

**SUPPORTING STATEMENT FOR RECORDKEEPING  
AND REPORTING REQUIREMENTS**  
**25 C.F.R. § 542**

**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.**

**25 C.F.R. § 542(c) and (d)**

25 C.F.R. § 542.3(c) requires tribal gaming regulatory authorities to establish and implement tribal internal control standards that provide a level of control that equals or exceeds those set forth in 25 C.F.R. part 542, that contain standards that comply with 31 C.F.R. part 103, and that address games not in 25 C.F.R. part 542.

25 C.F.R. § 542.3(d) requires each gaming operation to develop and implement internal control standards that, at a minimum, comply with the tribal internal control standards established by the tribal gaming regulatory authority.

Neither of the above regulations requires a filing of any record with the Commission.

In furtherance of the Commission's oversight responsibilities for an expanding Indian gaming industry, it has become apparent that the industry has in many respects matured and has become more diverse and complex.

The vitality of the industry and the confidence the gaming public places in the integrity of play of the gaming offered is manifest by the growing patronage at tribal gaming facilities. The economic benefit brought to tribes by gaming is evidenced by the reduction, and in some cases elimination, of tribal unemployment on many reservations.

Effective control of all gaming revenues and gaming resources is essential to the continued success of this industry and, to this end, all gaming operations should establish internal controls that specify and require procedures, consistent with the accepted practices of the gaming industry, whereby there is monitoring, documentation and accounting of all of the gaming operations' activities. Gauging the sufficiency of the internal controls over the play of the games and the handling and accounting of the receipts and proceeds from the gaming, particularly for an industry as diverse and complex as tribal gaming, has become challenging. The inherent risks associated with cash-intensive businesses such as gaming, are significant and material. Preventing collusion, witnessing and documenting transactions and revenue flows, limiting access,

controlling inventories, and auditing these activities are among the essential controls designed to mitigate risk.

The need for a minimum level of internal controls, consistent with the gaming industry overall, to apply universally throughout tribal gaming, was recognized by those within and without the Indian gaming community. To assist the tribes in the identification and implementation of clearly defined objective standards in which the adequacy could be effectively measured, the Commission concluded that it is not only appropriate but necessary for it to promulgate the subject regulations. The ultimate objective is to ensure best practices of the gaming industry are applied to tribal gaming sufficient to provide reasonable assurance that the games are conducted honestly and fairly, that the gaming operations are shielded from organized crime and other corrupting influences and that the Indian tribes are the primary beneficiaries of the gaming operations.

### **25 C.F.R. § 542.3(f)**

25 C.F.R. § 542.3(f) requires the tribes to engage an independent certified public accountant (CPA) to perform “Agreed-Upon Procedures” to verify that gaming operations have adopted and implemented minimum internal control standards compliant with 25 C.F.R. § 542. A report of findings is required to be submitted to the Commission within 120 days of the gaming operation’s fiscal year end. Gaming operations conducting less than a \$1 million in gross gaming revenue are exempt from this requirement. Gross gaming revenue is defined as the amount wagered, plus admission fees to a game, less payouts.

Although the IGRA recognizes the tribes are primarily responsible for the regulation of their respective gaming operation(s), the Commission has concurrent regulatory jurisdiction. However, the federal oversight is not anticipated to be as intrusive or as consistent or routine as that of the tribal gaming regulatory authorities; therefore, the Commission relies on the collection of information and data, whether acquired directly or through indirect sources, to allocate its resources in such manner to produce the greatest benefit to the Indian gaming industry. Essentially, the objective is to identify gaming operations that pose an unacceptable risk of bringing disrepute to this vulnerable industry.

Considering the unavoidable organizational weaknesses associated with the concept of self regulation in which the tribal gaming regulatory authority and the gaming operation ultimately report to the same governmental entity (generally a tribal council), it is important to the effectiveness of the regulatory oversight function that an independent evaluation of the internal control systems be periodically conducted by an external party possessing sufficient competency to perform the review. The tribe and Commission benefit equally from the findings produced.

The Agreed-Upon Procedures engagement is one in which a CPA is engaged by a tribe to issue a report of findings based on specific procedures performed. The objective

is to assist the tribe, Commission and potentially others in evaluating the effectiveness of the internal control systems of the gaming operation(s). The tribe assumes responsibility for the sufficiency of the agreed-upon procedures, which are codified within the subject regulation. In this type of engagement, the CPA does not perform an examination and does not provide an opinion or negative assurance about compliance with the MICS. The CPA's report is in the form of procedures and findings.

The regulation provides guidance on the procedures to be performed. This results in standardization of the testing, sample size, documentation and report format. Standardized requirements ensure that all CPAs are performing the same procedures. Consequently, the Commission is able to review the reports in a more efficient and time-saving manner without having to adjust to a myriad of individual/firm styles. The same CPA that performs the audit of the financial statements may also perform the agreed-upon procedures. Using the criteria established by the regulation, the CPA must report each procedure detected that does not satisfy the MICS. Although not required by the regulation, management is generally expected to report to the tribe the corrective measures taken to rectify control deficiencies noted by the CPA.

Utilizing the data produced by the agreed-upon procedures reports, the Commission is able to perform a risk analysis of the quantity and quality of the compliance exceptions noted. Based on the accumulation of data collected from all the gaming tribes, the Commission can more effectively allocate its resources to the neediest organizations.

**2. Indicate how, by whom, and for what purposes 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.**

#### **25 C.F.R. § 542.3(f)**

Upon receipt of the agreed-upon procedures report, Commission personnel well versed in casino internal control systems, as defined by long-established best practices of the gaming industry, examine the findings from a risk perspective. It is worthy of recognition that casino internal controls may be categorized into three broad categories. There are those that function as a deterrent to the occurrence of an integrity violation; those that are of an accounting or auditing nature, which are intended to account for assets or confirm compliance with an established process; or those that govern the transfer of an asset, such as cash and cash equivalents, from the accountability of one employee to another or to a patron. Obviously, a control weakness involving the last category would possess the greatest risk to the tribe's investment and the reputation of the gaming enterprise. Some compliance exceptions, such as the failure to appropriately authorize and document jackpot payouts from a gaming machine, would be characterized by the reviewer as posing an immediate and material risk to tribal assets.

Once the risk analysis is performed, the data is recapped in a report, which also includes information collected from other sources, and an overall risk factor is applied to

the gaming operation. Those facilities deemed to have a high risk of having a materially deficient system of internal controls are further evaluated in terms of size and scope of gaming conducted, geographical location and previous regulatory problems. The gaming operations determined to pose the greatest risk are scheduled for follow-up contact, which could include a comprehensive compliance audit of their internal control systems, assistance in the implementation of corrective actions, or remedial training of casino personnel, as requested by management.

**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 collections. Also describe any consideration of using information technology to reduce burden.**

**25 C.F.R. § 542.3(f)**

The information collection does not specifically involve the use of technological collection techniques; however, it should be noted that, except for the most elementary of gaming operations, computerized systems are to varying degrees directly involved in the authorization, recognition, recordation and summarization of transactions and events. Under the regulations of the NIGC, information may be submitted by compatible automated, electronic, and/or mechanical means.

**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.**

**25 C.F.R. § 542.3(f)**

The required information is unique to each Indian tribe and to each gaming operation. No similar information pertaining to gaming on Indian lands is collected by the NIGC or by other federal agencies.

**5. If the collection of information impacts small business or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize the burden.**

**25 C.F.R. § 542.3(f)**

Not applicable to Indian 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.**

**25 C.F.R. § 542.3(f)**

For NIGC to effectively monitor the individual gaming operations to ensure the economic and social interests of the stakeholders are being adequately protected and the overall integrity of the industry is safeguarded from reproach, independent testing of the casino internal control systems is necessary. Furthermore, the regulation codifies the testing criteria and procedures to be followed by practitioners in the evaluation of the controls. The organization's fiscal year is the common and logical reporting period for such data. Without the information provided by the submissions, the NIGC would be hampered in its effective allocation of resources and the fulfillment of its mission.

**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 documents;
- 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.

With regard to confidential information, the NIGC must ensure that Indian gaming is kept free from criminal influence. To that end, the NIGC must require the maintenance and reporting of certain confidential information. IGRA, 25 U.S.C. § 2716, requires the Commission to keep confidential trade secrets, privileged or confidential, commercial or financial information, or information related to ongoing law enforcement investigations. 25 U.S.C. § 2716 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.

Under 25 C.F.R. § 571.7 gaming operations are required to maintain financial books and records sufficient to establish the information required under the IGRA and regulation for no less than five years. This requirement corresponds to record retention mandated by other federal statutes and regulations, such as Title 31, the Bank Secrecy Act. Pursuant thereto, financial documentation supporting Current Transaction Reports by Casinos and Suspicious Activity Reports must be retained for a minimum of five years.

**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 C.F.R. '1320.8(d), soliciting comments on the information collection prior to submission to OMB.**

In August 11, 1998, the proposed Minimum Internal Control Standards were published in the Federal Register, 63 Fed. Reg. 42,939. The proposed rule invited the regulated community to comment on the form and content of the regulation. The final rule, published January 5, 1999, 64 Fed. Reg. 590, included a discussion of the requirements of the rule, along with a response to the public comments received. This rule was assigned OMB control number 3141-0009 on October 17, 1998.

The OMB control number expired in October 2001 but was subsequently approved as part of another rulemaking on the Minimum Internal Control Standards. On December 26, 2001, the NIGC published the proposed rule related to the Minimum Internal Control Standards, 66 Fed. Reg. 66,500. The NIGC invited comments from the public on the form and content of the rule. On June 27, 2002, the final rule was published, along with a response to the comments received. This information collection expired on June 30, 2005.

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

**25 C.F.R. § 542.3(f)**

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.**

**25 C.F.R. § 542.3(f)**

The IGRA (25 USC § 2716) provides:

(a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provision of paragraphs (4) and (7) of section 552(b) of title 5, United States

Code.

(b) The Commission shall, when such information indicates a violation of Federal, State or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

The NIGC is bound by the above requirements.

**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.**

**25 C.F.R. § 542.3(f)**

Not applicable. No sensitive questions are asked.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

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- 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 on Item 13 of OMB Form 83-I.
- Provide estimates of annualized costs 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 14.

**25 C.F.R. § 542.3(f)**

It is estimate that the maximum number of current tribal gaming operations plus those possessing the potential for future impact to be 387 facilities. Since the Agreed-

Upon-Procedures Report is an outsourced function, no hour burden specific to performance would be incurred by the respondents. With regard to the time invested to procure the services of an external accountant, since it is rare for the same accounting firm that performance the annual audit of financial statements to not also perform the Agreed-Upon-Procedures engagement, the hour burden associated therewith is indistinguishable. Consequently, the resource investment is deemed to be negligible.

**13. Provide an estimate of 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 description 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 economics 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.

**25 C.F.R. § 542.3(f)**

Although no capital outlay results from the regulation, the cost of the annual engagement of a Certified Public Accountant to perform the Agreed-Upon-Procedures testing is relevant. Since the objective of the engagement is to evaluate the effectiveness of the internal control systems employed by the organizations in the normal course of business activities, no additional record keeping or creation of additional records is dictated by the regulation.

To estimate the cost of the engagements, a stratified sample was devised. The first layer of the sample was comprised of accounting firms that frequently perform such



engagements and the second stratum was a sample of tribal gaming operations. The results were broken down into three categories: facilities conducting less than \$25 million in gross gaming revenues, those conducting \$25 million to \$100 million, and those conducting \$100 million or more. Accordingly, a simple average produced cost data of \$14,000, \$15,300 and \$15,600 respectively, and a weighted average that considered the number of facilities in each grouping produced an annual cost of \$14,900 per respondent, which equates to approximately \$5,800,000 total cost to the 387 respondents.

**14. Provide estimate 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. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

**25 C.F.R. § 542.3(f)**

The NIGC anticipates that there will be costs of a routine nature associated with the submissions, which will pertain to the record keeping to account for items received and the identification of those gaming operation that failed to comply with the regulation. Additionally, hours will be expended performing the aforementioned risk analysis of the data. The time expended of a routine nature is anticipated to be two hours per filing, which, utilizing an hourly rate of \$30, would result in an annual burden of \$23,220.

However, it is also anticipated that further costs will be incurred in the enforcement of the regulation. Accordingly, it is projected that 5% of the gaming operations will fail to comply and additional hours will be required to obtain compliance. Although much variance in the actual time invested is likely, the agency forecasts that an average of 200 hours will be expended per noncompliant item. Using the above hourly rate, the cost of initiating enforcement actions is anticipated to be \$116,100  $[(387*5%)*\$30]$ .

The aggregate of annual routine processing cost and the costs incurred in the initiation of enforcement actions is expected to be \$139,320  $(\$23,220 + \$116,100)$ .

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

**25 C.F.R. § 542.3(f)**

The current OMB inventory includes burden hours projected by the NIGC when the regulation first became operational. The NIGC now has nine years experience collecting the information and as in a much better position to project the burden hours required. In preparing the document, the NIGC reviewed the original projections and the information received in response to the regulation as it has been adjusted throughout the years. Adjustments have been made to better reflect the reporting burden.

**16. For collections of information whose results will be published, outline plans for tabulations 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.**

**25 C.F.R. § 542.3(f)**

This is an ongoing information collection with no ending date and no plans for publication.

**17. If seeking approval to not display the expiration date for OMB approval of information collection, explain the reasons that display would be inappropriate.**

**25 C.F.R. § 542.3(f)**

Not applicable.

**18. Explain each exception to the certification statement in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB Form 83-I.**

**25 C.F.R. § 542.3(f)**

Not applicable. The NIGC certifies compliance with 5 C.F.R. § 1320.9.

**B. Collection of Information Employing Statistical Methods.**

**25 C.F.R. § 542.3(f)**

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