SUPPORTING STATEMENT FOR RECORDKEEPING AND REPORTING REQUIREMENTS FOR PROPOSED 25 C.F.R. PART 547

PROCESS FOR CERTIFICATION OF ELECTRONIC, COMPUTER, OR OTHER TECHNOLOGIC AIDS USED IN THE PLAY OF CLASS II GAMES

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 (25 U.S.C. §§ 2701 et seq., 102 Stat. 2467, Pub. L. 100-497) ("IGRA") governs the regulation of gaming on Indian lands. IGRA establishes the National Indian Gaming Commission (NIGC) as an independent Federal regulatory agency with authority to oversee Indian gaming, 25 U.S.C. § 2704, and gives to the NIGC the power to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Act" 25 U.S.C. § 2706(b)(10).

IGRA divides Indian gaming into three classes. Class I encompasses "social games" played "solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6). Class II encompasses, among other games, Bingo, lotto (another name for Bingo, not the game offered by most state lotteries), "games similar to bingo," pull tabs, punch boards, tip jars, and instant bingo, all of which IGRA permits to be played with "electronic, computer, or other technologic aids." 25 U.S.C. § 2703(7)(A)(i). Class III is a catchall category and includes "all forms of gaming that are not Class I gaming or Class II gaming," 25 U.S.C. § 2703(8), and includes any "electronic or electromechanical facsimile of any game of chance" or slot machine. 25 U.S.C. § 2703(7)(B)(ii).

IGRA places Class I gaming on Indian lands within the exclusive jurisdiction of the Indian tribes and outside of IGRA's own provisions. 25 U.S.C. § 2710(a)(1).

IGRA authorizes Class III gaming on Indian lands only if, among other requirements, it is "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State" within which the tribe is located. 25 U.S.C. § 2710(d)(1)(C).

IGRA makes the Indian tribes the primary regulators of Class II gaming on Indian lands and gives to the NIGC a regulatory oversight role in that regulation. 25 U.S.C. §§ 2710 – 2711. No Tribal-State compact is required for Class II gaming.

Because IGRA also authorizes the use of "electronic, computer, or other technologic aids" with the play of Class II games, Class II gaming facilities nationwide offer bingo and pull tabs electronically aided in various forms. These include electronic card minders that automatically mark matching numbers and track the occurrence of winning patterns, thereby allow players to play large numbers of bingo cards. Also common are electronic implementations of bingo in the form of electronic player stations linked to central computer servers. While technical standards such as those contained in the proposed rule are a fundamental part of Class III gaming and of non-Indian casino gaming throughout North America, and while some tribes have technical standards for their Class II games and aids, no uniform standards exist. Therefore, the **proposed part 547** establishes minimum uniform technical standards that are applicable to Indian gaming nationwide, compliance with which is intended to ensure the integrity and security of Class II games and the proper accounting of the money they earn.

Proposed 25 C.F.R. § 547.4

Proposed 25 C.F.R. § 547.4 establishes a process for assuring that technologic aids used with the play of Class II games comply with these technical standards. **Proposed part 547** uses the term "Class II gaming system" to refer to any particular collection of hardware, software, and other components used to play a Class II game.

Proposed 25 C.F.R. § 547.4(c) contains the general rule. A tribe's gaming regulatory authority must require that all Class II gaming systems, or modifications thereof, be submitted to a qualified, independent testing laboratory for review and analysis of the system's compliance with **proposed part 547**. As a matter of established practice, it is the game manufacturer who makes the submission to the testing laboratory, though the proposed rule also leaves open the possibility that the gaming operation may do so. The submission must include a working prototype of the complete system – all pertinent hardware and software – together with an information collection: the complete documentation and description of all functions and components.

In turn, the laboratory will provide the next information collection, a written report stating that the system does or does not meet the requirements of the proposed rule and of any additional requirements adopted by the tribe's gaming regulatory authority. The laboratory will provide the report and certification to the tribal gaming regulatory authority for its approval or disapproval of the gaming system. The tribal gaming regulatory authority must retain a copy of the lab report as long as the gaming system in question remains in play. These information collections allow Federal and tribal gaming regulatory bodies to ensure compliance with the requirements of the proposed rule for all Class II equipment offered for play to the public.

Proposed 25 C.F.R. § 547.4(a)-(d)

Proposed 25 C.F.R. § 547.4(a)-(d) contain minor variations on the submission and report process for particular circumstances, and these variations bring with them other possible information collections.

Gaming systems currently in play or on delivery at the time of the publication of the **final 25 C.F.R. part 547** may be grandfathered – exempt from strict compliance with the provisions of the proposed rule – provided that they be found, through the above submission and reporting process, to be compliant with certain

designated minimum provisions. Upon a finding that a particular system is grandfathered, the tribal gaming regulatory authority must issue a certificate to that effect to the system manufacturer and send a notice of to that effect to the NIGC identifying the name and components of the grandfathered system. These information collections allow Federal and tribal gaming regulators to ensure that grandfathered systems meet the required minimum standards and that the location of all grandfathered systems and components is tracked while they are still in use. While grandfathering gaming systems is not made mandatory by the proposed rule, the NIGC expects that Indian gaming operations will seek to do so.

Proposed 25 C.F.R. § 547.4(f)

Given the integral role that independent testing laboratories have in the submission and reporting process detailed above, **proposed 25 C.F.R. § 547.4(f)** requires testing laboratories to submit to suitability determinations made by the tribes they serve, including criminal background checks for the laboratories' principals. These determinations are made according to the same standards used to license the primary management officials and key employees of Indian gaming operations under the Indian Gaming Regulatory Act. All of this requires the submission of corporate financial information; qualifications of the engineering staff; information (and inspections) of the engineering facilities available, and personal information for principals, including tax returns, bankruptcies and law suits, work histories and references. This information collection is essential to ensuring the competence, integrity, and independence of the testing laboratories and the suitability of their decision makers, *i.e.* to ensure that undesirable elements are kept out of gaming.

Proposed 25 C.F.R. § 547.17

The NIGC recognizes that there is a tremendous variety in Indian gaming operations. They range from the largest casino in the world to rural bingo games played a few times per week or only seasonally. The NIGC therefore recognizes the possibility that there may be unique, individual circumstances in which uniform standards are inapplicable. As such, **proposed rule 25 C.F.R. § 574.17** provides the opportunity for a tribal gaming regulatory authority to seek a variance from particular requirements of the uniform rules by means of a formal request to the NIGC Chairman. Seeking a variance in entirely voluntary, and thus **proposed 25 C.F.R. § 547.17** creates no mandatory submission requirements. Discussion is included here for the sake of completion.

If a tribal gaming regulatory authority wishes to seek a variance, the tribal gaming regulatory authority must send a request to the Chairman, together with a proposed alternate standard, an explanation of how the standard provides a level of security and integrity equivalent to (or better than) the uniform standard it seeks to replace. That explanation may include an evaluation of the proposed variance by an independent testing laboratory. Having reviewed the request, the Chairman may approve it or object to it.

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.

Proposed 25 C.F.R. § 547.4

Information in a submission to a testing laboratory is the complete documentation and description of the gaming system and is used by the laboratory for its evaluation. Casino games played with the use of technologic aids can involve complicated pieces of equipment. They can involve tens or even hundreds of thousands of lines of software code, not only to run the game itself but also, for example, for network data communications. The more complicated aids are not single pieces of equipment but can contain multiple peripheral pieces of equipment such as button panels, communications boards, printers, currency acceptors, and video screens. Thus, **proposed 25 C.F.R. § 547.4** requires the submision of sufficient information to enable review and analysis by the laboratory, leaving to the laboratory the final say over what is sufficient for its review. If this collection of information is not provided as described, meaningful laboratory review cannot occur.

Information provided by the laboratory in the form of its report is provided to the tribal gaming regulaltory authority in order that the authority may make an informed decision whether or not to find that the system meets the requirements of the proposed rule, to approve the gaming system, and to permit it to be offered for play. If this collection of information is not provided as described, the tribal gaming regulatory authority cannot exercise the primary regulatory role over Class II gaming that IGRA assigns to it. If this collection of information is not maintained by the tribal gaming regulatory authority as described, the NIGC cannot exercise the oversight regulatory role over Class II gaming that IGRA assigns to it.

Information provided by the tribal gaming regulatory authority in the form of a grandfather certification to the manufacturer and the NIGC has two functions. It allows manufacturers to know that particular grandfathered systems are still permitted to be offered for play and allows the NIGC to track all existing grandfathered systems, that is to say, to identify at any given time the existence and location of all gaming systems not completely compliant with the proposed rule.

Information provided by the laboratory to the tribal gaming regulatory authority in the form of an suitability application is essential to assuring the competence, independence, integrity and suitability of the testing labs and its principals. Without this information, the tribal gaming regulatory authority cannot exercise the primary regulatory role over Class II gaming that IGRA assigns to it, the process for insuring the integrity and security of Class II games will break down, and undesirable elements may find their way into Indian gaming.

These are new collections of information. NIGC's review of current collections is not applicable.

Proposed 25 C.F.R. § 547.17

The information provided by a tribal gaming regulatory authority with a variance request will allow the Chairman to make a complete and thorough review of the request for a variance and thus be able to make an informed decision whether or not to approve the request. The information provided serves no other purpose.

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.

Proposed 25 C.F.R. § 547.4

Information may be submitted to the laboratory by any compatible electronic means. In fact, the submissions contemplated by **proposed 25 C.F.R. § 547.4** are modeled directly on similar regulations in state, tribal, and Canadian provincial gaming jurisdictions throughout North America. It is already common practice for manufacturers to submit documentation on CD-ROM and electronically.

Information, whether a report or a suitability application, may be submitted by the laboratory to the tribal gaming regulatory authority by the same means, though **proposed 25 C.F.R. § 547.4** does not speak to the question, and the issue is ultimately left to the decision of the tribal authorities themselves.

Information may be submitted by the tribal gaming regulatory authority to a manufacturer or to the NIGC by the same means and may be maintained electronically. **Proposed 25 C.F.R. § 547.4** does not speak to the question, and the issue is ultimately left to the decision of the tribal authorities themselves.

No specific technological collection techniques are employed.

Proposed 25 C.F.R. § 547.17

A variance request under **proposed 25 C.F.R. § 574.17** may be submitted entirely electronically, if a tribal gaming regulatory authority so wishes.

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.

Proposed 25 C.F.R. § 547.4

The required information is unique to every submission of a gaming system or modification.

However, though there are approximately 226 Tribes with gaming operations, **proposed 25 C.F.R. § 547.4** does not require a submission and report from a laboratory each time a manufacturer wishes to place a gaming system into a tribal gaming operation. Rather, **proposed 25 C.F.R. § 547.4** requires only one submission to a laboratory and one laboratory report. That report may then be submitted to multiple tribes and

may be used by multiple tribal gaming regulatory authorities as a basis for allowing play of the system or modification.

Similarly, testing laboratories need not repeatedly submit applications for suitability determinations to tribal gaming regulatory authorities. The proposed rule specifically permits a tribal gaming regulatory authority to rely upon and adopt a suitability determination made by another gaming regulatory body. There are only a handful of private testing laboratories, and as they already serve Tribal, State and Canadian Provincial gaming jurisdictions in North America, they have already had suitability determinations made in most of those jurisdictions. It is likely that most tribal gaming regulatory authorities will accept suitability determinations made by other gaming jurisdictions rather than repeating the entire process for themselves.

Further, most submissions of systems are, or will be, modifications of previous submissions. For example, manufacturers may bring out new versions of games that are substantially identical to ones previously submitted and reviewed. In such cases, the laboratory has the discretion to require documentation of the changes only.

Gaming other than Indian gaming in the United States is regulated at the state level, and all State gaming jurisdictions require submission and review of games and equipment prior to approval for play. The submission and review process in the proposed rule simply adopts the existing procedure. Manufacturers that sell into multiple jurisdictions of necessity have the personnel and infrastructure in place to prepare and produce multiple copies of individual submissions. To the extent that a manufacturer has already submitted games and equipment for review and approval in non-Indian gaming jurisdictions, submissions pursuant to **proposed 25 C.F.R. § 547.4** can be made using information already available.

Proposed 25 C.F.R. § 574.17

Each variance request under **proposed 25 C.F.R. § 574.17** will, of necessity, be unique, and thus duplication is not an issue, nor will existing information be implicated.

5. If the collection of information impacts small business or other small entities (item 5 of OMB Form 83-1), describe any methods used to minimize burden.

Not applicable.

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.

Proposed 25 C.F.R. § 547.4

As a practical matter, the NIGC expects that the submission and reporting requirements will be applied initially when tribal gaming operations wish to identify grandfathered gaming systems. Thereafter, they will be applied only when a manufacturer seeks approval or modification of a gaming system, whether or not grandfathered. The submission and reporting requirements are, therefore, entirely market driven.

Submissions and the resulting reports by laboratories are not, and cannot be, regularly scheduled. Doing these things on any fixed schedule would either allow for the play of untested games and aids in Indian casinos (and thus defeat the very purpose of the proposed rule) or unnecessarily retard the Indian gaming industry (if, say, Tribes had to wait for a certain date to arrive before games could be reviewed and approved).

As for the suitability determinations for testing laboratories, these are essential to assuring the integrity, independence, and suitability of the labs and their principals and thus for the security and integrity of all Class II games offered for play in Indian gaming operations and are likewise market driven. Making suitability determinations on any fixed schedule with potentially allow unsuitable laboratories to participate in gaming while awaiting their determinations (and thus defeat the purpose of the proposed rule) or unnecessarily retard the Indian gaming industry (if, say, Tribes had to wait for a certain date to arrive before a testing laboratory became available to review gaming systems or modifications).

Proposed 25 C.F.R. § 574.17

If variance requests are not conducted by submission to the Chairman, then either variances must occur without Federal oversight (*i.e.* implemented by tribal gaming regulatory authorities without any review or approval by the NIGC) or not at all. Review by submission is the most efficient way to make regulatory determinations about what, by their nature, are unique circumstances.

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;

Proposed 25 C.F.R. § 547.4

The frequency of submissions is market driven and is expected to vary. **Proposed 25 C.F.R. § 547.4** provides 120 days after its effective date for the submission of gaming systems to be grandfathered. Following what is expected to be a first wave of submissions, the frequency of any other submissions and retention of gaming system records will be a function solely of the Class II market and the need or desire for new or modified Class II gaming systems. Thus, the NIGC anticipates that the frequency of information collections will range over a short, initial period of frequent submissions, settling down into less frequent or occasional submissions punctuated by fairly steady periods of submissions when new systems or modifications are introduced.

Similarly, submissions by testing laboratories for suitability determinations will occur shortly after the effective date of the proposed rule and infrequently again thereafter. Testing laboratories are under a continuing obligation to provide to tribal gaming regulatory authorities material changes in their information, *e.g.* of new principal officers who must undergo background investigations or of adverse regulatory action taken against a lab in another gaming jurisdiction.

All of that said, note that **proposed 25 C.F.R. § 574.4**, requires submission of gaming systems to testing labs and submission of reports from testing labs to tribal gaming regulatory authorities. **Proposed 25 C.F.R. § 574.4** requires no submissions to the NIGC, except for the singular requirement that tribal gaming regulatory authorities send an identifying list of grandfathered Class II systems to the NIGC. That is expected to occur within a brief window during and following the 120-day period for submission of grandfathered systems, when testing labs provide the reports on those systems, and not again thereafter.

Proposed 25 C.F.R. § 574.17

Based upon the NIGC's experience with variances requests to the minimum internal control standards contained in 25 C.F.R. Part 542 and upon the agency's experience with technical gaming matters, it is anticipated that there will be no more than one variance per quarter or four per year.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

There is no such requirement.

- requiring respondents to submit more than an original and two copies of any document;

There is no such requirement.

- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;

Proposed 25 C.F.R. § 547.4

Proposed 25 C.F.R. § 574.4 requires a tribal gaming regulatory authority to retain a copy of the laboratory's report, or of a modification made to a grandfathered gaming system, so long as the system at issue remains available to the public for play. It is possible, therefore, that reports and records of modifications must be held for more than three years, though prevailing market forces typically cause turnover of gaming systems on the floors of gaming operations in less time than that.

Proposed 25 C.F.R. § 547.17

Proposed 25 C.F.R. § 574.17 contains no such requirement.

- in connection with a statistical survey, which is not designed to produce valid and reliable results that can be generalized to the universe of study;

Not applicable.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

Not applicable.

- that includes a pledge of confidentiality that is not supported by authority established in statue or regulation, which 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

Proposed 25 C.F.R. § 547.4

A manufacturer's descriptions and documentation provided with a submission to a laboratory may contain confidential or proprietary information. Laboratories keep such information confidential by contractual agreement, though no statute or regulation requires them to do so. A laboratory's certification and report may reflect the manufacturer's confidential and proprietary information in detailed descriptions of how a particular gaming system is engineered or works. Typically, tribal gaming regulatory authorities undertake contractually to keep the manufacturer's information confidential or may enact a Tribal ordinance or regulation requiring confidentiality. Such an ordinance or regulation, however, is not required by IGRA, and thus its existence is purely a tribal decision.

A letter written by a manufacturer to a tribal gaming regulatory authority requesting adoption of a suitability determination made by another gaming jurisdiction contains no confidential information. An application by a manufacturer for a suitability determination will likely contain substantial amounts of confidential information, both corporate and personal. The tribes receiving such information and making suitability determinations have already established vendor licensing and employee licensing programs and keep such information confidential as a matter of course under tribal law.

Nothing in **proposed 25 C.F.R. § 547.4** will impede inter-agency data sharing.

Proposed 25 C.F.R. § 574.17

A description of equipment or software made for the purpose of justifying a variance may contain confidential or proprietary information. Again, laboratories keep such information confidential by contractual agreement, and tribal gaming regulatory authorities may undertake contractually to keep the manufacturers' information confidential or may enact a Tribal ordinance or regulation requiring confidentiality.

Accordingly, variance submission to the NIGC Chairman may contain confidential or proprietary information. IGRA, 25 U.S.C. § 2716 removes from the NIGC any discretion it would otherwise have to disclose information that falls within FOIA exceptions 4 and 7 and requires NIGC to disclose such information only to other law enforcement agencies for law enforcement purposes.

- 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.

Proposed 25 C.F.R. § 547.4

A laboratory's report may reflect the manufacturer's confidential and proprietary information in detailed descriptions of how a particular game or aid is engineered or works. As stated above, however, such

information is not required to be submitted to the NIGC but only to tribal gaming regulatory authorities, who keep such information confidential, typically by contract or under tribal law. In the event that a report is sent to the NIGC, any confidential information contained in it remains confidential. Such information is protected from disclosure under Freedom of Information Act exception (b)(4). Further, 25 U.S.C. § 2716 removes from the NIGC any discretion it would otherwise have to disclose information that falls within FOIA exceptions 4 and 7 and requires NIGC to disclose such information only to other law enforcement agencies for law enforcement purposes.

Proposed 25 C.F.R. § 574.17

Any confidential information contained in a variance request remains confidential. Such information is protected from disclosure under Freedom of Information Act exception (b)(4). Further, 25 U.S.C. § 2716 removes from the NIGC any discretion it would otherwise have to disclose information that falls within FOIA exceptions 4 and 7 and requires NIGC to disclose such information only to other law enforcement agencies for law enforcement purposes.

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. Summarize public comment 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.

Copy attached. No comments have yet been 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 record keeping, disclosure, or reporting format, (if any), and on the data elements to be recorded, disclosed, or reported.

The notice of proposed rulemaking for **proposed 25 C.F.R. part 547** will be published simultaneously with the provision of this Paperwork Reduction Act submission to the Office of Management and Budget. The proposed rule was developed with the advice and assistance of an advisory committee composed of representatives of tribal governments, and committee members have at various times provided views on these issues.

In addition, the NIGC staff has discussed the nature and number of potential respondents, the burdens of compliance on respondents, and the costs of compliance with gaming laboratories that serve Tribal, State, and Canadian Provincial gaming jurisdictions in North America and with game manufacturers who sell to the Indian gaming and non-Indian gaming markets.

As the submission, review, and approval process contemplated by **proposed 25 C.F.R. § 547.4** is fundamentally similar to the submission, review, and approval processes already in existence in North

American gaming jurisdictions, the instructions, disclosure requirements, reporting formats, and data elements are already established and understood.

Similarly, the NIGC staff has discussed variance requests and the burdens and costs of compliance with these same gaming laboratories. The voluntary submission, review, and approval process contemplated by **proposed 25 C.F.R. § 547.26** is fundamentally similar to the variance approval process for the NIGC's minimum internal control standards, 25 C.F.R. Part 542, and thus already established and understood by tribal gaming regulatory authorities.

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 prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Commission contemplates such further consultation. At least annually, the Commission conducts government-to-government consultations with tribal leaders and tribal gaming regulatory authorities about all gaming issues.

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

Not applicable. The NIGC does not provide any payment or gift to respondents.

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

See supporting statement for #7, above.

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.

Proposed 25 C.F.R. § 547.4

The respondents are developers and manufacturers of Class II games, independent testing laboratories, and Indian tribes. There are approximately 20 such manufacturers, 5 such laboratories, and 226 gaming tribes. It is the existing practice in the gaming industry, both Indian and non-Indian alike, for the game manufacturer to submit a gaming system to a testing laboratory for review and analysis. **Proposed 25 C.F.R. § 547.4** leaves open the possibility that a tribal gaming regulatory authority may require the management of a gaming operation to make a submission, say, for example, for the purpose of establishing the grandfathered status of a particular gaming system. There are approximately 226 gaming tribes.

The frequency of responses to the information collection requirements will vary.

As described in response #1 above, in order to qualify under the grandfather provisions of the proposed rule, a gaming system must be submitted to a testing laboratory for review and analysis during the first 120 days after the effective date of **proposed 25 C.F.R. part 547.** NIGC anticipates that all of the approximately 25 gaming systems will be submitted during this period.

Following the initial-120 day period, the frequency of submissions of new gaming systems or of modifications to existing gaming systems will be entirely market driven. NIGC anticipates approximately a 20% turnover each year for the 5-year grandfather period. Consequently there should be approximately 5 submissions of new gaming systems each year.

Submissions of modifications are, as a matter of course, a more common practice. Software in particularly commonly goes through may iterations in development and continues to be improved and revised even after sale and placement on a gaming operation's floor, for example to add features and functionality. That said, the submission of modifications tends to be sporadic, with less frequent or occasional submissions punctuated by fairly steady periods of submissions when new systems or modifications are introduced. The NIGC anticipates there will be approximately 300 submissions of modifications and thus 300 reports produced by testing laboratories each year following the 120-day period that begins with the effective date of the proposed rule should it become final.

The preparation and submission of documentation supporting submissions by manufacturers or a tribal gaming operation (as opposed to gaming system hardware and software per se) is an information collection burden under the Paperwork Reduction Act, as is the preparation of reports by the test laboratories or the preparation of a grandfather certificate and explanation of gaming system by a tribal gaming regulatory authority.

The amount of documentation submitted by a manufacturer as part of a submission of a gaming system and the size of a laboratory report is a function of the complexity of the gaming system submitted for review. Minor modifications of software or hardware that a manufacturer has already submitted and that a laboratory has previously examined is a matter of little time both for manufacturer and laboratory, while the submission and review of an entirely new game platform is time consuming. The provision of a grandfather certificate and a description of a gaming systems components is a small matter as that information can be taken directly from a testing laboratory's report.

The practice of submission and review set out in **proposed 25 C.F.R. § 547.4**, however, is not new. It is already part of the regulatory requirements in tribal, state, and Canadian provincial gaming jurisdictions throughout North America. Manufacturers already have significant compliance personnel and infrastructure in place, and the very existence of private, independent laboratories is due to these requirements.

Accordingly, based upon the discussions with leading testing laboratories and with manufacturers for the Indian gaming and non-Indian gaming markets, the NIGC estimates that a gathering and preparing documentation for a submission of a single, complete gaming system requires, on average, 8 hours for manufacturer's employee. Following examination and analysis, NIGC estimates that writing a report for a complete gaming system requires, on average, 10 hours of a laboratory engineer's time. For the submission of modifications to a gaming system, NIGC estimates 4 hours for a manufacturer's employee. For the report on a modification, NIGC estimates 5 hours for a laboratory engineer.

Thus, the information collection requirements in **proposed 25 C.F.R. § 547.4** will be a 200-hour burden on manufacturers industry-wide during the first 120 days after the final rule becomes effective and a 1200-hour burden industry-wide thereafter. The information collection requirements in **proposed 25 C.F.R. § 547.4** will be a 250-hour burden on laboratories for the grandfather submissions made during the first 120 days and a 1500-hour burden thereafter.

In addition, NIGC anticipates that tribal gaming operations, though they may do so under the proposed rule, will not themselves make any grandfather submissions. As a matter of well-established practice, that responsibility belongs to the game manufacturers.

Next, NIGC anticipates that tribal gaming regulatory authorities will issue grandfather certificates to manufacturers and send a description of grandfathered systems to NIGC for all of the approximately 25 existing gaming systems. The preparation of these certificates and descriptions will be a small matter as all of the necessary information is contained in the testing laboratory reports and will take no more than 0.5 hours to prepare.

Finally, **proposed 25 C.F.R. § 547.4** requires tribal gaming regulatory authorities to maintain laboratory reports as long as the game system or modification at issue is available for play. This, however, is a ministerial function that involves little more than filing, and occasionally retrieving, the report. As this is already common practice among tribal gaming regulatory authorities, NIGC estimates that 0.1 hours per report will be dedicated to these tasks.

The following table summarizes the annual hour burden:

Provision	Respondents	No. of Respondents	Collections, 1st 120 days	Hours per collection	Total Annual Hours	Collections, day 121 forward, per annum	Hours per collection	Total Annual Hours
25 C.F.R. 547.4	Laboratories	5	25	10	250	300	5	1500
25 C.F.R. 547.4	Manufacturers	20	25	8	200	300	4	1200
25 C.F.R. 547.4	Tribal Gaming Operations	226	0	0	0	0	0	0
25 C.F.R.	Tribal Gaming regulatory Authorities	226	25	.5	12.5	300	0.1	30

Proposed 25 C.F.R. § 547.4(f)

Proposed 25 C.F.R. § 547.4(f) requires a determination of suitability for each of the approximately 5 testing laboratories. The information required can be substantial. Again: corporate financial information; qualifications of the engineering staff; information (and inspections) of the engineering facilities available, and personal information for principals, including tax returns, bankruptcies and law suits, work histories and references.

However, the 5 existing testing laboratories have already collected and provided this information – multiple times – in order to be licensed in tribal and non-tribal gaming jurisdictions nationwide. The NIGC estimates that the re-submission of such information would take the necessary laboratory employees 20 hours to accomplish once. As the gaming tribes typically use only one gaming laboratory, the submission of suitability determinations to 226 tribal gaming regulatory authorities would total 4,520 hours.

The NIGC believes, however, that the hour burden is not likely to be this high. As stated above, **proposed 25 C.F.R. § 547.4(f)** permits a tribal gaming regulatory authority, rather than to require a new suitability determination for a testing laboratory, to rely upon a suitability determination already made by another gaming jurisdiction in the United States, whether tribal or state. The existing testing laboratories are already licensed in numerous jurisdictions though the United States, and the Commission believes that approximately 90% – 203 of 226 – of the tribal gaming authorities will accept existing suitability determinations from other jurisdictions. The submission by a testing lab of an existing suitability determination amounts to the writing of a letter. The NIGC estimates that the submission of such letters will take the necessary laboratory employees .5 hours to accomplish once. As the gaming tribes typically use only one gaming laboratory, the submission of suitability determinations of to 203 tribal gaming authorities would total 101.5 hours. For the remaining 10% or 23 tribal gaming regulatory authorities, the submission burden on laboratories is 20 hours per tribe or 460 hours. If every tribe requires annual re-licensing, the subsequent annual hours burden on the 5 laboratories is 561.5 hours.

Finally, as stated above, all of the information burdens implicated by the submission, reporting, and licensing requirements of **proposed 25 C.F.R. § 547.4** are already commonplace practice for manufacturers, laboratories, and tribal gaming regulatory authorities, even without adoption of the proposed rule. All of the foregoing are arguably customary and usual business practices in the gaming industry.

Proposed 25 C.F.R. § 574.17

Though there are approximately 226 gaming tribes, the NIGC anticipates no more than one variance request per quarter or four per year.

The technical standards of 25 C.F.R. Part 547 are designed to be uniform standards with nationwide applicability. As stated above in supporting statement for #1, the possibility of a variance is designed precisely for unique, and therefore uncommon or unusual, circumstances. More than this, the NIGC has a similar variance process for its minimum internal control standards under 25 U.S.C. Part 542, which contains another set of uniform standards. The NIGC's experience with those standards, together with some general degree of uniformity in the construction of gaming equipment, points to infrequent submissions.

The preparation of a variance request by a tribal gaming regulatory authority is, however, a customary and usual business practice for a tribal attorney, and therefore no hour burdens are included for tribes.

- 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 83-1.

Not applicable.

- 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.

Proposed 25 C.F.R. § 547.4

For the first 120 days after adoption, at prevailing wages, the cost of the information burden imposed by **proposed 25 C.F.R. § 547.4** upon all testing laboratories is approximately $25,000 for writing reports analyzing 25 grandfather submissions. Subsequently, the burden is expect to be approximately $150,000 each year. These average figures represent the $100 average hourly charges for a group of engineers, of differing levels of experience and salaries, who prepare, review, and issue reports, multiplied by the total annual hours spent in preparing the reports and certifications. The preparation of reports and certifications is, however, a laboratory's usual and customary business practice – it is precisely part of the review and analysis service that it sells.

At prevailing wages, the cost of the information burden imposed by **25 C.F.R. § 547.4** upon all manufacturers is approximately $8,000 for the 120 days after adoption and approximately $48,000 annually thereafter. These average figures represent the $40 average hourly cost of a group of engineers and compliance employees, of differing levels of experience and salaries, who produce, prepare, review, and submit documentation and descriptions for games and aids. The preparation of such documentation and description is part of a manufacturer's usual and customary business practice. It is a necessary part of being an entity that sells games to a highly regulated industry in which manifold State, Canadian Provincial, and Tribal jurisdictions across North America all require such submissions before games will be approved by regulators and available to the public for play.

At prevailing wages, the cost of the information burden imposed by **25 C.F.R. § 547.4** upon the tribal gaming regulatory authorities for issuing a grandfathering certificate and gaming system description is $250. This is a ministerial function that amounts to creating a certificate and writing a letter, and the average figure represents the $40 average hourly cost of a gaming authority employees to produce, prepare, and send such documentation. Subsequently, the cost of the information collection burden is $1,200 per year.

Given the highly regulated nature of gaming, neither manufacturers nor laboratories nor tribal gaming regulatory authorities contract out for the information collections activites at issue.

Provision	Respondents	Hours per collection, 1st 120 days	Total Hours	Total Cost	Hours per collection, day 121 forward, per annum	Total Annual Hours	Annual Cost
25 C.F.R. 547.4	Laboratories	10	250	$25,000	5	1500	$150,000
25 C.F.R. 547.4	Manufacturers	8	200	$8,000	4	1200	$48,000
25 C.F.R. 547.4	Tribal gaming regulatory authorities	.5	12.5	$250	0.1	30	$1,200

Proposed 25 C.F.R. § 574.4(f)

At prevailing wages, the cost of the information burden imposed by **proposed 25 C.F.R. § 574.4(f)** upon testing laboratories for the submission of information for suitability determinations and background investigations to 23 tribes, and for the submission of letters requesting adoption of existing determinations to 206 tribes, is $25,267.5 per year, if every tribe requires annual relicensing.

Proposed 25 C.F.R. § 574.17

At prevailing charges by testing laboratories, the annual cost of compliance to tribes for making variance requests is $1,200 to $9,600. This range assumes four variance requests per year. The $1,200 figure represents four simple variance requests. The $9,600 figure represents for complex variance requests.

13. Provide an estimate of the total annual cost burden to respondents or record keepers 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.**

  Not applicable. See supporting statement for #12.

- **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.**

  Not applicable. See supporting statement for #12.

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 11, 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.**

  See supporting statement for #12.

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

Proposed 25 C.F.R. § 547.4

Proposed 25 C.F.R. § 547.4 requires only one submission to the NIGC, a description of grandfathered Class II gaming systems. Pursuant to a separate proposed rule, 25 C.F.R. part 546, the NIGC will create a new Machine Compliance Department that will be responsible for day-to-day work in implementing these two proposed rules, including the information collections for the agency that result. The proposed budget for the new department is as follows:

Budget Estimate for Machine Compliance Department	
Supervisor	$102,000
Specialist	$74,000
Travel	$65,000
Rent, Communications & Utilities	$55,000
Printing & Reproduction	$3,000
Supplies, Materials & Equipment	$15,000
Other Services	$0
Misc.	$0
Total	$314,000

It is anticipated that the Machine Compliance Department will maintain the information provided under **proposed 25 C.F.R. § 547.4** and the marginal cost for doing so is effectively $0**.**

Proposed 25 C.F.R. § 574.17

As stated in supporting statement for #1, under **proposed 25 C.F.R. § 574.17,** variance requests are not mandatory. In the event that tribal gaming regulatory authorities do make the anticipated four requests per year, the direct costs to the Federal government comprise only the time it will take a staff attorney to review the request and make a recommendation to the NIGC Chairman, and the time it will take the Chairman to review the request and make a determination. No new staff is required, and such time as may be required will be part of the usual and customary business of the agency. The attorney's time is estimated to be 8 hours, at a cost of approximately $50 per hour, for a total of $400. The Chairman's time is estimated to be 1 hour.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of OMB Form 83-1.

Proposed 25 C.F.R. § 547.4

Not applicable. New collection of information.

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.

This is an ongoing information collection with no ending date. NIGC has no plans to publish the information collection.

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

Not applicable.

18. Explain each exception to the certification statement in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1.

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

B. Collection of Information Employing Statistical Methods.

Not applicable. Statistical methods are not employed.