

SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENTS
25 CFR PART 547

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.*, laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act directs the Commission to monitor class II gaming conducted on Indian lands on a continuing basis in order to ensure that the Indian tribe is the primary beneficiary of the gaming operation and to protect such gaming as a means of generating tribal revenue, and to assure that gaming is conducted fairly and honestly by both the operator and players. 25 U.S.C. 2702(2), 2706(b)(1). The Act allows Indian tribes to use "electronic, computer, or other technologic aids" to conduct class II gaming activities. 25 U.S.C. 2703(7)(A). The Commission is authorized to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 547 of title 25, Code of Federal Regulations, to aid it in monitoring class II gaming facilities that use electronic, computer, or other technologic aids to conduct class II gaming.

25 CFR § 547.5

Section 547.5 of title 25, Code of Federal Regulations, establishes a process for assuring that electronic, computer, or other technologic aids used with the play of class II games comply with minimum uniform technical standards that are applicable to the Indian gaming industry;

compliance that is intended to ensure the integrity and security of class II games and the proper accounting of the money that they earn.

Class II gaming systems that were manufactured before November 10, 2008, may be grandfathered – i.e., exempt from strict compliance with the 25 CFR part 547 provisions – provided that they be found to be compliant with certain designated minimum provisions. For any class II gaming system manufactured before November 10, 2008, §

Section 547.5(a)(2) requires that, for any grandfathered class II gaming system made available for use at any tribal gaming operation, the tribal gaming regulatory authority (TGRA): must retain copies of the gaming system’s testing laboratory report, the TGRA’s compliance certificate, and the TGRA’s approval of its use; and must maintain records identifying these grandfathered class II gaming systems and their components. Section 547.5(b)(2) requires that, for any class II gaming system generally, the TGRA must retain a copy of the system’s testing laboratory report, and maintain records identifying the system and its components. As long as a class II gaming system is available to the public for play, section 547.5(c)(3) requires a TGRA to maintain records of any modification to such gaming system and a copy of its testing laboratory report. Section 547.5(d)(3) requires a TGRA to maintain records of approved emergency hardware and software modifications to a class II gaming system (and a copy of the testing laboratory report) so long as the gaming system remains available to the public for play, and must make the records available to the Commission upon request. Section 547.5(f) requires a TGRA to maintain records of its following determinations: (i) regarding a testing laboratory’s (that is owned or operated or affiliated with a tribe) independence from the manufacturer and gaming operator for whom it is providing the testing, evaluating, and reporting functions; (ii) regarding a testing laboratory’s suitability determination based upon standards no less stringent

than those set out in 25 CFR § 533.6(b)(1)(ii) through (v) and based upon no less information than that required by 25 CFR § 537.1; and/or (iii) the TGRA's acceptance of a testing laboratory's suitability determination made by any other gaming regulatory authority in the United States. The TGRA must maintain said records for a minimum of three years and must make the records available to the Commission upon request.

25 CFR § 547.17

Section 547.17 requires a TGRA to submit a detailed report for each enumerated standard for which the TGRA approves an alternate standard, and the report must include: (i) an explanation of how the alternate standard achieves a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace; and (ii) the alternate standard as approved and the record on which the approval is based. This collection is mandatory and allows the NIGC to confirm tribal compliance with NIGC regulations on "electronic, computer, or other technologic aids" to conduct class II gaming activities.

- 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.**

As mentioned above, IGRA mandates the Commission to monitor class II gaming conducted on Indian lands on a continuing basis in order to ensure that the Indian tribe is the primary beneficiary of the gaming operation and to protect such gaming as a means of generating tribal revenue, and to assure that gaming is conducted fairly and honestly by both the operator and players. The Commission uses this information collection to further IGRA's purposes.

The Commission uses the grandfathered gaming system's approval notice, as well as the record(s) of approved modifications that affect the play of a grandfathered class II gaming system, to ensure that the TGRA has determined, based on a testing laboratory's report, that the

grandfathered class II gaming system is, at a minimum, compliant with the NIGC technical standards found at §§ 547.8(b), 547.8(f), 547.14, and any other technical standards adopted by the TGRA.

By requiring that a TGRA maintain a copy of the testing laboratory's report of a class II gaming system, as well as record(s) of any emergency software or hardware modification thereto, for as long as the class II gaming system, cashless system, voucher system, or modification thereto remains available to the public for play, the Commission ensures that the particular class II gaming system meets the requirements of 25 CFR parts 543 and 547 (any applicable provisions that are capable of being tested by the testing laboratory), and any other technical standards adopted by the TGRA.

Regarding the requirement that a TGRA maintain the records of its suitability determination of a particular testing laboratory and its principals, the Commission ensures the competence, integrity, and independence of the testing laboratories and the suitability of their decision makers.

With regard to the detailed report after a TGRA has approved an alternate standard to any of the NIGC's minimum uniform technical standards, the Commission uses these reports to ensure that any alternate standards established by the TGRA are at least as stringent as those in 25 CFR part 547 in order to achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is intended to replace.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Under NIGC regulations, tribes and/or TGRAs can submit and/or maintain information via 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.**

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

In addition, while there are approximately 506 Indian gaming operations across the United States, § 547.5 only requires one submission of a particular class II gaming system to a testing laboratory and one resulting testing laboratory report. That report may then be submitted to multiple TGRAs at different Indian gaming operations as a basis for allowing play of the same system or modification.

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

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.**

In order for the Commission to monitor class II gaming on a continuing basis, the NIGC has established minimum uniform technical standards found in part 547 and set them as the minimum that Indian gaming operations must do to be in compliance with IGRA. Without this information collection as described in Item 2, the Commission would be hampered in the fulfillment of its statutory 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 document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The Act requires the Commission to ensure that tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2703. To that end, NIGC regulations require tribes to maintain and/or submit certain information which the Commission treats as privileged or confidential in nature, including testing laboratory reports and certifications, alternate technical standards, business or commercial records, financial and bank statements, proprietary secrets, or information related to ongoing law enforcement investigations. The Act removes from the Commission any discretion that it would otherwise have to disclose such information that falls within FOIA exemptions 4 and 7, and requires the Commission to disclose such information only to other law enforcement agencies for law enforcement purposes. 25 U.S.C. 2716.

In addition, the submission and maintenance of this information collection is market driven and is expected to vary. For example, § 547.5 requires a TGRA to maintain a copy of a

class II gaming system's testing laboratory report, or records of emergency hardware and software modifications made to said class II gaming system, so long as the system at issue remains available to the public for play. While rare, it is possible that such reports and records must be maintained for more than three 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 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

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

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

On June 12, 2018, a 60-day notice containing the information collection requirements was published in the Federal Register allowing the public an opportunity to comment on the requirements. 80 FR 27344 (June 12, 2018). The public comment period closed on August 13, 2018. No public comments were received.

In addition, the Commission surveyed tribal gaming operators and/or TGRAs regarding the submission and recordkeeping requirements contained in its regulations. The Commission asked the tribal gaming operators and/or TGRAs to provide annual hourly estimates required to perform each of the activities, as well as any cost estimates. The Commission has adjusted its previous estimates accordingly.

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

Not applicable. The Commission does not provide any payment or gifts to respondents.

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

The Act mandates the Commission to preserve any and all information received pursuant to IGRA as confidential and removes from the Commission any discretion that it would otherwise have to disclose any information that falls within FOIA exemptions 4 and 7. 25 U.S.C. 2716(a). The Commission may disclose such information only to other law enforcement agencies for law enforcement purposes. 25 U.S.C. 2716(b).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Not applicable. No sensitive questions are asked.

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

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

As mentioned in Item 8 above, the Commission consulted with tribal gaming operators and/or TGRAs to gather the burden estimates for these information collection activities. Because the estimates provided by the tribal gaming operators and/or TGRAs varied (sometimes dramatically), the Commission averaged the estimates received only after dropping the highest estimates for each aspect of the information collection.

ESTIMATED ANNUAL BURDEN TOTALS

| CFR CITE/ COLLECTION | NUMBER OF ANNUAL RESPONDENTS | FREQUENCY OF RESPONSES PER YEAR | TOTAL ANNUAL RESPONSES | AVERAGE HOURS PER RESPONSE | TOTAL HOURS | TOTAL ANNUAL COST |
|-------------------------|------------------------------------|---------------------------------------|------------------------------|----------------------------------|----------------|-------------------------|
| 547.5(a)(2)- | 50 | Varies | 50 | 16 | 800 | \$0 |
| 547.5(b)(2) | 211 | Varies | 211 | 1 | 211 | \$0 |
| 547.5(c)(3) | 211 | 1 | 211 | 1 | 211 | \$0 |
| 547.5(d)(3) | 211 | 1 | 211 | 2 | 422 | \$0 |
| 547.5(f) | 1 | Varies | 1 | 2 | 2 | \$0 |
| 547.17 | 1 | Varies | 1 | 5 | 5 | \$0 |
| TOTAL | 685 | | 685 | | 1,651 | \$0 |

- 13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**
- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
 - **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden**

estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use 10/95 existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

All estimated costs and hour burdens are shown in Item 12.

- 14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The Commission determined its cost and burden hour estimates, inclusive of operational expenses, based on the workflows of the agency, and the functions specific to the receipt, recordation, and analysis of the submissions. As a general matter, the cost rate was based upon the hourly rate of personnel assigned to task. Support services are included in cost estimates.

ESTIMATED AGENCY ANNUAL BURDEN TOTALS

| CFR CITE/ COLLECTION | NUMBER OF ANNUAL RESPONDENTS | FREQUENCY OF RESPONSES PER YEAR | TOTAL ANNUAL RESPONSES | REVIEW HOURS PER RESPONSE | TOTAL HOURS | HOURLY RATE | TOTAL AGENCY COST |
|-------------------------|------------------------------------|--|------------------------------|------------------------------------|----------------|----------------|-------------------------|
| 547.17 | 1 | Varies | 1 | 80 | 80 | \$60 | \$4,800 |
| TOTAL | 1 | | 1 | | 80 | | \$4800 |

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

The Commission has made the following adjustments to its estimated burdens:

- (a) the Commission has increased the number of estimated annual responses from 500 to 685.

The primary reason for this increase is due to the fact that in January 2018, the commission

completed a modification of three rules associated with this IC. Two Commission rules governing the tribal use of “grandfathered” Class II machines – rules 547.5(b)(2) and 547.5(b)(5) – were consolidated into one, 547.5(a)(2). Also, part of 547.5(c), which governs the tribal use of Class II machines (and not simply “grandfathered” machines), was partly broken off and moved into the now vacant 547.5(b)(2). Therefore, two rules for the (small subset of) grandfathered Class II machines were consolidated into one and one rule for governing all (non-grandfathered) Class II machines was expanded into two. For this reason, the number of estimated respondents increased and the number of responses, concomitantly, increased;

(b) the Commission has decreased its estimate of burden hours and this is primarily due to the fact that the average hours per response for 547.5(c) decreased from 6 hours to 2 hours. This estimated decrease was based on tribal feedback. Anecdotally, there is evidence that, as tribes move more towards electronic gaming management system for Class II games, recordkeeping requirements decrease.

- 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 and no plans for publication.

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

Not applicable.

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

Not applicable. The Commission certifies compliance with 5 CFR § 1320.9.

B. Collection of Information Employing Statistical Methods.

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