an authorized tribal official to act for the tribe concerning the management contract, as well as copies of documents evidencing this authority; (iii) a list of all persons and entities with a direct or indirect financial interest in the contract or with management responsibility for the contract, including any changes in such persons or entities; (iv) if applicable, a justification for a term limit in excess of five years, but not exceeding seven

years; and (v) if applicable, a justification for a management fee in excess of 30 percent, but not exceeding 40 percent.

Section 535.2 requires a tribe or management contractor to submit, upon execution, the assignment by a management contractor of its rights under an approved management contract.

25 CFR § 537.1

In order for the Commission to conduct background investigations on all persons and entities with a direct or indirect financial interest in the contract or with management responsibility for the contract, § 537.1 requires a management contractor to submit the following information to the Commission for each natural person: (i) the full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender; (ii) a current photograph and driver's license number; (iii) business and employment positions held, and business and residence addresses currently and for the previous ten years; (iv) the names and current addresses of at least three personal references; (v) current business and residence telephone numbers; (vi) a description of any existing and previous business relationships with Indian tribes, including ownership interests; (vii) a description of any existing and previous business relationships with the gaming industry generally, including ownership interests; (viii) the name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted; (ix) for each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and of the disposition; (x) for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the

disposition; (xi) a complete financial statement showing all sources of income for the previous three years, and assets, liabilities, and net worth as of the date of the submission; (xii) for each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition; (xiii) fingerprints taken by an appropriate federal, state, or tribal law enforcement authority; (xiv) responses to written or oral questions propounded by the Chairman; and (xv) signed Privacy Act and false statement notices.

Section 537.1 also requires a management contractor to submit the following information to the Commission for each entity: (i) a list of the following persons: each of the ten largest beneficiaries and the trustees when the entity is a trust; each of the ten largest partners when the entity is a partnership; each person who is a director or who is one of the ten largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation; and for any other type of entity, the ten largest owners of that entity alone or in combination with any other owner who is a spouse, parent, child, or sibling, and any person with management responsibility for that entity; (ii) for each person in the aforementioned list, all of the background information that § 537.1 requires a management contractor to submit for a natural person; (iii) copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation; (iv) copies of documents designating the person who is charged with acting on behalf of the entity; (v) copies of bylaws or other documents that provide the day-to-day operating rules for the organization; (vi) a description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses; (vii)

a description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses; (viii) the name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted; (ix) for each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition; (x) for each misdemeanor conviction or ongoing misdemeanor prosecution within ten years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition; (xi) complete financial statements for the previous three fiscal years; (xii) for each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed, the criminal charge, the name and address of the court involved and the dates of the charge and disposition; (xiii) responses to written or oral questions propounded by the Chairman; and (xiv) a signed false statement notice.

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 requires tribes and/or management contractors to submit the information identified in Item 1 above in order for the Chairman to determine whether a management contract, or amendments and modifications thereto, meets IGRA's statutory requirements for approval. In addition, the requested background information will enable the Commission to perform background investigations in order for the Chairman to determine whether the individuals or entities directly or indirectly involved in the financial or management aspects of the gaming operation meet the suitability criteria established in IGRA. These

requirements are intended to ensure that tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue.

- 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 management contractors can submit information via compatible automated, electronic, and/or mechanical means. Tribes typically submit information in paper form and follow up initial submissions with electronic revisions. Recently, more management contractors are using portable document format (pdf) fillable forms when submitting background information, resulting in less time to compile the information.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The required information is unique to each Indian tribe and/or management contractor. 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.**

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. These 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 Commission requires tribes and/or management contractors to submit the information identified in Item 1 above in order for the Chairman to determine whether a management contract, or amendments and modifications thereto, meets IGRA's statutory requirements for approval. In addition, the requested background information enables the Commission to perform background investigations in order for the Chairman to determine whether the individuals or entities directly or indirectly involved in the financial or management aspects of the gaming operation meet the suitability criteria established in IGRA. These statutory requirements are intended to ensure that tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue.

The Commission imposes these collection requirements as infrequently as possible. The submission requirements apply only when a tribe or management contractor wishes to obtain the Chairman's approval of a management contract, and when amendments or modifications are made to existing approved contracts. With regard to the background information of individual or entities, the submission requirements apply only when changes are made in persons or entities with an indirect or direct financial and management interests in an Indian gaming operation. The Commission would be unable to effectively monitor Indian gaming operations as required by IGRA if the information collection were not conducted as described.

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:**

- **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.**

The Act requires the Commission to ensure that tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2703. To that end, the Commission must conduct background investigations into individuals and entities directly or indirectly involved in the financial or management aspects of the gaming operation. This requires the submission of information by these individuals or entities that can be considered privileged or confidential in nature, including business or commercial

records, financial and bank statements, proprietary secrets, or information related to ongoing law enforcement investigations. The Act removes, from the Commission, any discretion that it would otherwise have to disclose such information that falls within FOIA exemptions 4 and 7, and requires the Commission to disclose such information only to other law enforcement agencies for law enforcement purposes. 25 U.S.C. 2716.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On March 29, 2022, 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* 87 FR 18033 (March 29, 2022). The public comment period closed on May 31, 2022. No public comments were received.

In addition, the Commission consulted with various tribal gaming operators and/or management contractors regarding the submission requirements contained in the regulations. The Commission asked these tribal gaming operators and/or management contractors 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 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 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 management contracts, amendments/modifications to management contracts, assignments of rights to management contracts, and background investigation submissions for individuals and entities, that it receives per calendar year. To arrive at the estimates below, the Commission averaged the number of submissions that it received from calendar years 2019 - 2021 in order to determine the estimated total number of annual respondents and estimated total annual responses.

As mentioned in Item 8 above, the Commission consulted with tribal gaming operators and/or management contractors to gather the burden estimates for these information collection activities. Based on these consultations, the Commission was able to establish average time and wage expenditures for each type of response. The Commission was then able to calculate the total annual wage and cost estimates by multiplying these averages by the average number of annual responses.

ESTIMATED ANNUAL BURDEN TOTALS

| CFR CITE/ COLLECTION | NUMBER OF ANNUAL RESPONDENTS | FREQUENCY OF RESPONSES PER YEAR | TOTAL ANNUAL RESPONSES | AVERAGE HOURS PER RESPONSE | TOTAL ANNUAL HOURS | AVERAGE WAGE COST | TOTAL WAGE COST |
|---------------------------------|---|--|---------------------------------------|---|-----------------------------------|----------------------------------|--------------------------------|
| 533.3 | 2 | Varies | 12 | 16 | 192 | \$1,167 | \$14,000 |
| 535.1 | 2 | Varies | 4 | 4 | 16 | \$1,000 | \$4,000 |
| 535.2 | 1 | Varies | 1 | 1 | 1 | \$25 | \$25 |
| 537.1 | 24 | Varies | 24 | 8 | 192 | \$320 | \$7,680 |
| TOTAL | 29 | | 41 | | 401 | | \$25,705 |

- 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.

ESTIMATED ANNUAL COST TOTALS

Similar to 12, non-wage annual cost estimates were determined by stake-holder based estimates being multiplied by the average number of annual responses. In this case, non-wage costs were primarily the procurement of legal services for the purpose of assisting in the submission of the documents.

| CFR CITE/ COLLECTION | NUMBER OF ANNUAL RESPONDENTS | FREQUENCY OF RESPONSES PER YEAR | TOTAL ANNUAL RESPONSES | AVERAGE ANNUAL COSTS | TOTAL COSTS |
|-------------------------|------------------------------------|--|------------------------------|----------------------------|-------------|
| 533.3 | 2 | Varies | 12 | \$333 | \$3,996 |
| 535.1 | 2 | Varies | 4 | \$333 | \$1,333 |
| 535.2 | 1 | Varies | 1 | \$0 | \$0 |
| 537.1 | 24 | Varies | 24 | \$600 | \$14,400 |

| | | | | | |
|--------------|----|--|----|--|---------------|
| TOTAL | 29 | | 41 | | 19,729 |
|--------------|----|--|----|--|---------------|

- 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 | AVERAGE HOURLY RATE | TOTAL AGENCY COST |
|---------------------------------|---|--|---------------------------------------|--|------------------------|------------------------------------|----------------------------------|
| 533.3 | 2 | Varies | 12 | 85 | 1020 | \$90 | \$91,800 |
| 535.1 | 2 | Varies | 4 | 43 | 172 | \$90 | \$15,480 |
| 535.2 | 1 | Varies | 1 | 0 | 0 | \$90 | 0 |
| 537.1 | 24 | Varies | 24 | 94 | 2,256 | \$90 | \$203,040 |
| TOTAL | 29 | | 41 | | | | \$310,320 |

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

CHANGES FROM THE PREVIOUS COLLECTION

| | Requested in this collection | Previously Approved Collection | Net Change |
|-----------------------|---|---|-------------------|
| # of Responses | 41 | 51 | -20% |
| Annual Burden Hours | 401 | 440 | -1% |
| Burden Hour Wage Cost | \$25,705 | Not Available | Not Available |
| Non-Burden Hour Cost | \$19,729 | Not Available | Not Available |

It should be cautioned 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 different Tribal governance practices and 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 consultants has limited value and it would be improper to extrapolate from these burden estimates any definitive trends.

It should also be noted that, in previous years, the NIGC did not break out wage costs in its data. This deficiency was identified in a previous review process and has now been rectified, however, because these costs were previously lumped together, it is not possible to make direct comparisons between costs this review cycle.

Overall, this past cycle saw a decrease in burden hours. This would be due to the fact that the gaming industry was substantially affected by the COVID-19 pandemic and the temporary closures of gaming operations for a period of time during the pandemic.

The estimated financial cost for information collected under Section 533.3 of title 25 saw a particularly marked drop this cycle. This is due to a change in how the Commission assesses this activity under the PRA. Previously, the cost of providing the information to the Commission was equated to the cost of performing the related background investigations. It is now understood that providing the information is only a first step in the investigative process and for this cycle, and going forward, the burden is assessed for the production of the information and exclude any subsequent background investigative activities.

- 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 dates 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. Collection of Information Employing Statistical Methods.

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