

## **Comments of the Seminole Tribe of Florida**

**September 10, 2004**

FIRST DRAFT (Revised 31 August 2004)

### **Classification Standards for Electronic, Computer or Other Technological Aids Used in Connection with Class II Gaming**

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**10) What are the steps for a compliance program to ensure that devices in play in  
Class II tribal game facilities meet the classification standards of this part?**

1) **What is purpose of this part?**<sup>1</sup>

This part establishes uniform classification and technical standards and procedures for the classification, approval, and operation of “electronic, computer or other technologic aids” used in connection with Class II gaming. These standards and procedures are intended to ensure that gaming offered through the operation and play of such “technologic aids” meets the definition for Class II gaming established by the Indian Gaming Regulatory Act, 25 U.S.C. § 2501, et seq. (IGRA or “Act”). The classification standards are intended to provide key distinctions between ~~devicemaehine~~ gaming activity that is Class II and other machine gaming that is Class III gaming because it constitutes an electronic or electromechanical facsimile of a game of chance or operation of a slot machine of any kind.

**As the Tribe has previously noted, these draft regulations go far beyond setting classification and technical standards and procedures for aid devices and instead impermissibly attempt to redefine the underlying Class II games. These draft regulations seem designed to reach a predetermined result to slow the operation of and threaten the viability of aids to Class II games, without regard to the specific language of the IGRA or traditional aspects of bingo that are widely authorized under state law.**

2) **What are the definitions for this part?**

a) What is a “game” of bingo?

A “game” of the “game commonly know as bingo” is the random draw(s) or electronic determination(s) and release(s) of the numbers or other designations that are necessary to form ~~athe~~ pre-designated game-winning pattern on a card held by the winning player. Players in competition with each other in a common game must cover (daub) the numbers or other designations on their cards that correspond to the numbers or designations randomly drawn or electronically determined when those numbers or designations are randomly drawn or electronically determined and announced or otherwise revealed to all players in the game. **Except in the case of ante-up games, Each** bingo game must have a winning player before it can end.

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<sup>1</sup> **The Tribe reiterates and incorporates by reference its comments on and objections to the previous draft which were submitted on July 30, 2004. Although this draft contains several improvements, the Tribe remains concerned that many of the provisions are unreasonably restrictive and contrary to the IGRA.**

**The last change is necessary to at least make the standard consistent with the MegaMania cases. However, as a general matter, it is not true that each bingo game must end with a winner, since no such requirement is imposed by the IGRA definition of bingo. As held by the courts, the three statutory requirements of bingo are exclusive. Thus, the NIGC lacks the power to impose additional requirements.**

b) What does it mean to “win” in a game of bingo ~~or “other game similar to bingo”~~?

To “win” a game of the game commonly known as bingo ~~or an “other game similar to bingo”~~ is to be the first player to properly cover a pre-designated and announced game winning pattern of numbers or other designations on a card held by the player ~~and then successfully claim the win.~~

**These changes are necessary to make the standards internally consistent. Elsewhere, the standards provide that (1) a game similar to bingo can be won by a player other than the first player to cover a pre-designated pattern and (2) there is not a separate claim requirement.**

c) What is a “bonus prize” in the game commonly known as bingo or “other game similar to bingo”?

A bonus prize is a prize awarded in a game in addition to the game-winning prize. The prize may be based on different pre-designated and pre-announced patterns than the game-winning pattern, may be based on achieving a winning pattern in a specified quantity of numbers or designations drawn or electronically determined and released, other factors tied to the bingo game or a combination of these conditions.

**As the Tribe has commented previously, prizes can be awarded based on other factors tied to the bingo game, such as “good neighbor” prizes.**

d) What is a “progressive prize” in the game commonly known as bingo?

A progressive jackpot prize is an established prize for a game, funded by a percentage of each player’s buy-in or wager, that is awarded to a player for obtaining a specified pre-designated and pre-announced pattern or by achieving that pattern within a specified quantity of numbers or designations randomly drawn and released or electronically determined, or randomly drawn and released or electronically determined in a specified sequence. ~~Mystery jackpots, where the winning of the jackpot is determined by events outside the results of the play of bingo, are not permitted.~~ If the progressive prize is not won in a particular game, the prize must be rolled over to each

subsequent game until it is won. The progressive prize is thus increased from one game to the next based on player buy-in or wager contributions from each qualifying game played in which the prize is not won. All contributions to the progressive prize jackpot must be awarded to the players. A winning pattern for a progressive prize is not necessarily the same as the game-winning prize pattern.

**A progressive could be awarded for simply achieving a specific pre-designated pattern, regardless of the quantity of numbers or other designations needed to achieve the pattern. Also, there is no basis for a prohibition against mystery jackpots, since the IGRA only specifies that bingo be played “for prizes.”**

e) What does it mean to “sleep” in the game of bingo or an “other game similar to bingo”?

~~Although not a required part of a bingo game, to “sleep” or to “sleep a bingo” means that a player fails, within the time allowed by the game: (i) to cover (daub) one or more previously released numbers or other designations and consequently will forfeit the use of such number(s) or other designation(s) in the game, or (ii) to claim the prize to which the player is entitled, having covered (daubed) a previously designated pattern.~~

**This provision is inconsistent with other provisions in these standards which recognize that there is not a separate claim requirement for bingo. Also, the Tribe disagrees that a player MUST be allowed to sleep a bingo pattern, since no such requirement is specified in the IGRA definition of bingo.**

f) What is the game of “pull-tabs?”

In the game of pull-tabs, players compete against one another to obtain winning cards from a set of cards known as the “deal.” Each deal contains a finite number of cards that includes a pre-determined number of winning cards. Each individual pull-tab within a deal is a ~~paper~~ card with hidden or covered symbols. When those symbols are revealed, there is a pattern indicating whether the player has won a prize. Winning cards are randomly spaced within the pre-arranged deal. One deal consists of all of the pull-tabs in a given game that could be purchased.

**As the Tribe has commented previously, there is no basis to prohibit electronic pull-tab cards, especially when electronic bingo cards clearly are permitted. The IGRA permits the use of electronic aids for both forms of Class II gaming.**

g) What is an “electronic pull-tab?”

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An electronic pull-tab is ~~an electronic facsimile of a paper~~ pull-tab that is displayed on a video screen.

h) What is “instant bingo?”

In “instant bingo,” a player purchases a card containing a pre-selected group of numbers or designations; the winning cards are those in which the pre-selected group of numbers or designations on the card matches the preprinted winning arrangement indicated elsewhere ~~on the card~~. The game is functionally similar to the same as pull-tabs.

i) What is “Lotto?”

The term “Lotto” means a game of chance played ~~(in the same manner as the game of chance commonly known as bingo)~~ with cards bearing row(s) of numbers or other designations in which numbers or other designations are drawn or electronically determined from a finite pool of such numbers and each player covers the corresponding numbers or other designations if they appear on a card held by the player. Players are awarded prizes for, the winner being the player who first covers a complete row, column, or other pre-designated pattern or arrangement. ~~The term is synonymous with “bingo” and does not mean “lottery” in general or the type of lottery operated by various states and denominated “lotto” or some derivative thereof.~~

**As modified, this definition reflects that lotto and bingo are similar. However, they are not synonymous. If they were, then there would have been no reason for Congress to separately list lotto as an allowable Class II game.**

j) What is an “auto daub” feature?

An “auto-daub” is a feature, incorporated into an “electronic computer or other technologic aid” to the play of bingo or an “other game similar to bingo,” that automatically performs the requirements for the player to cover (daub) numbers or designations on the player’s electronic card when similar numbers or designations are drawn or electronically determined in the game.

k) What is a “bingo minder?”

A “bingo card minder” is any electronic or electromechanical aid device that may assist a player in a ~~paper~~ bingo game to identify and monitor multiple bingo cards used by

that player in the game. The device electronically stores bingo cards purchased by the player, provides a means for ~~the players to~~ input of numbers or other designations when those numbers or other designations are drawn or electronically determined in a ~~paper~~-bingo game, compares the number or other designation ~~input by the player~~ to bingo cards in the electronic storage of the device, and identifies ~~to the player~~ those electronically stored bingo cards that contain the number or other designation input made by the player.

**IGRA does not distinguish between “paper” and “electronic” bingo. Rather, the IGRA permits bingo to be played using electronic aids (including the use of electronic cards). If the game is bingo, then it does not matter whether or not the cards are paper or electronic. Thus, the reference to “paper” bingo games is confusing and misleading. Also, as written, this definition is more limited than the types of bingo minders permitted under various state laws. In light of Congress’ intent that tribes be given maximum flexibility to use modern technology to conduct Class II games, the definition is unreasonably restrictive. See, e.g., KRS § 238.505(26)(“Card-minding device’ means any mechanical, electronic, electromechanical, or computerized device that is interfaced with or connected to equipment used to conduct a game of bingo and that allows a player to store, display, and mark a bingo card.”); 16 TX ADC § 402.541(5)(“card-minding device--Any mechanical, electronic, electromechanical, or computerized device, and including related hardware and software, that is interfaced with or connected to equipment used to conduct a game of bingo and which allows a player to store, display, and mark a bingo card face ...”).**

*(Note: definitions for the terms “other game similar to bingo,” “electronic, computer, or other technologic aid,” and “electronic facsimile” are found in 25 C.F.R. Part 502.)*

**3) What are the standards for establishing, classifying, and operating a bingo game played through an electronic medium using “electronic, computer, or other technologic aids” as Class II gaming?**

- a) Establishment of a “common game” and requirement for minimum number of players.
  - i) Electronic player stations or other electronic multimedia device must link players into a common game through a networked system. Participating linked player stations or other electronic multimedia device may be located adjacent to or separately from one another at each location at which a common game is played.

- ii) The networked system may also extend to electronic player stations or other electronic multimedia device at multiple gaming locations. Players at electronic player stations or other electronic multimedia device in different locations may be linked into a common game.

**The phrase “other electronic multimedia device” has been added to reflect the fact that new technology may permit games to be played using interactive electronic multimedia devices that are not player stations.**

- iii) The location of any “electronic, computer, or other technologic aid” assisting game play by providing the random draw or electronic determination of numbers or designations used in the game, controlling a progressive game, or allowing a player to participate in the game must be located on “Indian lands” as that term is defined in the Indian Gaming Regulatory Act. Electronic, computer, or other technologic systems which only monitor game revenue may be located elsewhere.

- ~~iv)~~ The networked system must require a minimum of two players to begin for each game and be designed to broaden potential participation in each common game by providing reasonable and sufficient opportunity for ~~at least six~~ players to join enter the game the common game. A minimum time period may be established by the tribal gaming regulatory authority based on factors such as the number of active electronic player stations or other electronic multimedia devices on the network. ~~of two seconds, from the time that the first player elects to play, is required to enable six or more players to enter. The game may commence when at least six players have elected to play or after the elapse of two seconds from the time the first player elects to play provided at least one other player has elected to play. Nothing in this section is intended to limit games to six players.~~

**There is no legal basis to require more than two players in a game. As long as two players are required before a game can begin, then the game is not player against the device.**

- ~~v)~~iv) In order for players to be considered as participating in a common game, and to meet the requirements for the minimum number of players, each player must be eligible to compete for all game-winning patterns in the game, except that a minimum wager may be established as a condition of eligibility to win a progressive prize.



**As long as all players are playing for the same game-winning pattern, there is a common game even if the players are playing for different interim patterns based on card-type or buy-in level.**

~~vii)v)~~ A common draw or electronic determination of numbers or designations may be utilized for separate games that are played simultaneously.

~~viii)vi)~~ Each player must play with one or more bingo cards assigned to that player from a pre-designated set of cards for the game. The card need not exist in tangible form but may be displayed electronically on a video screen at the electronic player station or other electronic multimedia device. Each card must be unique among players; no two cards in any game shall be identical. ~~The gaming facility or its employees may not play as a substitute for a player.~~

**As the Tribe previously commented, there is no basis for this restriction, which is contrary to the NIGC advisory opinion on National Indian Bingo issued on November 14, 2000.**

~~viii)~~ ~~The card or cards in play by the player must be established for the player before the game begins. Players must obtain the card or cards to be played in each game before any numbers or designations are drawn or electronically determined for that game. Players must have the option of changing the card they will play in the game before play begins. Players cannot change the card once play of a particular bingo game has commenced. Players cannot enter the game and purchase a bingo card after the game commences. Cards assigned to players may not have pre-daubed (pre-covered) numbers or designations.~~

**See previous comments on bonanza-style bingo.**

~~ix)~~ ~~The minimum number of numbers or other designations in the non-replacement pool from which selections may be randomly drawn or electronically determined is 75 and the maximum number is 150.~~

**This is an impermissible change to the IGRA definition of bingo. There is no basis for this limitation in the statutory definition of bingo.**

~~x)vii)~~ The numbers or other designations needed for the game must be kept and released in the order in which they were randomly drawn or electronically determined. Each game may provide for the release of up to the total quantity of numbers or other designations in the pool. Except in the case of bonanza-style bingo, N numbers or other designations for the game must be

used in real time immediately in the game for which they are randomly drawn or electronically determined, that is they must not be selected and released until all players have entered and the game actually commences. Selected numbers must be released in the sequence in which they are randomly drawn or electronically determined.

~~x)viii)~~ Each bingo game will have a distinct reference number visible on the screen at each electronic player station or other electronic multimedia device and used subsequent to the game to track game play and results.

b) Requirements for the Electronically Displayed Bingo “Card.”

- i) Each electronically displayed bingo card in use by a player must be displayed prominently on the video screen of the electronic player station or other electronic multimedia device utilized by the player and must be clearly visible to that player at all times during game play and at the end of the game, except that the card need not be displayed during a graphical display presented as a second screen during a bonus prize round. If multiple bingo cards are in use by a player, the video screen must show at least the “best” card all of the bingo cards all of the time during game play and at the end of the game with each such card display meeting the visibility requirements of Sections ii) and iii) following.

**It is common for bingo minders to allow players to play 75 or more cards simultaneously. Since it is not practical to show all cards at the same time, only the best card or cards are shown. A similar rule should apply to Class II bingo aids.**

- ii) ~~The interior size of the card will be a minimum of 5 centimeters by 5 centimeters and contain a minimum grid of 25 spaces, arranged in horizontal rows and vertical columns. Grids other than in a square must scale appropriately so that each component can be easily viewed. Each space in a grid must be clearly visible to the player at least 1 centimeter by 1 centimeter.~~

**There is no basis to require at least 25 spaces on a bingo card, especially when the Commission has agreed previously that smaller configurations are permissible. The minimum number of grid spaces is two, since a minimum of two spaces is necessary to form a pattern.**

- iii) Different numbers or designations ~~may~~ must be shown in each of the ~~25~~ individual spaces on the bingo card in a font or symbol size that is clearly visible to the player fills at least 3/4 of the space. Designations other than

numbers may include letters, figures, or other symbols. Color attributes must permit covered spaces to stand out. As an example, it is unacceptable to have foreground and background colors the same.

~~iv) Each space will contain a unique number or other unique designation that may not appear more than once on the card. The uniqueness criteria does not preclude the same number from being used more than once provided there is another differentiating criteria such as color. The card may contain one free (covered) space without a specified number or other designation, provided the free space is located identically on every card in play or available to be played in the game.~~

**These are game design issues to be decided by the tribes, since they go beyond the IGRA definition of bingo.**

c) Requirement for Pre-Designated Patterns.

i) In each game, at least one pattern must be designated as the game-winning pattern and disclosed to the players before the game begins.

**The IGRA permits more than one game-winning pattern.**

ii) Other winning patterns may be designated for the award of prizes in addition to the prize to be awarded based on the game-winning pattern (bonus prizes and progressive prizes). Each such designated pattern or arrangement must also be disclosed to the players upon request before the game begins.

iii) The pre-designated game-winning pattern must consist of at least ~~23~~ spaces. Other patterns that result in the award of a bonus prize or progressive prize will consist of at least 2 spaces. The maximum number of spaces for any winning pattern in a game is the number of spaces on the card.

iv) The designated winning patterns and the prizes available should be explained in the Rules of the Game, which must be made available to the players upon request.

v) All players in the game must be eligible to play for all pre-designated game-winning patterns. A common game may not consist of players who compete for different game-winning patterns, except that a minimum wager may be established as a condition of eligibility to win a progressive prize.

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d) Award of Prizes.

i) General requirements for prizes.

~~(a) All prizes eligibility in a game must be awarded based on the outcome of the game of bingo or other factors tied to the bingo game. and may not be based on events outside the selection and covering of numbers or other designations used to determine the winner in the game and the action of the player to cover the pre-designated winning patterns. The prize structure must not rely on an additional element of chance other than the play of bingo.~~

**Again, there is no basis for this limitation, especially when extra chance elements (such as prize wheels) are common in bingo games and have been used for many years.**

~~(b)(a) A game may offer players the opportunity to play at different entry wagers and the prizes in the game may be increased based on a higher entry wager so long as all players are playing for the same game-winning pattern(s). Players also may pay additional consideration to play for other winning patterns. In addition, promotional prizes may be awarded to players as long as no additional consideration is required as a condition of eligibility. prizes are based on achieving pre-designated winning patterns common for all players.~~

~~(e)(b) Each game must provide an equal chance of obtaining any game-winning pattern for each card played by an active player in the game. The probability of achieving any particular pre-designated winning pattern for a participating player in the game may not vary based on the amount wagered by that player, except that a minimum wager may be established as a condition of eligibility to win a progressive prize.~~

~~(d) All prizes in the game, except for progressive prizes, must be fixed in amount or established by formula and disclosed to all participating players in the game. Random or unpredictable prizes are not permitted.~~

**There is no statutory basis for this limitation.**

~~(e)(c) A multiplier to the prize based on a winning pattern containing a specified number or other designation is permitted.~~

~~(f)~~(d) The order of, or quantity of, numbers or other designations randomly drawn or electronically determined may affect the prize awarded for completing any previously designated winning pattern in a game.

~~(g)~~(e) If a player sleeps according to the rules of the game, i.e. fails to cover one or more previously released batches of numbers or other designations, that player cannot be awarded a prize for any specific winning pattern achieved on that release which contains one or more of the slept numbers or other designations. All ~~patterns~~ numbers or other designations slept must be clearly and uniquely identified as such by displaying them in a unique color, by drawing a strikeout through them, or by other readily visible means.

**Providing that “slept” numbers or other designations cannot be used later in the game is flatly contrary to how bingo is played. Patterns are slept, not the individual numbers or other designations. Players have the ability in bingo to “catch up” during the game.**

ii) Game-winning prize.

(a) A game-winning prize ~~may~~must be awarded in every game. If the first player, or a subsequent player, obtaining the pre-designated game-winning prize pattern sleeps one or more numbers or other designations that would be part of such gaming-winning patterns, the game ~~may~~must continue until a player achieves the game-winning pattern. ~~The same value prize must be awarded to a subsequent game-winning player in the game.~~

**There is no basis to require that the game-winning prize be awarded in every game or to require that the first slept win “locks in” the prize value. In an ante-up game, there might not be any winner. Also, many bingo games vary the win based upon the number the bingo numbers needed to reach the win. If a player sleeps a win, then the value of the win must be determined when a winning pattern is achieved.**

(b) ~~A~~The pattern designated as the game-winning pattern does not need to pay the highest prize available in the game.

(c) A game-winning prize less than the amount wagered is permitted, provided that the prize has a monetary value. ~~is no less than 20% of the amount wagered and at least one cent.~~

**The IGRA only requires that prizes have value.**

(d) The use of a prize payout table is permitted. For example, ~~the~~ prize payout table may be based on achieving the game-winning pattern in a specified quantity of numbers or designations drawn or electronically determined and released.

iii) Bonus and progressive prizes.

(a) In addition to winning the game, the game-winning player and other players may also compete for and win bonus or progressive prizes in the game based on covering (daubing) other pre-designated winning patterns. These prizes may be greater in value than the game-winning prize.

(b) Bonus prizes must be awarded in the same manner of play as described for winning the game-winning prize, but may be based on different pre-designated and pre-announced patterns, on achieving a winning pattern in a specified quantity of numbers or designations drawn or electronically determined and released, on the order in which numbers or designations are drawn or electronically determined and released, on other bingo-related factors or on a combination of these criteria.

(c) A player may ~~ever~~ obtain the pre-determined winning pattern for the game-winning prize, a bonus prize, and/or a progressive prize in the same game and, under the rules of the game, may be awarded one or more of such prizes.

~~(d) A bonus prize in a game that is designated as an “interim prize” must be awarded in a random draw or electronic determination and release of numbers or other designations that is no more than the exact quantity of numbers or designations that are needed for the game-winning player to achieve the game-winning pattern.~~

~~(e) A bonus prize in a game that is designated as a “consolation prize” may be awarded after the game-winning pattern is achieved and claimed by a player but only after a subsequent release of randomly drawn or electronically determined numbers or other designations has been made to all remaining participating players in the game.~~

~~(f)(d) A Progressive Jackpot prize may be awarded, only if the game also provides a game-winning prize as described elsewhere in these Standards.~~

The method of determination of the winner of a Progressive Jackpot in a game must be based ~~only~~ on the play of the game of bingo and may not be based on events outside the random selection of numbers or other designations and the action of the competing players to cover such numbers or other designations on their respective cards to achieve the pre-designated winning patterns in the game. As an example, an acceptable basis for awarding a progressive jackpot prize would be for the winning player to obtain a winning bingo pattern in the first five numbers drawn in the exact order in which they are drawn.

- e) Use of “electronic, computer or other technologic aids” in the play of bingo through an electronic medium.
- i) Because the game of chance commonly known as bingo may be played with computer and other electronic and electromechanical aids, an aid device may (but need not) perform the daub and claim functions after the player requests entry into a game is a game requiring active participation by multiple competing players, a minimum of three steps is required for play of the game on an electronic player station:
- ~~(1) A request for entry into the game;~~
  - ~~(2)(1) a first cover (daub) opportunity of at least two seconds for all competing players in the game to cover (daub) the numbers or other designations on their cards that correspond to the numbers or other designations in the first batch of numbers or other designations randomly drawn or electronically determined and released in the game;~~
  - ~~(3) a second cover (daub) opportunity of at least two seconds for all competing players in the game to cover (daub) the numbers or other designations on their cards that correspond to the numbers or other designations in the second batch of numbers or other designations randomly drawn or electronically determined and released in the game and claim any game winning, bonus, or progressive prize to which they may be entitled; an action by the player to cover (daub) the numbers or other designations on the player's card following this second release is required as a condition to that player winning any prize.~~
- ~~—The minimum two-second opportunity for covering (daubing) the selected numbers or other designations in each release that appear on players' cards may be shortened, and the game may proceed, if all players in the game cover (daub) their cards in less time. One or more additional releases and cover (daub) opportunities~~

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~~may be necessary if there is not a winner in the game following the second release and cover (daub) opportunity. A game design may provide for more than two releases prior to a winner being determined.~~

- ii) To enter ~~and begin~~ the game, each player accepts the card or cards to be used by that player and requests entry into the game by selecting an amount to wager and pressing or touching a button showing the word “play” or other similar designation. The cards will meet the requirements specified in this part.
- iii) After the game begins, one or more unique numbers or other designations are manually drawn or electronically determined, ~~randomly without replacement, from a finite pool of numbers or other designations. For example, if the number B-15 is drawn or electronically determined, it cannot be used again in that game.~~
- iv) ~~Each game will permit the random draw and release or electronic determination of all numbers or designations in the non-replacement pool of such numbers or other designations. Numbers or other designations must be selected and used immediately in real time by the competing players in the game for which they are drawn or electronically determined, that is they cannot be selected and released until all players have entered and the game has actually commenced.~~ Selected numbers or other designations must be used in the sequence in which they are drawn or electronically determined.
- v) Numbers or other designations will be randomly drawn and released or electronically determined and made known to players in batches. Each batch may consist of one or more numbers or designations. The numbers or other designations selected must be displayed to the player in the sequence they are used in the game.
- ~~vi) Prizes cannot be won in the first release of numbers or other designations, meaning that players are required to participate and compete through the random determination and release of at least two batches of numbers or other designations as part of the contest to be the first to cover the winning pattern. Two or more releases are required before a player is eligible to win any prize in any game.~~
- vii)vi) All players must have an opportunity to cover (daub) their cards after each release to reflect their participation in a common game. Players may cover (daub) each card they have in play by the use of an auto-daub feature or by touching the video screen at the electronic player station or other electronic



multimedia device or a button showing the word “cover” or other similar designation. A minimum time established by the tribal gaming regulatory authority of two seconds, or a lesser time if all players have covered, must be available for each player to accomplish the cover (daub) action. Following this action by a player, the video screen at that electronic player station or other electronic multimedia device will display a different color on the number or designation on that player’s card if that number or designation has been properly covered (daubed) by the player. ~~Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed. For each cover opportunity, the game must wait (indefinitely) until at least one player performs the cover (daub) action.~~

~~viii~~vii) A player who fails to cover (daub) any numbers or other designations appearing on the player’s card after ~~the~~ minimum time ~~of two seconds~~ has elapsed following release of the numbers or other designations in the first batch may continue as an active participant in the game or be disqualified, depending on the particular rules for that game established by the tribal gaming regulatory authority gaming facility. However, a player who fails to cover (daub) within the time period allowed by the rules of the game, ~~which shall be at least two seconds~~, sleeps any winning pattern achieved with that release. the cover opportunity and forfeits the use of those numbers or other designations in the game to form a game winning, bonus, or progressive prize pattern.

~~ix~~viii) After the first release and cover (daub) opportunity by all players, subsequent batch or batches of numbers or other designations may ust be released. ~~The quantity of numbers or designations contained in each subsequent batch may not extend beyond the quantity of numbers or other designations necessary to form the first available eligible game-winning pattern on a card in play in the game.~~ Following each subsequent release, all players must again have the opportunity to cover (daub) the spaces on their cards that contain any of the numbers or designations randomly drawn and released or electronically determined. Numbers or other designations covered (daubed) by a player must stay covered throughout the play of the game. A player who fails to daub (cover) and claim a winning pattern within the time allowed “sleeps” that winning pattern and will not be eligible to claim a prize based upon that pattern, subject to the exception noted in subparagraph 1)a)i)below.

~~x~~ix) A player wins the game by being the first player(s) in the game to cover a pre-designated game-winning pattern or arrangement of numbers or other designations ~~and, after the release of at least the second batch of numbers or other designations, claiming the win by touching the screen or a button~~

~~showing the word “cover,” “daub,” “claim” or other similar designation within the time allowed by the rules of the game which must be at least two seconds.~~

~~xix)~~ xix) A player who “sleeps” one ~~or more numbers or other designations in a~~ potentially winning pattern ~~or fails to timely claim the covered game winning pattern~~, and thereby forfeits the win based on that pattern, must be informed by an indication on the electronic player station or other electronic multimedia device video screen that the player has “slept” the win. ~~Patterns~~Numbers or other designations that have been slept must be clearly and uniquely marked on the player’s card to give notification that they have been forfeited.

~~xii)~~ xii) A bingo game cannot end until a player in the game wins the game winning prize i.e. obtains a pre-designated game winning pattern, timely covers (daubs) all of the numbers or other designations in the pattern, and timely claims the win in the manner prescribed by the rules of the game. ~~The game may end at this point or other additional criteria for the end of the game may apply, such as the additional release(s) of randomly drawn or electronically determined numbers or other designations for a consolation prize(s), provided such criteria are clearly stated in the rules available to the players.~~

~~xiii)~~ xiii) After all available numbers or designations have been randomly drawn or electronically determined and released that could lead to a game winning prize (i.e. no more balls could be drawn that would assist in the formation of a game winning prize), the game may allow an unlimited length of time to complete the last required (cover) daub and claim the prize, or be declared void and wagers ~~forfeited or~~ returned to players and prizes canceled – the latter action is only to be permitted under strict security control of the tribal gaming regulatory authority gaming facility.

~~xiv)~~ xiv) A player who does not obtain a prize winning pattern after the second cover (daub) opportunity may exit the game, for the purpose of entering a new game provided a game winner has been determined and the player does not hold a card showing a covered pre-designated prize winning pattern.

~~xv)~~ xv) ~~Each player in a game must take overt action to cover (daub) the player’s card(s) during play of the game by touching the screen or a designated button one time after each batch of numbers or other designations is released. Each released number or designation does not have to be covered individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located, but the player must overtly touch the screen or a designated button at least one time to cover~~

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~~(daub) the numbers or designations drawn and released in each batch that appear on the player's card.~~ When each release of a batch of numbers or designations occurs, the technologic aid may highlight and cover the numbers or designations on the card ~~that a player should cover (daub)~~ by a change of color ~~that changes again when the player covers (daubs) those numbers or designations.~~

- f) Alternative display of the results of the game on the video screen at the electronic player station or other electronic multimedia device.
- i) An electronic player station or other electronic multimedia device may offer an alternative display of the results of the game, in addition to the display of the game results on the bingo card. The game results may be shown on a video screen using a game theme display such as spinning reel icons. If the alternative display is presented, the video screen must continue to display the bingo card and results to the player. The alternative display of bingo game results may be shown on a technologic aid using mechanical reels but only if there is also a screen which is a component of the technologic aid which always shows the results of the bingo game as well as other important player information such as current bet amount. The alternative display of bingo game results may also be shown on a secondary display screen.
- ii) Alternative result display options may only be utilized for entertainment or amusement purposes and may not be used to independently determine a winner of the game or the prizes awarded or change the results of the bingo game in any way.
- iii) Each game must give the player the option to select only the bingo card display and to play the game using that display alone. The video screen may revert to the combined screen with alternative display if the credit meter reaches zero.
- iv) If both the electronic bingo card and the additional depiction of the results using a game theme display are presented simultaneously, the bingo card must be displayed in a manner (size, color, location, etc) that allows the player to clearly see the numbers or other designations on the bingo card and any results of covering (daubing). At the conclusion of a game, the screen must reflect whether the player has won and the value of any win without reference to the alternative display.

**4) What are the standards for establishing, classifying, and operating the game of pull-tabs played with assistance of an “electronic, computer, or other technologic aid” as Class II gaming?**

- a) Pull-tabs and Instant Bingo played with the assistance of an “electronic, computer, or other technologic aid” may be considered Class II gaming, if played in the same location as bingo, provided the game meets the requirements specified below. Hereafter, the term “pull-tabs” also includes “Instant Bingo.”
- i) Each pull-tab in the game must exist in a tangible **or electronic** medium. ~~A pull-tab exists in tangible medium if the pull-tab is discernable by touch or capable of being touched by the player at the device or location from which the pull-tab is purchased and dispensed.~~

**Again, in light of the MegaMania rulings, there is no legal basis to prohibit electronic pull-tabs.**

- ii) A pre-printed pull-tab ~~may~~**must** be distributed to the player as a tangible medium at the time the pull-tab is purchased.
- iii) The ~~tangible~~ pull-tab presented to the player must contain the information necessary for the player to determine if that player has won a prize in the game and this information must be presented to the player in a readable format. For example, if the rules of the pull-tab game require the player to have a particular pattern of identical figures as a condition of winning a prize, the player must be able to see and read the winning pattern of the face of the pull-tab.
- iv) A pull-tab may contain more than one game, but each game must comport with the requirements of this section. The player must pay for all of the games on that pull-tab in advance.
- v) Pull-tabs that exist in a tangible medium may also be sold to players with assistance of a “technologic aid” that assists in the sale. In addition to assisting the sale, the “technologic aid” may also read and display the contents of the pull-tab as the pull-tab is distributed to the player. The results of the pull-tab may be shown on a video screen that is part of or adjacent to the technologic aid assisting in the sale of the pull-tab. The player may also purchase a pull-tab or multi-game pull-tab from a person or from a vending unit and place the pull-tab in a separate “technologic aid” that reads and displays the contents of the pull-tab. If pull-tabs contain multiple games, the rules for game play must indicate the disposition of a pull-tab in a technologic

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aid that is only partially played, i.e. all games have not been viewed in the technologic aid.

- vi) In addition to a depiction of the pull-tab, the game results may also be shown on a video screen that is part of the “technologic aid” using alternative displays including game theme graphics, spinning reels, or other imagery. Options for players found in this alternative display may not determine a winner of the game or the prizes awarded or change the results of the pull-tab game in any way.
  - vii) The alternative display of pull-tab game results may be shown on a technologic aid using mechanical reels but only if there is also a screen which is a component of the technologic aid which always shows the contents and results of the pull-tab game as well as other important player information such as current bet amount. The alternative display of pull-tab game results may also be shown on a secondary display screen.
  - viii) If the pull-tab is a winning card, it must be redeemable for a prize when presented at the location in the gaming facility designated by the gaming operator, unless the prize for obtaining that winning pull-tab is one or more credits to be accumulated on a credit meter as described in paragraph (b) of this section. In that instance, the pull-tab must state that credits are being accumulated. However, if the winning pull-tab cards are registered as credits on a technologic aid, the pull-tab must be electronically and/or physically marked as having been redeemed i.e. no longer available for play. Last game recall may be used to demonstrate the pull-tab results.
- b) A pull-tab game that otherwise meets the requirements for Class II gaming established by these Standards does not lose its character as a Class II gaming because the prizes won by the players holding the winning pull-tab cards are registered as credits on a meter that is part of the “technologic aid” reading and displaying the contents of the pull-tabs. These accumulated credits may be made available to the player for the purchase of other pull-tabs in the game or may be redeemable for a prize, including a monetary prize, through presentation of a receipt generated by the technologic aid rather than through presentation of the actual winning pull-tab cards.
- c) ~~Electronic P~~pull-tabs that do not exist in tangible medium, often called video pull-tabs, ~~are “electronic facsimiles” of the game of pull-tabs and do not~~ qualify as Class II gaming.

- d) Pull-tabs that exist in a tangible medium but which are electronically or optically read and transformed into an electronic medium and made available to the player only as depictions on a video screen (and not presented directly to the player in the tangible medium) ~~are “electronic facsimiles” of the game of pull-tabs and do not~~ qualify as Class II gaming.
- e) A pull-tab may ~~not~~ be generated at the electronic player station or other electronic multimedia device from an electronic storage file.
- 5) **What are standards for determining whether games offered as an “other game similar to bingo” and played through an electronic medium with assistance of an “electronic, computer, or other technologic aid” constitute Class II gaming?**
- a) An “other game similar to bingo” played with an “electronic, computer, or other technologic aid” may be considered Class II gaming if the game is played in the same location as bingo. contains the features and manner of play set forth in Section 3) of this part, except that the requirements in paragraphs below may stand in place of a corresponding requirement of Section 3).

**The existing regulations already define “other games similar to bingo.”**

- i) The card or electronic card presented for use by the player in an “other game similar to bingo” may be non-traditional in shape and format. ~~The interior size of card must be at least 25 square centimeters. A minimum of 3 equally sized spaces is required.~~ Each space in the grid must be clearly visible to the player at least 1 centimeter by 1 centimeter. Other appearance requirements for the card specified in Section 3) of this Part are applicable.

**The Tribe agrees that the card must be readable. However, many of these requirements are simply arbitrary and have no basis in law.**

- ~~ii) The minimum number of numbers or designations randomly drawn or electronically determined from a non-replacement pool of such numbers or designations is 25 and the maximum number is 150.~~

**There is no basis in the IGRA definition of bingo for this limitation.**

- ~~iii)ii) A player other than the first player to cover the predetermined pattern of numbers of designations on the card may be the winner of the game, provided that winning player covers a pre-determined game-winning pattern when the~~

numbers or designations are randomly drawn or electronically determined and released.

- ~~b) A version of an “other game similar to bingo” operated with a payout table or targeted retention ratio or return to player percentage is house banked and not eligible for a Class II determination under these Standards. For purposes of this Part, a game is played with a targeted retention ratio or return to player percentage when the operator of the game establishes prizes in the game where each prize is multiplied by the probability of players achieving specific pre-designated patterns, achieving such patterns following release of a specified quantity of numbers or other designations, or a combination of these or similar prize control variables, and summed to achieve an overall return for the game, generally the summed value being less than 1.0.~~

**The Tribe strongly objects to the restrictive interpretation of house banking reflected in this standard. Both the Ninth and Tenth Circuits have held (in the MegaMania cases) that the use of a targeted retention ratio does not make a game house banked as that term is defined in the Commission’s own regulations. This standard appears to be intended to reverse those decisions by simply asserting the opposite conclusion. In addition to being vulnerable to legal challenge, there is no good policy reason to impose such a restriction, since Congress intended that tribes be able to offer an expansive range of Class II games.**

**The Tribe believes that there are two reasonable alternatives to the language proposed by the NIGC. The first is to state that a game similar to bingo cannot be a house banking game as that term is defined at 25 C.F.R. 502.11. This approach would provide consistency with existing case law on this issue.**

**A better approach, however, would be to eliminate the requirement found in 25 C.F.R. 502.9 that a game similar to bingo cannot be house banked. As detailed below, there is ample support for such a change.**

**According to Congress, if a game falls within one of the following seven classes of games, it is Class II by definition: (1) bingo, (2) pull tabs, (3) lotto, (4) punch boards, (5) tip jars, (6) instant bingo, and (7) other games similar to bingo. 25 U.S.C. § 2703(7)(A)(i). Whether or not the game is a “house banking” game is simply not relevant to the classification of games similar to bingo. The statute provides that Class II games do not include “any banking card games, including baccarat, chemin de fer, or blackjack.” 25 U.S.C. § 2703(7)(B) (emphasis added). In other words, “house banking” was only to be used to distinguish between Class II and Class III card games. As the Senate Committee on Indian Affairs reported:**

Section (4)(8)(A)(ii) provides that certain card games are regulated as class II games, with the rest being set apart and defined as Class III games under section 4(9) and regulated pursuant to section 11(d). The distinction is between those games where players play against each other rather than the house and those games where players play against the house and the house acts as banker. The former games, such as those conducted by the Cabazon Band of Mission Indians, are also referred to as non-banking games, and are subject to the class II regulatory provisions pursuant to section 11(a)(2). Subparagraphs (I) and (II) are to be read in conjunction with sections 11(a)(2) and (b)(1)(A) to determine which particular card games are within the scope of class II. No additional restrictions are intended by these subparagraphs.

S.Rep. 100-466 at A-9. “Games similar to bingo,” only the other hand, are by definition always to be classified as Class II.

Thus, the “house banking” requirement was intended by Congress to distinguish between class II and class III card games, not the seven types of games it had already provided qualify by definition as class II games. By imposing this requirement on “games similar to bingo,” the NIGC limited the congressional definition of Class II games. As the NIGC explained, it believed at the time that doing so provided a “simple test”:

Some commenters pointed to the fact that the IGRA mentions banking games only with respect to card games and there only as they related to nonbanking card games. The Commission, however, finds the distinction between house banking games and other games useful in defining class III games. In the view of the Commission, house banking games are a subset of casino games that Congress intended to include in class III. Because the house banking game concept provides a simple test for implementing congressional intent, the Commission adopted it. Therefore, the Commission rejected the suggestion that the concept of banking apply only to card games.

57 Fed. Reg. 12382, 12385 (April 9, 1992).

While this “simple test” might be “useful,” it is inconsistent with congressional intent as expressed in the statutory language. As previously discussed, in IGRA Congress had already provided that all seven classes of games specifically



enumerated in the statute, including “games similar to bingo,” automatically qualify as Class II games. Requiring “games similar to bingo,” and none of the other classes of games to meet a house banking test is inconsistent with the statute.

As the NIGC recognized, requiring the other six enumerated classes of games to meet a house banking test would have been inconsistent with IGRA’s statutory scheme. Many forms of bingo, for example, involve some aspects of house banking. When this was pointed out in comments to the NIGC regulations, the NIGC responded by stating simply that “[t]he Commission has determined that whether or not a game is a house banking game or a stakeholder game is not relevant to the classification of games that Congress expressly placed in class II: Bingo, lotto, pull-tabs, instant bingo, and tip jars.” 57 Fed. Reg. 12382, 12388. In doing so, however, the Commission overlooked the last class of games Congress “expressly placed in class II”: “games similar to bingo.” “With respect to ‘games similar to bingo,’ ... the Commission ... determined that the concept of house banking game is relevant to whether such games are in class II.” 57 Fed. Reg. 12382, 12387 (April 9, 1992).

Under this rationale, house banking is relevant for “games similar to bingo,” but not relevant, and precluded by statute, for the other six classes of games enumerated in the statute. However, if the statute precludes the use of “house banking” for six of the seven enumerated Class II games in IGRA, it also precludes the use of “house banking” for the seventh class – “games similar to bingo.” As the Commission noted, “the concept of house banking game is not relevant to games enumerated in the IGRA as class II games.” *Id.* We agree. Because “games similar to bingo” are “games enumerated in the IGRA as class II,” the “concept of house banking game is not relevant.”

- 6) What are the requirements and limitations for the use of other “electronic, computer, or other technologic aids” [such as a bingo card-minder] that assist the play of a ~~live (paper)~~ game of bingo offered by a tribal gaming facility?

If a game is bingo, it does not matter whether or not it is played with paper or electronic cards. Games played with electronic cards are not less “live” than games played with paper cards. Also, there is no need or justification for separate standards for bingo minders. Such a restriction has no basis in logic or law.

- ~~a) To assist players participate who participate in a live (paper) bingo game, cards purchased by a player may be programmed into a “bingo card minder.” Bingo cards, when so programmed into an electronic bingo card minder under the control of the player, are considered held by the player.~~

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~~b) The “bingo card minder” must contain a screen that allows the player to view one or more of the bingo cards held by the player in the electronic storage.~~

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~~e) The “bingo card minder” must allow the player to input each number or other designation when that number or other designation is called in the live bingo game, thereby allowing the player to cover (daub) the numbers on the bingo cards in use by the player.~~

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~~d) The “bingo card minder” may not interface directly with the equipment used to conduct the live bingo game, such as the bingo blower, a random number generator used as an alternative to a bingo blower, or a electronic storage file or board that informs players of the numbers or other designations drawn or electronically determined in the live bingo game.~~

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~~e) The “bingo card minder” cannot serve as the means for a player to notify the bingo game operator that the player has obtained a pre-designated winning bingo pattern and is claiming the win.~~

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~~f) The “bingo card minder” may be used to identify the card containing the pre-designated winning pattern and display the winning card to the operator for verification.~~

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~~g) The bingo operator may verify a winning pattern on a card held by a player by visual examination of the electronic card on the “bingo card minder” screen, or by other electronic verification means. However, the “bingo card minder” must not be capable of accessing an electronic computer system that assists bingo operation in any manner that would allow modification of the program that operates the “bingo card minder,” the cards held in its electronic storage after those cards are sold to the player for use in the bingo game, or the number or other designation input made by the player during the game.~~

**The requirements for bingo minders are set forth in the definition found in section 2(k). Also, as noted above, there is no basis for treating bingo minders differently than other electronic bingo aids.**

**7) Are there technical standards for devices used as “electronic, computer, or other technologic aids” in Class II play?**

*(Currently, there are no common technical specifications for gaming ~~devices~~machines, Class II games, and in particular the client-server implementation required to support*

*Class II Bingo played with “electronic, computer, or other technologic aids.” In fact, a degree of incompatibility exists among the major specifications in regulations from states that prescribe standards, such as Nevada and New Jersey, the regulations of other countries where standards are established, and testing entities that serve other jurisdictions without established standards. It is the NIGC’s desire to combine the standards from relevant jurisdictions into a common standard. In addition, NIGC intends to create a framework so that new technology can be adopted and used in Class II gaming. Such new technology is by default banned in many jurisdictions.)*

**8) How does a tribal gaming operation offering Class II gaming comply with this part?**

A tribal gaming operation complies with this part by ensuring that “electronic, computer or other technologic aids” used in the play of bingo, lotto, pull-tabs, and other games similar to bingo, offered as Class II gaming in its gaming operation(s), comport with the features and operational characteristics established by these standards and are classified and approved in accordance with certification procedures established under this part. A tribe’s gaming regulatory authority may establish additional criteria in the classification standards it applies in determining whether an aid may be utilized in the tribe’s Class II gaming operation.

**9) What is the process for approval, introduction, and verification of games and devices under the classification standards established by this part?**

- a) Classification testing of new games and equipment.
  - i) An Indian tribe, supplier, manufacturer, and/or game developer (hereafter, the requesting party) wishing to have games and associated “electronic, computer, or other technologic aids” certified as meeting the classification and technical standards established by this part must submit the games and associated aid equipment to a testing laboratory recognized by the NIGC under subparagraph 9)c) below. The requesting party must support the submission with materials and software sufficient to establish that the game and the associated aid equipment meets classification standards and provide any other information requested by the testing laboratory. A Tribe can be a co-sponsor and operate/test a game simultaneously to the testing by the laboratory. This will assist in verifying functionalities and game integrity (often referred to as a “BETA Test”).

As written, Indian tribes apparently would not be permitted to apply for a Class II certification. We assume that this is an oversight that will be corrected in the next draft.

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- ii) The testing laboratory will conduct evaluation and testing of the submission to the classification and technical standards established by this part at the expense of the requesting party. Problems identified during the evaluation or testing process, if any, will initially be discussed between the testing laboratory and the requesting party. In the event of impasse, the requesting party and the testing laboratory may jointly submit questions concerning the issue to the tribal gaming regulatory authority NIGC Chairman ~~which~~ may decide the issue.
- iii) At the completion of the evaluation and testing process, the testing laboratory will provide a formal written report to the requesting party setting forth its findings and conclusions in the manner and form prescribed by the NIGC. The report shall be made available to any interested tribal gaming regulatory authority by the requesting party ~~or the testing laboratory~~ on request. The requesting party testing laboratory will also forward a copy of this report to the NIGC.
- iv) Each report from a testing laboratory must state the name of the requesting party; the type of game evaluated; name(s) and version(s) of the game played and the associated ~~with the~~ “electronic, computer, or other technologic aid” being evaluated; all associated game themes under which the game will be played on the “technologic aid” being evaluated; findings regarding game features and manner of play; a checklist of the Classification and Technical Standards established by this part together with an indication of the results of testing and evaluation to each particular standard; and a summary conclusion as to whether the gaming conducted with the aid meets the requirements of this part. Each report will also provide one or more unique signatures or checksum values for the operating programs used with the “electronic, computer, or other technologic aid,” as set forth in subparagraph v below. The purpose of the unique signature(s) or check sum values is to permit later verification that the games and the aids in play in a Tribe’s gaming operation(s) are the games and aids certified by the testing laboratory, by comparison of the signature(s) or checksum values.
- v) The formal report from the testing laboratory will contain the following specific information necessary for this verification:
  - (1) Hardware and software versions for all equipment and components.
  - (2) Unique checksums for verification of correct operational software.
    - (a) In the case of disk based devicesmachines, a standard directory checking program and the data files and documentation to verify the correct operational software will be provided.
    - (b) In the case of EPROMs, a checksum will be provided based upon standard algorithms.

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- vi) The NIGC will maintain a listing of games and “electronic, computer, or other technologic aids” certified by recognized testing laboratories as meeting the Classification and Technical Standards established by this Part. The NIGC will make this listing available on its website. Reports and certifications by testing laboratories provided to the NIGC will be available for review in NIGC regional offices, except that confidential and proprietary information concerning the “electronic, computer, or other technologic aid” contained in the report will not be made available for public review.
- b) Additional requirements established by a tribal gaming regulatory authority.
  - i) A tribal gaming regulatory authority may establish additional classification and/or technical standards that extend and/or exceed the standards established by this part and require additional testing and certification to its own extended standards as a condition to operation of the game and associated “electronic, computer, or other technologic aid” in a gaming facility it regulates.
  - ii) A tribal gaming regulatory authority may elect to provide its extended testing standards to the testing laboratories and require additional tests and certification reports applicable to its own certification of a game or “electronic, computer or other technologic aid.” In this instance, a requesting party wishing to meet the specific tribal requirements will submit additional supporting materials and documentation to the testing laboratory as may be necessary to meet the specific tribal requirements. A testing laboratory evaluating a game and associated aid equipment in this circumstance will include in its report to the requesting party information relevant to the specific additional tribal requirements and provide a copy of the report to that tribal gaming regulatory authority and the NIGC.
- c) Recognition of Testing Laboratories. The NIGC will maintain a listing of testing laboratories recognized as qualified to perform testing and evaluation for Class II games played using "electronic, computer, or other technologic aids." ~~that are offered for use in Class II gaming.~~ To obtain NIGC recognition a testing laboratory will meet the following qualifications:
  - i) The testing laboratory will demonstrate its probity, independence and financial stability by providing evidence of licensing obtained from a State or Tribal regulator that has conducted a complete background check of the testing laboratory within the last two years. The investigative requirements in the background check preliminary to the licensing determination by the State or Tribal regulator shall have consisted, at a minimum of the following steps;

- (1) For the testing laboratory and its parent corporation, if any, a complete corporate financial disclosure and review; a complete disclosure and review of any criminal proceedings, civil litigation or investigations by a regulatory entity; and an evaluation of its corporate good standing in the jurisdiction(s) where it is incorporated and/or does business.
  - (2) For its principal shareholders (10% or greater) and its officers and directors, a complete individual financial disclosure and review; a complete disclosure and review of any criminal proceedings, civil litigation or investigations by a regulatory entity; and a finding of suitability.
- ii) The testing laboratory will demonstrate its relevant technical skill and capability by providing evidence of suitable testing conducted for at least three State or Tribal regulatory authorities within the last two years.
  - iii) A testing laboratory recognized by the NIGC will notify the requesting party and NIGC immediately if any license issued by a State or Tribe is revoked or not renewed.
  - ~~iv) The testing laboratory recognized by the NIGC is required to demonstrate its continuing level of technical skill through a Key Performance Indicator (KPI) analysis evaluated yearly as a condition to maintaining its recognition. This KPI will consider:
    - ~~(1) Accuracy of evaluation of Class II Classification and Technical standards conducted through periodic audit by the NIGC of the testing laboratory's recommendations.~~
    - ~~(2) Reports of serious classification or technical faults in games and associated equipment placed in operation in tribal gaming facilities following certification by the testing laboratory.~~~~

**The testing laboratories should be independent. This standard would compromise such independence by making all laboratories beholden to the NIGC for annual "recognition." The provisions in section (c)(i)-(iii) are sufficient to ensure the quality and competence of the testing laboratories.**

- ~~d) Objections to a testing laboratory certification by the NIGC. The NIGC Chairman or a designee will review the certifications and accompanying reports received from testing laboratories and may interpose an objection to any certification issued by a testing laboratory by notification to the testing laboratory and the requesting party within 60 days of receipt of the certification and report. In the absence of objection within 60 days, the testing laboratory and the requesting party may assume the NIGC does not interpose an objection. The NIGC will conduct additional discussions with the testing laboratory and the requesting party on any~~

~~game or “electronic, computer, or other technologic aid” to which it has objection to resolve the dispute. If the objection is upheld after further review by the NIGC, the testing laboratory and requesting party will notify any tribal gaming regulatory authority to which it has provided a certification and report on the game and associated equipment that the NIGC has objected to the certification and that the certification is no longer valid.~~

**We understood that the goal of this process was to develop objective standards for Class II aids that would eliminate the need for NIGC staff to be involved in the game classification process. Independent labs are certainly qualified to test games for compliance with objective standards. However, this standard would involve the NIGC in the review of each and every game certification. If NIGC staff are given responsibility for reviewing and objecting to independent lab reports, then this is likely to create confusion as to what the standards mean and whether any certification is truly final. If a game is certified by an independent testing laboratory as meeting the objective game standards, then there is no need for further review by NIGC staff.**

**10) What are the steps for a compliance program to ensure that devices in play in Class II tribal game facilities meet the classification standards of this part?**

- a) In regulating Class II gaming, tribal gaming regulatory authority will institute a compliance program which ensures that bingo, pull tabs, lotto, or other games similar to bingo operated and played with the use of “electronic, computer, or other technologic aids” required to be certified under this part and in use in its gaming facilities meet the standards established by this part and any additional tribal standards adopted by the tribal gaming regulatory authority. The program must include the following elements:
  - i) Initial certification of ~~a game and associated~~ aid equipment as meeting the standards established by this part before the aid is placed for use in the gaming operation;
  - ii) Internal controls that prevent unauthorized access to game control software to preclude modifications that would cause the game and associated aid equipment to no longer meet the standards established by this part;
  - iii) Periodic testing of the game and associated aid equipment, conducted at least annually, to validate that the game and associated aid equipment continues to meet the standards established by this part.
- b) In authorizing particular Class II gaming within a gaming facility it licenses a tribal gaming regulatory authority shall, at a minimum, require a finding and certification by an independent gaming testing laboratory, recognized by the NIGC under

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- subsection 9) c), that each “electronic, computer, or other technologic aid” used in connection with such gaming meets the standards of this part. If the Tribe’s gaming regulatory authority has established classification and technical standards that apply additional criteria, the Tribe shall require additional findings consistent with the additional standards as a condition to authorizing a technologic aid for use and play in gaming facility it regulates.
- c) The tribal gaming regulatory authority will place a seal or other label on each individual Class II technologic aid certified for use and play under this part and offered for play in a gaming facility it regulates attesting that the equipment meets the standards established by this part and any additional standards established by the Tribe.
- d) For Class II game facilities in operation on the effective date, or for new Class II gaming facilities that open within six months of the effective date, certification of the “electronic, computer, or other technologic aids” covered by this part as meeting the standards must be completed and authorization to operate provided by the tribal gaming regulatory authority within six months of the effective date of this part. Games and associated aid equipment not obtaining certification within that period must be removed until certification is obtained and its operation authorized by the tribal gaming regulatory authority. For new Class II gaming facilities opening after six months from the effective date, certification and authorization to operate by the tribal gaming regulatory authority must be completed prior to opening. Games played with “electronic, computer, or other technologic aids” that have not been in operation in the Tribe’s gaming facility prior to the effective date of this part, must be authorized for use as Class II by a tribal gaming regulatory authority using the processes described in Section 10) before being operated in that Tribe’s gaming facilities.

**The specific standards applicable to Class II aids will not be known until the Commission issues the regulations as a final rule. Obviously, there could be changes between the proposed rule (when it is issued) and the final rule. As a result, most vendors are likely to wait until the final rule is promulgated before making extensive (and expensive) game modifications. Once those game modifications are made, each game will need to be submitted to one of a very limited number of available labs. There are numerous game vendors with a wide variety of Class II products currently in play throughout Indian Country. Certification of each game could take several months. In light of these factors, requiring all existing games to be certified within six months of the final rule is unrealistic. A 12 month certification process would be more reasonable and less likely to create chaos in the industry.**

- e) Recognizing that tribes are the primary regulator of their gaming operation(s), enforcement action by the Commission will not be initiated under this part without first informing the Tribe and the Tribal gaming regulatory authority that in the view of the Chairman, a game and associated “electronic, computer, or other



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technologic aid” in play in a tribal gaming facility does not meet the minimum standards established by this part and allowing a reasonable time to remove the game and associated aid equipment, or bring the game and associated aid equipment into compliance. Such prior notice and opportunity for corrective action is not required where the threat to the integrity of the gaming operation is immediate and severe.