

Points for discussion over regulations with NIGC for July 25

- Point out to the Commission that this is NOT a Government-to-Government Consultation. The Yakama Nation is providing their initial comments to NIGC on the proposed regulation on Class II. Comments that are more formal will be provided at a later time. This meeting is considered to be merely a comment meeting.
- In Washington, the Tribes work closely together to protect the integrity of Gaming. Class II gaming is regulated and standardized to fit IGRA requirements. Washington Tribes interact on a Government-to-Government basis to protect our Casinos from illegal activity. The machines we use clearly comply with the law. Washington Tribes should not be penalized by these regulations for problems NIGC may be having with compliance in other jurisdictions.
- The NIGC Technical Standards have not yet been published and provided to the Tribe for comment. The Yakama Nation requests that the official comment period be postponed until the technical standards are available. It is not possible to analyze the proposed classification standards in 546 without the technical standards.
- The Yakama Nation also asks that there be a public hearing process conducted on 546 and the upcoming technical standards. It is difficult to comment to the NIGC without knowing how this rule affects other Tribes, the industry, and our vendors. The public record needs to be available to the Tribe to evaluate so that a thorough and complete comment can be done. When will the public record be available to the public?
- The NIGC states that there is no taking of property. The current Class II machines are the property of the Tribe. The effect of the proposed rule is a taking of property without just compensation.
- The Economic Impact this regulation imposes on the Yakama Nation is devastating to our Government. Our Government programs and services rely in large part on the proceeds from Class II gaming. The Tribe cannot continue our Government programs on Class III alone. To be required to purchase, license, certify, and install all new machines, would have the effect of putting our Government Gaming, and Government programs at a stand still. It will lay off hundreds of employees in our community.
- Our loss of operating revenues alone for shutting down the machines would be close to \$50 million dollars. Additional costs for purchasing, licensing, certifying, installing, training, re-writing internal controls, and re-designing our technology may cost millions more. All these costs are yet unknown. Jobs, Tribal services, and the cost of waiting time for any new machines to be certified and “come on line” would be devastating to our Tribe and its members. This

proposed regulation could virtually bankrupt our Class II Government Gaming. The Tribe has made financial commitments for expansion of our Casino. These commitments may be jeopardized if the Tribe is put into an uncertain position with regard to Class II gaming. This imposes a great uncertainty for creditors, builders, Casino staff, and lenders with the possibility of placing our credit with lenders in jeopardy.

- This proposal is not about protecting the public from being confused about whether they are playing bingo or a Class III machine. The Tribe is operating a readily distinguishable machine. Our machines are in a separate area of the Casino. The signage entering this area clearly identifies it as a Bingo area. It is solely used for the game of Bingo. It is arbitrary and capricious to decide that by changing the screen, delaying the play, and requiring a 20% “payout”, that the public/customer will be assured that they are now playing “BINGO”. There has never been a question of customer “confusion” about what game they are playing under the current technology. There is a bingo card displayed on the machine, and the machine says bingo with instructions on how to play. These proposed rules make the assumption that by slowing down the play, the Bingo player will now know they are playing Bingo. It is an insult to them to assume they cannot determine the difference.
- IGRA statutorily, has three requirements for Bingo. There are outlined in 25 U.S.C. 2703(7) (A). The Class II Bingo the Yakama Nation is operating meets those requirements. We have notified our vendors that all Class II machines have to meet IGRA standards. The Yakama Nation is conducting gaming pursuant to federal gaming law. The NIGC has arbitrarily decided that these machines do not meet IGRA’s requirements, and has developed their own requirements. The Indian Gaming Regulatory Act regulates Indian gaming. As you know, the Nation Indian Gaming Commission executes that law. It does not have the authority to make new law but simply to be the executing arm of the law. These proposed rules are beyond the NIGC’s authority. They are not the legislative branch of government. Nor should they be.
- The requirement of a “prize” being a 20% payout renders the game to be a non-gaming event. There then is no gamble and no game of chance. The two-second delay of play is arbitrary. By requiring this so there is assurance that more than one player is playing the game does not solve the more than one player rule. The current Class II games are linked to make sure other players come into the game.
- Questions about grandfathering of the current machine need to be addressed. The proposed rule requires compliance within 6 months of the rule adoption. This cannot be done. The time for certification of the new machine may take up to 36 months. What occurs during the time it takes to certify? Manufacturers have confirmed that the time for re-tooling and having a machine ready that will meet these standards will take 18 months. To change the infrastructure of the Casino will take another 6 months, and to certify the machine may take another 6 months.