

SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENTS
FOR 25 CFR PART 543

A. Justification

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

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701, *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC or Commission) and set out a comprehensive framework for the regulation of gaming on Indian lands. The Act sets standards for the regulation of Indian gaming, including the requirement that the Commission 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 Commission is also 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 543 of title 25, Code of Federal Regulations, to aid it in monitoring class II gaming on a continuing basis.

25 CFR § 543.3

Section 543.3 of title 25, Code of Federal Regulations, requires a tribal gaming regulatory authority (TGRA) to submit a notice to the Commission that it is extending the deadline, by an additional six months, to achieve compliance with the requirements of the new tier after a gaming operation has moved from one tier to another.

25 CFR § 543.5

Section 543.5 requires a TGRA to submit to the Commission a detailed report after the TGRA has approved an alternate standard to any of the NIGC's minimum internal control standards. The report must include the following information: (i) an explanation of how the alternate standard achieves a level of security and integrity sufficient to accomplish the purpose of the standard that it is replacing; and (ii) the alternate standard as approved, and the record on which it is based.

25 CFR § 543.23

Section 543.23(c) requires a tribe to maintain and make internal audit reports available to the Commission upon request. The reports must include the following information: (i) audit objectives; (ii) audit procedures and scope; (iii) findings and conclusions; (iv) recommendations, if applicable; and (v) management's response.

Section 543.23(d) requires a tribe to hire an independent certified public accountant (CPA) to perform an assessment, in accordance with agreed-upon procedures (AUP), to verify whether the gaming operation is in compliance with the Commission's minimum internal control standards (MICS) and/or tribal internal control standards (TICS) established by the TGRA that are at least as stringent as the NIGC MICS, or system of internal control standards (SICS) if they provide at least the same level of controls as the NIGC MICS. The tribe must then submit two copies of the AUP assessment report within 120 days of the gaming operation's fiscal year end.

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 activities (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 these information collection activities to further IGRA's purposes.

Under the Commission's MICS, gaming operations are divided into three tiers based on their annual gross gaming revenues: (i) tier A = more than \$3 million but not more than \$8 million; (ii) tier B = more than \$8 million but not more than \$15 million; and (iii) tier C = more than \$15 million. Depending on the tier into which it falls, a gaming operation may have less stringent or more stringent MICS requirements than another gaming operation that falls under a different tier. When a gaming operation moves from one tier to another tier, it has nine months (from the date of the independent CPA's audit report) to achieve compliance with the requirements of the new tier. However, a TGRA may extend that deadline by an additional six months by submitting a notice to the Commission. The Commission uses these notices when reviewing AUP reports to ensure that a particular gaming operation is in compliance with the NIGC MICS requirements that are applicable to the tier into which the gaming operation falls.

With regard to the detailed report after a TGRA has approved an alternate standard to any of the NIGC MICS, the Commission uses these reports to ensure that any alternate standard established by the TGRA is at least as stringent as the NIGC MICS. The requirement that tribes maintain and make internal audit reports available to the Commission upon request furthers IGRA's overall purposes, as set forth above.

Finally, the Commission makes use of the AUP assessment reports to verify whether gaming operations are in compliance with the NIGC MICS and/or TICS that are at least as

stringent as the NIGC MICS, or SICS if they provide at least the same level of controls as the NIGC MICS.

- 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.

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

None of the respondents meet the Small Business Administration's definition of a small business. Nonetheless, the Commission's regulations require operations to submit the minimum amount of information that the Commission requires to fulfill its statutory responsibilities. These requirements apply to all Indian gaming operations, regardless of size. The burden is directly proportional to the economic activity conducted.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

In order for the Commission to monitor class II gaming on a continuing basis as required by IGRA, the NIGC established its MICS and set them as the minimum of what Indian gaming operations must do to be in compliance with IGRA. Without these information collection activities (as described in Item 2), the Commission would be hampered in 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;**

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure**

and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

N/A

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The Act requires the Commission to ensure that tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2703. To that end, NIGC regulations require tribes and/or TGRAs to maintain and/or submit certain information that the Commission treats as privileged or confidential in nature, including internal audit reports, alternate internal control standards, and AUP assessment reports. The Act removes from the Commission any discretion that it would otherwise have to disclose such information that falls within FOIA exemptions 4 and 7, and requires the Commission to disclose such information only to other law enforcement agencies for law enforcement purposes. 25 U.S.C. 2716.

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

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

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

On March 29, 2022, a 60-day notice containing the information collection requirements was published in the Federal Register allowing the public an opportunity to comment on the requirements. *See* 87 FR 18033 (March 29, 2022). The public comment period closed on May 31, 2022. No public comments were received.

In addition, the Commission consulted with various tribal gaming operators and/or TGRAs regarding the submission and recordkeeping requirements contained in the 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.**

The Commission tracks the number of tier change notices, alternate standard reports, and AUP assessment report submissions that it receives per calendar year. To arrive at the estimates below, the Commission averaged the number of annual submissions that it received from calendar years 2019 – 2021 in order to determine the estimated total number of annual respondents and estimated total annual responses.

As mentioned in Item 8 above, the Commission consulted a number of tribal gaming operators and/or management contractors to gather the burden estimates for these information collection activities. Based on these consultations, the Commission was able to establish an average time for each type of response and this was multiplied by the average number of annual responses to arrive at an estimated total annual time cost for each activity. The Commission was then able to calculate the total annual wage cost by multiplying the total annual time by the (Tribal consulted) average wage for each activity.

ESTIMATED ANNUAL BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE HOURS PER RESPONSE	TOTAL ANNUAL HOURS	AVERAGE HOURLY WAGE COST	TOTAL WAGE COST
543.3	1	Varies	1	1	1	\$60	\$60
543.5	1	Varies	1	10	10	\$60	\$600
543.23(c)	198	1	420	.471	198	\$60	\$11,880
543.23(d)	198	1	420	2.357	990	\$75	\$74,250
TOTAL	398		842		1,199		\$86,790

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.

Non-wage costs were determined by multiplying stake-holder based average annual costs by the number of annual respondents. In this case, non-wage costs were primarily audit fees.

Specifically, Commission regulations require tribes to hire an independent CPA to perform an internal control standards assessment and to produce an AUP report. The majority of the dollar costs for this information collection (\$3,296,800) is the estimated annual total amount that the tribes spend in order to engage these CPAs. The remaining cost were for administrative tasks such as copying and filing.

ESTIMATED ANNUAL COST TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE ANNUAL COSTS	TOTAL COSTS
543.3	1	Varies	1	\$50	\$50
543.5	1	Varies	1	\$50	\$50
543.23(c)	198	Varies	420	\$50	\$9,900
543.23(d)	198	Varies	420	\$16,600	\$3,286,800
TOTAL					3,296,800

- 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
543.3	1	Varies	1	1	1	\$51	\$51

543.5	1	Varies	1	10	10	\$65	\$650
543.23(d)	198	Varies	420	2		\$51	\$42,840
TOTAL							\$43,541

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

CHANGES FROM THE PREVIOUS COLLECTION

	Requested in this collection	Previously Approved Collection	Net Change
# of Responses	842	798	+18%
Annual Burden Hours	1,199	8,467	-86%
Burden Hour Wage Cost	\$86,790	Not Available	Not Available
Non-Burden Hour Cost	\$3,296,800	Not Available	Not Available

It should be cautioned at the outset that tribal gaming operations and their business practices are unique to each gaming Tribe and influenced by many local, state, and regional factors. Tribal gaming facilities vary in size and complexity and range from small truck stops to world-class casino resorts. The amount of time and resources that gaming tribes expend fulfilling regulatory requirements can vary dramatically and is further complicated by different Tribal governance practices and varying levels of investment in, and adoption of, new technologies and technical expertise. For these reasons, estimates provided by a statistically insignificant group of rotating tribal consultants has limited value and it would be improper to extrapolate from these burden estimates any definitive trends.

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

Overall, this past cycle saw a decrease in burden hours. This appears to be due to two factors:

1. The gaming industry was substantially affected by the COVID-19 pandemic and the temporary closures of gaming operations for a period of time during the pandemic.

2. The burden hours generated by 25 CFR § 543.23 significantly declined from an average of 18 to .471. The reason for this decline is not clear but upon examination, the estimates that were provided by tribal consultants during the last renewal appear to be unreasonably high. It is possible that these tribal consultants may have misunderstood the requirement to be more than a record-keeping requirement. In any case, it is the Commission's opinion that the estimates generated for this renewal are more aligned with what would be expected.

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.