

National Indian Gaming Commission Proposed Class II Game Classification Regulations
Paperwork Reduction Act Supporting Statement

Justification

1. The collection of information provisions in the proposed rule establish a process for assuring that bingo, lotto, other games similar to bingo, pull tabs, and instant bingo, played through or using electronic aids, are in fact Class II before their placement on the casino floor in a Class II operation. This process is necessary because the distinction between an electronic “aid” to a Class II game and an “electronic facsimile” of a game of chance, and therefore a Class III game, is often unclear. With advances in technology, the line between the two has blurred. The Commission is concerned that the industry is dangerously close to obscuring the line between Class II and III and believes that the future success of Indian gaming under IGRA depends upon Tribes, States, and manufacturers being able to recognize which games fall within the ambit of tribal-state compacts and which do not. The information collection requirements are an essential component of the process. Laboratories cannot conduct meaningful evaluation and analysis of games without documentation from the manufacturers. Tribes cannot make meaningful classification determinations without reports from the laboratories. The Commission cannot meaningfully review the process and, if necessary, object to a laboratory’s findings, without reports.

2. This process requires a Tribe’s gaming regulatory authority to require that all such games or aids, or modifications of such games or aids, be submitted by the tribe or manufacturer sponsored by a tribe to a qualified, independent testing laboratory for review and analysis. That submission includes a working prototype of the game or aid

and pertinent software, all with functions and components completely documented and described. In turn, the laboratory will certify that the game or aids do or do not meet the requirements of the proposed rule, and any additional requirements adopted by the Tribe's gaming regulatory authority, for a Class II game. The laboratory will provide a written certification and report of its analysis and conclusions, both to the Tribal gaming regulatory authority for its approval or disapproval of the game or aid, and to the Commission for its review. Ultimately, this process will allow the tribal regulatory authorities and the Commission to assure that only Class II gaming machines are operated without a tribal-state compact.

3. The documentation required under the proposed information collection may be submitted electronically.

4. The proposed regulation sets out standards for the classification for gaming machines. These are new standards. While some tribes and states already collect information to classify games, such collection has not been uniform and it has resulted in classifications that are inconsistent with the Commission's view on the gaming machines. The Commission has classified games on a case-by-case basis but ultimately has been unable to assure uniform compliance with the requirements under IGRA that Class III games be played only pursuant to a tribal-state compact. The case-by-case approach will be abandoned for the more uniform set of requirements in the regulations. Therefore, the Commission believes very little duplication of information will result.

5. This collection of information does not impact small businesses or other small entities. Tribes are not small entities under the Office of Management and Budget (OMB) definition.

6. If the information is not collected, the National Indian Gaming Commission will not be able to regulate Class II gaming effectively under the Indian Gaming Regulatory Act.

7. Respondents would be required to report information to the NIGC and to Tribal Gaming Regulatory Agencies prior to placing a gaming machine, as a Class II gaming machine, in a tribal gaming facility.

We expect that some of the information contained within the submissions will contain confidential and proprietary information the release of which may cause substantial competitive harm. Pursuant to 25 U.S.C. 2716, the Commission will not release that information except for law enforcement purposes.

8. The Notice of Proposed Rulemaking is being published at the same time that the Paperwork Reduction Act submission is being provided to the OMB. A copy of the proposed rule is attached. The proposed rule was developed with the advice and assistance of a tribal advisory committee. The Commission conducted government-to-government consultations with tribes on the proposed rule, including the information collection requirements. The Commission also spoke to laboratory, tribal and manufacturer representatives to develop estimates of cost and hour burdens.

9. The respondents will not receive any payments or gifts.

10. We expect that some of the information contained within the submissions will contain confidential and proprietary information the release of which may cause substantial competitive harm. Pursuant to 25 U.S.C. 2716, the Commission will not release that information except for law enforcement purposes.

11. The Commission will not be inquiring into issues of a sensitive nature.

12. The preparation and submission of documentation supporting submissions by the requesting parties (as opposed to the game or aid hardware and software per se) is an information collection burden under the Paperwork Reduction Act, as is the preparation of certifications and reports of analyses by the test laboratories.

The respondents include tribes or developers and manufacturers of Class II games sponsored by tribes and independent testing laboratories. The Commission estimates that there are approximately 226 gaming tribes, 20 manufacturers and developers and 5 laboratories. The frequency of responses to the information collection requirement will vary.

Existing games do not have to comply with this regulation for 5 years. After 5 years all existing games or aids in Class II operations that have not been classified and come within this rule must be submitted and reviewed if they are to continue in Class II operations. The useful life of such machines generally ranges between 2 to 5 years. Therefore, due to the five year grandfather provision, the Commission expects the implementation of this regulation to occur only as new Class II machines are developed and older machines replaced. The Commission expects that very few of the existing machines will be submitted to laboratories under these regulations. Consequently, the frequency of responses will be a function of the Class II market and the need or desire for new games or aids.

All new Class II machines and platforms must go through this classification process. The Commission estimates a 20% turnover in machines games in most operations and that there are approximately 25 Class II gaming systems presently in use. Consequently, there should be 1 to 5 new submissions each year with 3 to 10 modifications. The

Commission also estimates that the frequency of responses will be infrequent and occasional submissions during periods when there are a few games, aids, or modifications brought to market, punctuated by fairly steady periods of submissions when new games and aids are introduced. In any event, the Commission estimates that submission will number approximately 4 to 15 in total.

Modifications will not require the same level of employee hours to submit and review. The amount of documentation or size of a laboratory certification and report is a function of the complexity of the game, equipment, or software 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 can be more time consuming. Unless a tribe imposes additional standards, we expect that tribes will rely on classifications performed or requested by other tribes. This latter fact is borne out by tribes' present reliance on NIGC classification opinions.

Accordingly, the Commission estimates that gathering and preparing documentation for a single new submission requires, on average, 8 hours of an employee's time for a requesting party and that following examination and analysis, writing a report and certification requires, on average, 10 hours of an employee's time for a laboratory. Modifications will take approximately half that time. Based on 1 to 5 new submissions each year and 3 to 10 modifications, the Commission estimates that the information collection requirements in the proposed rule will be a 20 to 80 hour burden on requesting parties. The Commission estimates that the information collection requirements in the proposed rule will be a 50 to 100 hour burden on laboratories.

We estimate that the cost to requesting parties is approximately \$50 per hour and to laboratories \$100 per hour. Based on these estimates requesting parties would pay in total an estimated \$1000 to \$4000. The total estimate for laboratory costs would range from \$5000 to \$10,000 per year.

Because technical standards for all Class II machines are being proposed at the same time as these regulations, the Commission assumes that as new systems arrive on the market, they will be tested under these regulations and the technical standards at the same time. When this happens, we expect that the hour and cost burden attributed to the requesting parties' and laboratories' compliance with these regulations will be diminished by as much as 75%.

13. The practice of submission and review set out in the proposed rule is not new. It is already part of the regulatory requirements in tribal, state, and provincial gaming jurisdictions throughout North America and the world. Manufacturers already have significant compliance personnel and infrastructure in place, and the very existence of private, independent laboratories is due to these requirements. Consequently, we do not expect the requesting parties and laboratories to incur substantive start up and operational costs to comply with these regulations.

The primary other costs that may be attributed to these regulations is the economic impact attributable to playing Class II machine games that some may perceive as slower or less fun than slot machines. These costs are not, however, attributable to the cost of the information collection burden but are directly attributable to compliance with the IGRA requirement that a tribe play only Class II games unless it has a tribal-state compact.

14. The NIGC will create a new Machine Compliance Department that will be responsible for handling the information collection on behalf of the agency. The proposed budget for this 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

About one-fourth of this budget is attributable to implementation of the proposed regulation. The remainder of the budget will be used to implement other machine compliance programs.

15. This is a new program. To date, NIGC attorneys have been reviewing and classifying games. The proposed regulations and economic necessity require that the NIGC move quickly in its review of these games. Consequently, dedicated expertise is important to meet this goal.

16. The Commission will publish a list of classified games on its website.

17. Not applicable.

18. Not applicable.