



**BILLING CODE 7565-01-P**

**DEPARTMENT OF THE INTERIOR**

**National Indian Gaming Commission**

**Submission of Information Collections Under the Paperwork Reduction Act**

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Second notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the National Indian Gaming Commission (NIGC or Commission) is announcing its submission, concurrently with the publication of this notice or soon thereafter, of the following information collection requests to the Office of Management and Budget (OMB) for review and approval. The Commission is seeking comments on the renewal of information collections for the following activities: compliance and enforcement actions under the Indian Gaming Regulatory Act as authorized by OMB Control Number 3141-0001; tribal gaming ordinance approvals, background investigations, and issuance of licenses as authorized by OMB Control Number 3141-0003; National Environmental Policy Act submissions as authorized by OMB Control Number 3141-0006; and issuance to tribes of certificates of self-regulation for class II gaming as authorized by OMB Control Number 3141-0008. These information collections all expire on January 31, 2020.

**DATES:** The OMB has up to 60 days to approve or disapprove the information collection requests, but may respond after 30 days. Therefore, public comments should be submitted to OMB by no later than **[INSERT DATE 30 DAYS AFTER THE DATE**

**OF PUBLICATION IN THE FEDERAL REGISTER]** in order to be assured of consideration.

**ADDRESSES:** Submit comments directly to OMB's Office of Information and Regulatory Affairs, Attn: Policy Analyst/Desk Officer for the National Indian Gaming Commission. Comments can also be emailed to <OIRA\_Submission@omb.eop.gov>, include reference to "NIGC PRA Renewals" in the subject line.

**FOR FURTHER INFORMATION, CONTACT:** For further information, including copies of the proposed collections of information and supporting documentation, contact Tim Osumi at (202) 632-7054; fax (202) 632-7066 (not toll-free numbers). You may also review these information collection requests by going to <<http://www.reginfo.gov>> (Information Collection Review, Currently Under Review, Agency: National Indian Gaming Commission).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The gathering of this information is in keeping with the purposes of the Indian Gaming Regulatory Act of 1988 (IGRA or the Act), Public Law 100-497, 25 U.S.C. 2701, *et seq.*, which include: providing a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of the Commission, are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of

generating tribal revenue. 25 U.S.C. 2702. The Act established the Commission and laid out a comprehensive framework for the regulation of gaming on Indian lands.

## **II. Data**

*Title:* Indian Gaming Compliance and Enforcement.

*OMB Control Number:* 3141–0001.

*Brief Description of Collection:* Although IGRA places primary responsibility with the tribes for regulating their gaming activities, 25 U.S.C. § 2706(b) directs the Commission to monitor class II gaming conducted on Indian lands on a continuing basis. Amongst other actions necessary to carry out the Commission’s statutory duties, the Act authorizes the Commission to access and inspect all papers, books, and records relating to gross revenues of a gaming operation. The Act also requires tribes to provide the Commission with annual independent audits of their gaming operations, including audits of all contracts in excess of \$25,000. 25 U.S.C. 2710(b)(2)(C), (D); 2710(d)(1)(A)(ii). 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.

Section 571.7(a) 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).

Section 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.

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 to provide an annual audit of the financial statements of each gaming operation. Section 571.13 requires tribes to prepare and submit to the Commission two paper copies or one electronic copy of the 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. 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.

This information collection is mandatory and allows the Commission to fulfill its statutory responsibilities under IGRA to regulate gaming on Indian lands.

*Respondents:* Indian tribal gaming operations.

*Estimated Number of Respondents:* 723.

*Estimated Annual Responses:* 723.

*Estimated Time per Response:* Depending on the type of information collection, the range of time can vary from 25 burden hours to 2,250 burden hours for one item.

*Frequency of Responses:* 1 per year.

*Estimated Total Annual Burden Hours on Respondents:* 127,489.

*Estimated Total Non-hour Cost Burden:* \$35,033,688.

*Title:* Approval of Class II and Class III Ordinances, Background Investigations, and Gaming Licenses.

*OMB Control Number:* 3141–0003.

*Brief Description of Collection:* The Act sets standards for the regulation of gaming on Indian lands, including requirements for the approval or disapproval of tribal gaming ordinances. Specifically, § 2705(a)(3) requires the NIGC Chair to review all class II and class III tribal gaming ordinances. Section 2710 sets forth the specific requirements for the tribal gaming ordinances, including the requirement that there be adequate systems in place: to cause background investigations to be conducted on individuals in key employee and primary management official (PMO) positions (§ 2710(b)(2)(F)(i)); and to provide two prompt notifications to the Commission, including one containing the results of the background investigations before the issuance of any gaming licenses, and the other one of the issuance of such gaming licenses to key employees and PMOs (§ 2710(b)(2)(F)(ii)). In addition, § 2710(d)(2)(D)(ii) requires tribes who have, in their sole discretion, revoked any prior class III ordinance or resolution to submit a notice of such revocation to the NIGC Chair. 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). Parts 519, 522, 556, and 558 of title 25, Code of Federal Regulations, implement these statutory requirements.

Sections 519.1 and 519.2 require a tribe, management contractor, and a tribal operator to designate an agent for service of process, and § 522.2(g) requires it to be

submitted by written notification to the Commission. Section 522.2(a) requires a tribe to submit a copy of an ordinance or resolution certified as authentic, and that meets the approval requirements in 25 CFR §§ 522.4(b) or 522.6. Sections 522.10 and 522.11 require tribes to submit, respectively, an ordinance for the licensing of individually owned gaming operations other than those operating on September 1, 1986, and for the licensing of individually owned gaming operations operating on September 1, 1986. Section 522.3(a) requires a tribe to submit an amendment to an ordinance or resolution within 15 days after adoption of such amendment.

Section 522.2(b)-(h) requires tribes to submit to the Commission: (i) procedures that the tribe will employ in conducting background investigations on key employees and PMOs, and to ensure that key employees and PMOs are notified of their rights under the Privacy Act; (ii) procedures that the tribe will use to issue licenses to key employees and PMOs; (iii) copies of all tribal gaming regulations; (iv) a copy of any applicable tribal-state compact or procedures as prescribed by the Secretary of the Interior; (v) procedures for resolving disputes between the gaming public and the tribe or the management contractor; and (vi) the identification of the law enforcement agent that will take fingerprints and the procedures for conducting criminal history checks, including a check of criminal history records information maintained by the Federal Bureau of Investigation. Section 522.3(b) requires a tribe to submit any amendment to these submissions within 15 days after adoption of such amendment. Section 522.12(a) requires a tribe to submit to the Commission a copy of an authentic ordinance revocation or resolution.

Section 556.4 requires tribes to mandate the submission of the following information from applicants for key employee and PMO positions: (i) name(s), Social Security number(s), date and place of birth, citizenship, gender, and languages; (ii) present and past business and employment positions, ownership interests, business and residential addresses, and driver's license number(s); (iii) the names and addresses of personal references; (iv) current business and personal telephone numbers; (v) a description of any existing and previous business relationships with Indian tribes, including ownership interests; (vi) a description of any existing and previous business relationships with the gaming industry generally, including ownership interests; (vii) the name and address of any licensing/regulatory agency with which the person has filed an application for a license or permit related to gaming, even if the license or permit was not granted; (viii) for each ongoing felony prosecution or conviction, the charge, the name and address of the court, and the date and disposition, if any; (ix) for each misdemeanor conviction or ongoing prosecution within the past 10 years, the name and address of the court and the date and disposition; (x) for each criminal charge in the past 10 years that is not otherwise listed, the criminal charge, the name and address of the court, and the date and disposition; (xi) the name and address of any licensing/regulatory agency with which the person has filed an application for an occupational license or permit, even if the license or permit was not granted; (xii) a photograph; and (xiii) fingerprints. Sections 556.2 and 556.3 require tribes to place a specific Privacy Act notice on their key employee and PMO applications, and to warn applicants regarding the penalty for false statements by also placing a specific false statement notice on their applications.

Sections 556.6(a) and 558.3(e) require tribes to keep/maintain the individuals' complete application files, investigative reports, and eligibility determinations during their employment and for at least three years after termination of their employment. Section 556.6(b)(1) requires tribes to create and maintain an investigative report on each background investigation that includes: (i) the steps taken in conducting a background investigation; (ii) the results obtained; (iii) the conclusions reached; and (iv) the basis for those conclusions. Section 556.6(b)(2) requires tribes to submit, no later than 60 days after an applicant begins work, a notice of results of the applicant's background investigation that includes: (i) the applicant's name, date of birth, and Social Security number; (ii) the date on which the applicant began or will begin work as a key employee or PMO; (iii) a summary of the information presented in the investigative report; and (iv) a copy of the eligibility determination.

Section 558.3(b) requires a tribe to notify the Commission of the issuance of PMO and key employee licenses within 30 days after such issuance. Section 558.3(d) requires a tribe to notify the Commission if the tribe does not issue a license to an applicant, and requires it to forward copies of its eligibility determination and notice of results to the Commission for inclusion in the Indian Gaming Individuals Record System. Section 558.4(e) requires a tribe, after a gaming license revocation hearing, to notify the Commission of its decision to revoke or reinstate a gaming license within 45 days of receiving notification from the Commission that a specific individual in a PMO or key employee position is not eligible for continued employment.

These information collections are mandatory and allow the Commission to carry out its statutory duties.



*Respondents:* Indian tribal gaming operations.

*Estimated Number of Respondents:* 1,626.

*Estimated Annual Responses:* 220,461.

*Estimated Time per Response:* Depending on the type of information collection, the range of time can vary from 3.0 burden hour to 3,807 burden hours for one item.

*Frequency of Response:* Varies.

*Estimated Total Annual Burden Hours on Respondents:* 972,377.

*Estimated Total Non-hour Cost Burden:* \$1,287,967.

*Title:* NEPA Compliance.

*OMB Control Number:* 3141-0006.

*Brief Description of Collection:* The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, and the Council on Environmental Quality's (CEQ) implementing regulations, require federal agencies to prepare (or cause to be prepared) environmental documents for agency actions that may have a significant impact on the environment. Under NEPA, an Environmental Assessment (EA) must be prepared when the agency action cannot be categorically excluded, or the environmental consequences of the agency action will not result in a significant impact or the environmental impacts are unclear and need to be further defined. An Environmental Impact Statement (EIS) must be prepared when the agency action will likely result in significant impacts to the environment.

Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires the NIGC Chair to review and approve third-party management contracts that involve the operation of tribal gaming facilities. 25 U.S.C. 2711. The Commission

has taken the position that the NEPA process is triggered when a tribe and a potential contractor seek approval of a management contract. Normally, an EA or EIS and its supporting documents are prepared by an environmental consulting firm and submitted to the Commission by the tribe. In the case of an EA, the Commission independently evaluates the NEPA document, verifies its content, and assumes responsibility for the accuracy of the information contained therein. In the case of an EIS, the Commission directs and is responsible for the preparation of the NEPA document, but the tribe or potential contractor is responsible for paying for the preparation of the document. The information collected includes, but is not limited to, maps, charts, technical studies, correspondence from other agencies (federal, tribal, state, and local), and comments from the public. These information collections are mandatory and allow the Commission to carry out its statutory duties.

*Respondents:* Tribal governing bodies, management contractors.

*Estimated Number of Respondents:* 7.

*Estimated Annual Responses:* 7.

*Estimated Time per Response:* Depending on whether the response is an EA or an EIS, the range of time can vary from 2 burden hours to 30 burden hours for one item.

*Frequency of Response:* Varies.

*Estimated Total Annual Burden Hours on Respondents:* 33.

*Estimated Total Non-hour Cost Burden:* \$494,132.

*Title:* Issuance of Certificates of Self-Regulation to Tribes for Class II Gaming.

*OMB Control Number:* 3141-0008.

*Brief Description of Collection:* 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.

Section 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. Section 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; (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. 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.

Submission of the petition and supporting documentation is voluntary. Once a certificate of self-regulation has been issued, the submission of certain other information is mandatory.

*Respondents:* Tribal governments.

*Estimated Number of Respondents:* 11.

*Estimated Annual Responses:* 11.

*Estimated Time per Response:* Depending on the information collection, the range of time can vary from 1 burden hour to 284 burden hours for one item.

*Frequency of Responses:* One per year.

*Estimated Total Annual Burden Hours on Respondents:* 257.

*Estimated Total Non-hour Cost Burden:* \$203,825.

### **III. Request for Comments**

Regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, require that interested members of the public have an opportunity to comment on an agency's information collection and recordkeeping activities. *See* 5 CFR 1320.8(d). To comply with the public consultation process, the Commission previously published its 60-day notice of its intent to submit the above-mentioned information collection requests to OMB for approval. *See* 81 FR 36322 (June 6, 2016). The Commission did not receive any comments in response to that notice and request for comments.

The Commission will submit the preceding requests to OMB to renew its approval of the information collections. The Commission is requesting a three-year term of approval for each of these information collection and recordkeeping activities.

You are again invited to comment on these collections concerning: (i) whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimates of the burdens (including the hours and cost) of the proposed collections of information, including the validity of the methodologies and assumptions

used; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burdens of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology. It should be noted that as a result of the Commission reviewing its own records that track the number of tribal and/or management contractor submissions and after surveying tribal gaming operators, tribal gaming regulatory authorities, and/or management contractors regarding the Commission's submission and recordkeeping requirements, many of the previously published burden estimates have changed since the publication of the Commission's 60-day notice on July 1, 2019. If you wish to comment in response to this notice, you may send your comments to the office listed under the ADDRESSES section of this notice by **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments submitted in response to this second notice will be summarized and become a matter of public record. The NIGC will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid OMB Control Number.

Dated: December 19, 2019.

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**Christinia Thomas,**

*Chief of Staff (Acting)*

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