

**Comments by the Seminole Tribe of Florida**

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FIRST DRAFT (Version 1.0) July 15, 2004

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

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1) **What is purpose of this part?**

This part establishes technical classification standards for devices used as “electronic, computer or other technologic aids” that assist in Class II gaming. These standards are intended as a means to ensure that gaming offered through the operation and play of such devices meets the definition for Class II gaming established by the Indian Gaming Regulatory Act, 25 U.S.C. § 2501, et seq. The standards are intended to provide key distinctions between machine 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 involves operation of a slot machine of any kind.

The draft standards go far beyond establishing technical standards for aids to Class II games. While the Tribe supports reasonable standards for aids, many of the standards would redefine the underlying games. For example, requiring that the electronic bingo card be clearly visible to the player during all phases of the game is a reasonable technical standard for an aid to bingo. However, requiring that bingo be played with a pool of at least 75 numbers or symbols is an impermissible attempt to add to the bingo requirements set forth by Congress in the IGRA.

The Tribe is troubled that the draft standards are inconsistent with established case law, particularly the MegaMania decisions. In *United States v. 103 Electronic Gambling Devices*, 223 F.3d 1091 (9th Cir. 2000), the Ninth Circuit unequivocally interpreted the IGRA when it answered the question "what is bingo?" *Id.* at 1096. Its answer was simple: "IGRA's three explicit criteria, we hold, constitute the sole *legal* requirements for a game to count as class II bingo." *Id.* The court reached this result in a case that involved an electronic bingo game, making it clear that the definition of bingo is not restricted to the traditional paper game. The court specifically rejected the Government's arguments that there were other "implicit criteria" or that "other features" are pertinent to determining if a game constitutes bingo. The Court considered Congressional intent in drafting and noted that if Congress had intended that more than three criteria would define bingo, it could have said so. The Court did not find any ambiguity in the statute and it did not find the need for filling gaps in the statutory definition. The Court "decline[d] the invitation to impose restrictions on [bingo's] meaning besides those Congress explicitly set forth in the statute." *Id.* at 1097. The Court also directly addressed the Government's interpretation of the statute as requiring more details of what might constitute bingo. The Tenth Circuit soon followed in *United States v. 162 Megamania Gambling Devices*, 231 F.3d 713 (10th Cir. 2000). The Court directly interpreted the IGRA and concluded that a specific game met the bingo definition and requirements of the statute.

Now the Commission is attempting to circumvent these court holdings by promulgating regulations that are contrary to the clear statutory interpretation of these courts. These regulations will not withstand judicial scrutiny. The NIGC is required to abide by the laws of these Circuits unless and until reversed by the Supreme Court. See Industrial Turnaround Corp v. NLRB, 115 F.3d 248, 254 (4th Cir. 1997). As was noted by the Eighth Circuit in BPS Guard Services, Inc. v. NLRB, 942 F.2d 519 (8th Cir. 1991), "[Chevron USA v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)] does not stand for the proposition that administrative agencies may reject, with impunity, the controlling precedent of a superior judicial body. ... An agency's decision to refuse to follow controlling precedent hardly can be characterized as an exercise of discretion. See Allegheny Gen. Hosp. v. NLRB, 608 F.2d 965, 970 (3rd Cir.1979)."

There is no doubt that the NIGC's later interpretation of the IGRA will be assessed against the settled law. Neal v. United States, 516 U.S. 284, 295 (1996); Lechmere, Inc. v. NLRB, 502 U.S. 527 (1992); Maislin Industries U.S. Inc. v. Primary Steel, Inc., 497 U.S. 116, 131 (1990). And a court's interpretation of a statutory provision trumps an agency's later interpretation that is inconsistent with that Court's precedent. This is particularly true when the court's interpretation is not based on deference to an agency's interpretation, Banker's Trust New York Corp. v. United States, 225 F.3d 1368 (Fed. Cir. 2000) citing Mesa Verde Construction Co. v. Northern Cal. Dist. Council of Laborers, 861 F.2d 1124, 1136 (9th Cir. 1988).

For these reasons, any new regulations must be consistent with the MegaMania cases. As noted below, many of the draft standards are contrary to those cases, as well as the Commission's previous positions. In fact, the new standards are so restrictive that not even MegaMania satisfies them. Inconsistencies are noted below. The Tribe hopes to work with the Commission to ensure that any final regulations comply with applicable law.

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

### a) What is a "game" of bingo?

Bingo is played between two or more players for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of the card covers such numbers or designations, when objects similarly numbered or designated are drawn or electronically determined, and which is won by the first player to cover a previously designated pattern of numbers or designations on the card. A "game" of bingo is the random draw(s) or electronic determination(s) and release(s) of the numbers or other designations that are necessary to form ~~the a~~ previously designated game-winning pattern on a card held by the winning player. Players cover (daub) the

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numbers or designations on their cards that correspond to the numbers or designations called ~~when-if~~ those numbers or designations are called. Each player in the game attempts to become the first player to obtain ~~the a~~ game winning-pattern. ~~In a bingo game, numbers or other designations are 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. In Bingo, competition must build between and among players through the process of successive random draws and releases or electronic determinations of the numbers or other designations necessary to achieve the previously designated winning patterns. Each bingo game must have a winning player, or the game must be declared void. Bingo offered as Class II gaming may be played with or without “electronic, computer, or other technologic aids.”~~

Congress has set forth the requirements for Class II bingo in the IGRA. 25 U.S.C. 2703(7)(A). The NIGC is not permitted to add requirements for Class II bingo that exceed the statutory requirements. As held by the Ninth Circuit, “IGRA’s three explicit criteria, we hold, constitute the sole legal requirements for a game to count as class II bingo.” United States v. 103 Electronic Gambling Devices, 223 F.3d 1091, 1096 (9<sup>th</sup> Cir. 2000). Thus, the NIGC lacks the power to add requirements for bingo, such as those above.

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

To “win” the game of bingo or an “other game similar to bingo” is to be the first player to properly cover a predetermined and announced game winning pattern of spaces on a card held by the player, ~~and claim the win during the interval between the time the last number or designation necessary to complete the pattern on the player’s card and the time the next number or designation is randomly drawn and released or electronically determined for the players.~~ Prize or prizes are awarded to the player or players (in the event of a tie) who win the game. A player who fails to ~~claim cover after obtaining the a~~ winning pattern ~~will may~~ “sleep” the bingo and will not be awarded the prize associated with that pattern. ~~Each game must have a least one winning player who covers the numbers or designations constituting the pattern with the time period allowed, achieves the game-winning pattern, and claims the win.~~

These requirements are contrary to the MegaMania decisions. The courts held that MegaMania was Class II, even though the game could release more than enough bingo numbers to achieve a bingo and a game could end without a winner (if no player elected to ante-up). The NIGC cannot lawfully ignore those decisions in regulations. Further. The IGRA requires that the game be won by the first player to cover a game-winning pattern –

there is no basis to add a separate claim requirement. Finally, while a game may allow players to “sleep” bingo patterns, this is not a requirement of the IGRA.

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

A bonus prize is a prize awarded in 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 the 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.

A bonus prize also may be awarded based on other factors tied to the bingo game, such as a bonus prize awarded to the player sitting next to the player achieving a bingo (often called a “good neighbor” prize).

d) What is a “progressive prize” in 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. If the progressive prize is not won in a particular game, the prize must be rolled over to a subsequent game. 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.

e) What does it mean to “sleep” a pattern in bingo or “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) a previously designated pattern that, if covered (daubed), would entitle the player to a prize, or (ii) to claim the prize to which the player is entitled, having covered (daubed) a previously designated pattern.~~

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. A single game of pull-tabs is complete when all pull-tabs within a given deal have been sold.

The Tribe disagrees that a pull-tab must be paper. As long as the game meets the requirements of pull-tabs, electronic cards are permissible. This result follows from the MegaMania decisions, which determined that the use of electronic game cards is not a basis of distinction between Class II and Class III games.

g) What is an “electronic pull-tab?”

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

~~h) What is a “variant” of the game of bingo?~~

~~—A “variant” of bingo is a game played in the same manner as bingo is played but which does not meet all requirements for that game as described in these Standards.~~

Since the NIGC has already defined “other games similar to bingo,” there is no need for a separate definition for “variant.”

~~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 also may be played with the use of pre-marked cards, which when opened, are, by the pre-marking, determined to be winning or losing cards without any player participation. The game is functionally the same as pull-tabs.

~~h)~~ What is “Lotto?”

The term “Lotto” means a game of chance played (~~in the same manner as bingo~~) with cards bearing a row or rows of numbers in which numbers are drawn or electronically determined from a pool of numbers a caller draws numbered counters from a stock and each player covers the corresponding numbers if they appear on his card. Players are awarded prizes for covering previously designated arrangements on such cards. 5

~~the winner being the one who first covers one complete row. The term does not mean “lottery” in general or the type of lottery operated by various states and denominated “lotto” or some derivative thereof.~~

~~k)j)~~ What is an “auto daub” feature?

An “auto-daub” is a feature, incorporated into a device that aids the play of bingo or an “other game similar to bingo,” that performs all the requirements otherwise ascribed personally to the player to cover (daub) numbers or designations on the player’s electronic card when similar numbers or designations are called in the game.

~~h)k)~~ What is a “bingo minder?”

*(This definition will be set out in a future draft.)*

*(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 must link players into a common game through a networked system. Participating player stations may be adjacent or located separately from one another.
  - ii) The networked system may also extend to multiple locations. Players at electronic player stations in different locations may be linked into a common game.
  - iii) The location of any player station or device ~~“electronic, computer, or other technologic aid” assisting game play, which provides an element of chance such as providing the draw or electronic determination of numbers or designations used in the game,~~ must be located on “Indian lands” as that term is defined in the Indian Gaming Regulatory Act.
  - iv) The networked system must require a minimum of two players for to begin each game and be designed to broaden potential participation in each common



game by providing reasonable and sufficient opportunity for players to join each game at least six players to enter the game. ~~A minimum time period of six seconds, from the time that the first player elects to play, is required to enable these six players to enter. After at least six players have entered, or after that time period has expired, the game may commence provided at least two players have requested entry. Other methods that ensure that the devices used to aid the play of the game actually “broaden participation” to incorporate six players are acceptable.~~

There is no legal basis for requiring a minimum of more than two players, especially if the system is designed to accommodate a higher level of participation.

- v) 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 the same game-winning pattern(s). ~~all-winning patterns in the game.~~

As long as all players are playing for the same game-winning pattern(s), there is no legal basis to require that all players play for identical interim patterns regardless of card type.

- vi) A common draw or electronic determination of numbers or designations may be utilized for separate common games occurring simultaneously.
- vii) Each player will play with one or more bingo cards assigned to that player from a pre-designated set of cards for the game. Each player must have at least one card to play the game. The card need not exist in tangible form but may be displayed electronically on a video screen at the player station. Each card will be unique among players; no two cards in any game shall be identical. ~~Players cannot participate through a proxy.~~

The Office of General Counsel previously opined (correctly) that proxy play is permissible for Class II bingo. See National Indian Bingo Advisory Opinion (Nov. 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 before any numbers or designations are drawn or electronically determined. Players must have the option of changing the card to be played 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-drawn or pre-marked numbers or designations.~~

This standard is an unreasonable limitation on the types of bingo games available to tribes. Games with pre-drawn balls (in whole or in part) are not excluded from the definition of bingo set forth by Congress and are commonly played in paper form in bingo halls throughout the United States. Even if these games are not bingo, such games are at least games similar to bingo.

~~ix)viii) The minimum number of numbers or designations that may be drawn or electronically determined from a non-replacement pool of such bingo numbers or designations is 75 and the maximum number is 150.~~

This standard would impermissibly add a requirement to the statutory definition of bingo.

- b) Requirements for the Electronically Displayed Bingo “Card.”
- i) Each electronically displayed bingo card in use by a player must be clearly visible to that player at all times during game play and not subject to removal at the player’s option. The card must be displayed prominently on ~~the a~~ video screen of the electronic player station utilized by the player.
  - 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 on a bingo card must be at least 1 centimeter by 1 centimeter.

The IGRA definition of bingo requires that the game be played with cards bearing numbers or other designations. It does not limit the bingo card to a “minimum grid of 25 spaces.” In fact, the NIGC Office of General Counsel has previously opined that the IGRA allows bingo cards with as few as three grid spaces:

A card must bear “numbers or designations” and the player is to cover “a previously designated arrangement of numbers or designations when objects similarly numbered or designated” are selected. This would seem to eliminate the possibility of playing a game with a card that contained fewer than three numbers or designations or in which the purpose of the game was to cover only one number or designation. One number or designation would not be an “arrangement of numbers or designations.” At least two of

three numbers or designations on a card would be necessary to establish an “arrangement.”

NIGC Wild Ball Bingo (Electronic Version) Advisory Opinion (March 27, 2001). The Wild Ball Game at issue in that opinion, which was determined to be Class II, used a card with four grid spaces.

- iii) Numbers or designations will be shown on the card in individual spaces in at least 22-point font. Designations other than numbers may include, but are not limited to, letters, figures, colors or symbols, ~~except that representation of playing cards may not be used~~. Color attributes must permit covered spaces to stand out. As an example, it is unacceptable to have foreground and background colors the same.

There is no legal basis to prohibit the use of playing card symbols as the draw elements in a bingo game, since the IGRA permits the use of numbers or any other designations. Player cards clearly are other designations.

- ~~iv) Each space will contain a unique number or a unique designation that may not appear more than once on the card. The card may contain one free 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.~~

There is no legal basis to impose such restraints on the content of bingo cards. The IGRA merely requires cards bearing numbers or other designations. The NIGC is not permitted to add other requirements.

c) Requirement for Pre-Designated Patterns.

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

Neither the IGRA nor bingo as it is commonly played requires a single game-winning pattern in each game.

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

- iii) Each pre-designated game-winning pattern will consist of at least ~~23~~ spaces. Other winning patterns will consist of at least 2 spaces.

There is no legal basis to require more than two elements in a game-winning pattern. The NIGC Office of General Counsel agreed with this interpretation of the IGRA in its Wild Ball Bingo opinion (“At least two of three numbers or designations on a card would be necessary to establish an ‘arrangement.’”).

- iv) All such designated winning patterns must be displayed on a prize table screen available to the player at each player station. The designated winning patterns and the prizes available should be clearly explained in the Rules of the Game available to the players.

- 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.

d) Award of Prizes.

- i) General requirements for prizes.

- (a) ~~PAI prizes eligibility~~ 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 of numbers or 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.

- (b) 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)~~prizes are based on achieving pre-designated patterns common for all players.~~

- (c) 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 pattern outcome may not vary based on the amount wagered. Additional prize opportunities, e.g. designated patterns where the eligibility is based upon the amount wagered, may not be offered to some players in the game but not others.~~

There is no legal basis for these limitations. Rather, these are marketing decisions which Congress left to the tribes.

~~(d) All prizes except for progressive prizes must be fixed in amount and scheduled or disclosed. Random or unpredictable prizes are not permitted.~~

Again, there is no basis for this limitation.

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

~~(f)(e)~~ The order of or quantity of numbers or designations randomly drawn or electronically determined may affect the prize awarded for completing any previously designated pattern.

~~(g)(f)~~ If a player sleeps a bingo according to the rules of the game, that player cannot be awarded the prize for the specific pattern slept. All patterns slept must be clearly and uniquely identified as such, e.g. by displaying them in a unique color, by drawing a strikeout through them, etc.

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 designated game-winning prize pattern sleeps one or more gaming-winning patterns, the game ~~may~~must continue until a player achieves a game-winning pattern. and that same value prize must be awarded to a subsequent winning player or a different winning pattern from the same player.

As written, this requirement is contrary to the MegaMania decisions (where the game could end without a winner if no player anted-up).

(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 is no less than 50% of the amount wagered and at least one cent.~~

There is no basis for this requirement. The amount of prizes paid to winning players is a marketing decision which Congress left to the tribes.

~~(d)~~(c) The use of a prize payout table is permitted. ~~The~~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 win bonus or progressive prizes. 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, may be based on achieving the pattern in a specified quantity of numbers or designations drawn or electronically determined and released, the order in which numbers or designations are drawn or electronically determined and released, other bingo-related factors, or a combination of these.
- (c) A player may obtain the game-winning prize, a bonus prize, and/or a progressive prize and, under the rules of the game, may be awarded one or more such prizes.

~~(d) A bonus prize designated as an “interim prize” must be awarded in a random draw and release or electronic determination of numbers or designations that is no more than the exact quantity of numbers or designations that are necessary for the game-winning player to achieve the game-winning pattern. For example, if the game-winning pattern is obtained after seventeen numbers or designations are drawn and released, interim prizes must also be awarded in seventeen or fewer numbers.~~

This standard is contrary to the MegaMania decisions. The courts held that the game, which allowed more than the minimum number of bingo numbers necessary to achieve a winning pattern to be released in the first set, was Class II.

~~(e) A bonus prize designated as a “consolation prize” may be awarded after the game-winning pattern is achieved and claimed by a player but only following a subsequent release of numbers or other designations has been made to the remaining players in the game. For example, if the game-winning pattern is achieved and claimed after twenty numbers or~~

~~designations are provided during the second release, a third release of number or designations is required to award a consolation prize.~~

There is no legal basis for this limitation.

~~(f) 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 must be based only on the game of bingo and may not be based on events outside the selection of numbers or designations used to determine the winner in the game and the action of the player to cover the pre-designated winning patterns. As an example, an acceptable means might be for a player to obtain a winning bingo pattern in the first five numbers drawn in the exact order in which they are drawn. An example of an unacceptable means would be the use of a random number generator to choose a random number that might fall within a winning range.~~

As discussed in the preamble to the NIGC's original definition regulations, the NIGC has previously determined that progressive bingo is permissible, as long as at least a **consolation** prize is awarded in each session.

e) Use of "electronic, computer or other technologic aids" in the play of bingo through an electronic medium.

~~i) Because bingo may be played with computer and other electronic aids, an aid device may (but need not) perform the following functions after the player requests entry into a game: is a game requiring active participation by players; a minimum of four steps will be required for play on an electronic player station:~~

~~(1) request entry into the game;~~

~~(2) first cover (daub) bingo cards opportunity, executed by either covering (daubing) or by elapse of allowable time (two second minimum);~~

~~(3) (1) second cover (daub) which is required of all players as a condition to winning any prize (two second minimum); and~~

~~(4) (2) claim of the prize won (two second minimum), if any.~~

~~— Each step requires a direct touch or other direct contact by the player at the player station.~~

The use of auto-daub is an accepted way to play bingo in bingo halls throughout the United States. The use of auto-daub does not change the character of the bingo game and does not violate the Class II requirements of the IGRA.

- ii) To ~~begin-enter~~ the game, a 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. ~~Cards with pre-drawn numbers cannot be used in Class II bingo.~~
- iii) ~~After the game begins, o~~One or more 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.~~

The IGRA definition of bingo does not require the use of finite pools.

- iv) All the numbers or designations necessary for the game may be randomly drawn or electronically determined as needed for use in the game, or they may be randomly drawn or electronically determined at the beginning of the game. Under either method, the numbers or designations must be kept and released in the order in which they were randomly drawn or electronically determined. Each game will provide for the random draw and release or electronic determination of all numbers or designations. ~~\_ in the non-replacement pool of numbers or designations. Numbers or designations must be used in real time immediately in the game for which they are drawn or electronically determined, that is they must not be selected until all players have entered and the game actually commences.\_~~ Selected numbers must be used in the sequence in which they are drawn or electronically determined.

Nothing in the IGRA definition of bingo precludes the use of pre-drawn bingo numbers/designations in bingo and games similar to bingo.

- v) Numbers or 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 designations selected must be displayed to the player in the sequence they are randomly drawn or electronically determined ~~and at the time they are released for use in the game.~~
- vi) ~~The game winning pattern, as well as all other patterns on which a prize award is based, cannot be achieved in a single release of numbers or designations, meaning that players are required to participate through the release of at least two batches of numbers or designation 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.~~

This standard is contrary to the MegaMania rulings and must be eliminated.

~~vii)vi)~~ All players must have an opportunity to cover (daub) after each release to reflect their participation in a common game. Players cover (daub) each card they have in play by the use of an auto-daub feature or by touching the video screen at the player station or a button showing the word “cover” or other similar designation. A minimum time of two seconds, or a lesser time if all players have covered, must be available for the player to accomplish the cover (daub) action. Following this action by a player, the video screen at that player station 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.~~

~~viii)vii)~~ After the first release and cover (daub) opportunity by all players, a second batch of numbers or other designations may will be released. ~~The quantity of numbers or designations contained in this batch may not extend beyond the quantity of numbers or designations necessary to form the game-winning pattern on a card in play in the game.~~ 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 designations covered (daubed) by a player must stay covered throughout the play of the game. A player who sleeps a winning pattern will not be eligible to claim a prize based upon that pattern.

Again, the NIGC is not permitted to overrule the MegaMania decisions by issuing new regulations. MegaMania allowed more than the number of balls necessary to achieve the game-winning pattern to be released in a single set.

~~ix)~~ A player wins the game by being the first player in the game to cover a pre-designated pattern or arrangement of numbers or designations ~~and claim the win by touching the screen or a button showing the word “claim” or other similar designation within the time allowed. Once the player has covered (daubed) the winning pattern, the player must be given another two seconds to claim the prize.~~

viii)

The IGRA definition of bingo does not require a separate action by the player to “claim.” Rather, the statute says that the first player to cover a gaming winning pattern wins the

game. Thus, the player who is the first to cover a game-winning pattern must win the game in order to satisfy the IGRA definition of bingo. By imposing a claim requirement, the first player to cover the game-winning pattern might not win the game – a clear violation of the IGRA definition of bingo!

~~x)ix)~~ After all available numbers or designations have been randomly drawn or electronically determined and released, 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 returned to players and prizes canceled.

~~xi)x)~~ A player who does not obtain a prize winning pattern may exit the game at any time according to the rules of the game., ~~for the purpose of entering a new game, at that player's option, after the second cover (daub) opportunity if a winner has been determined and if the player is informed that he/she does not hold a card showing a pre-designated prize winning pattern.~~

~~xii)~~ ~~Each player must take overt action to cover (daub) the player's card during game play by touching the screen or a designated button one time after each release. 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 at least touch the screen or a designated button to cover (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 electronic aid may highlight and cover the numbers or designations on the card ~~that should be covered (daubed) by a change of color that changes again when the player covers (daubs) those numbers or designations.~~ Each player must also take overt action to claim a prize by touching the screen or a designated button ~~after a pre-designated pattern is covered (daubed).~~ ~~The aid may not employ an auto-daub or auto-claim feature.~~

xi)

f) Alternative display of the results of the game on the video screen at the player station.

i) ~~A player station may offer at t~~The player may be offered thes option of an alternative display of the game, in addition to the display of the game on the bingo card, consistent with the following requirements.

ii) The game results may be shown on a video screen using a game theme display such as including a graphical display of video spinning reel icons. If the alternative display is presented, the video screen must continue to clearly

display the bingo card and results to the player. ~~Video display of poker hands, simulated races, roulette, or dice games such as Craps are not permitted.~~

Options for players found in the alternative display may not be used to determine a winner of the game or the prizes awarded or change the results of the bingo game in any way.

There is no basis for this limitation on the types of graphics used in the entertaining display.

- iii) The game ~~may not~~ provide the option for the player 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.

If the bingo card is clearly visible on the video screen there is no reason to require a bingo-only screen.

- iv) The alternative display of bingo game results may ~~not~~ be shown on a device using mechanical drums or reels.

If the underlying game is bingo, there is no basis to limit the range of additional entertaining displays available (including mechanical reels).

- v) 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 daubing. The player must be able to view the bingo card even if the player prefers to view the results using the alternative game 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.~~

- 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. For example, if the rules of the pull-tab require the player to have a particular pattern of identical figures as a condition of winning a prize, the pull-tab must display that pattern. A prize table available to the player at the location pull-tabs are sold may contain specific information about the value of the prize.
  - iv) Pull-tabs that exist in a tangible medium may also be sold to players with assistance of a device that aids in the sale. In addition to facilitating the sale, the technologic aid device 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 device assisting in the sale of the pull-tab. The player may also purchase a pull-tab from a person or from a vending device and place the pull-tab in another device that reads and displays the contents of the pull-tab. In addition to a depiction of the pull-tab, the game results may be displayed on the device using theme graphics including designated symbols and video spinning reels. 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.
  - v) An alternative display of pull-tab results may ~~not~~ be shown on a device using a mechanical drum and reel.
  - vi) 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.
- b) A pull-tab game that otherwise meets the requirements for Class II gaming established by these Standards ~~does not lose its character as~~remains a Class II ~~gaming game~~ 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 technical aid device

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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 device rather than through presentation of the actual winning pull-tab cards.

~~e) Pull-tabs that do not exist in tangible medium, often called video pull-tabs, do not qualify as Class II gaming under these Standards. These are electronic facsimiles of the game of pull-tabs and are Class III gaming as that term is defined in IGRA.~~

~~d)c) Pull-tabs that exist in a tangible medium but which are 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 not Class II gaming under these Standards. These are electronic facsimiles of the game of pull-tabs and are Class III gaming as that term is defined in IGRA.~~

~~e) A pull-tab may not be generated at the player station from an electronic storage file.~~

If the aid device is dispensing an actual paper pull-tab, then the location of the printer is irrelevant.

**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” 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).

“Other games similar to bingo” is defined in the existing regulations. There is no need to change or limit that definition.

i) The card presented for use by the player in an “other game similar to bingo” may be non-traditional in shape and format. ~~The size of card must be at least 4 square inches. A minimum of 9 equally sized spaces is required.~~ Each space in the grid must be at least 1 centimeter by 1 centimeter. Other appearance requirements for the card specified in Section 3) of this Part are applicable.

There is absolutely no legal basis for this limitation. As noted above, even the NIGC Office of General Counsel has agreed that smaller card configurations are permitted by the IGRA.

- ~~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 absolutely no legal basis for this limitation.

- ~~iii)ii) All the numbers or designations necessary for the game may be randomly drawn or electronically determined as needed for use in the game, or they may be randomly drawn or electronically determined at the beginning of the game. Under either method, the numbers or designations must be kept and released in the order in which they were randomly drawn or electronically determined. Each game will provide for the release of up to the total quantity of numbers or other designations in the pool. Numbers or designations 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 until all players have entered and the game actually commences.~~ Selected numbers must be used in the sequence in which they are randomly drawn or electronically determined.

- ~~iv)iii) A player other than the first player to cover the predetermined pattern of numbers ~~of or~~ designations on the card may be the winner of the game, provided that winning player covers a pre-determined game-winning pattern after 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 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 use of such a targeted retention ration in a game similar to bingo was approved by the Tenth Circuit in the MegaMania case, where the game was designed with a targeted retention ratio of fifteen percent.

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

*(This section will be set out in a future draft.)*

- 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 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.)*

Many of the technical standards found in the MICS are applicable to electronic aids to Class II games. Additional standards are not necessary. To the extent that additional standards are deemed desirable by tribes, GLI has developed many such standards.

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

*(This section will be set out in a future draft.)*

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

*(This section will be set out in a future draft.)*

- 10) **How do these regulations affect state jurisdiction?**

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*(This section will be set out in a future draft.)*

**11) How do these regulations affect the definitions and standards set forth in a tribal-state compact?**

*(This section will be set out in a future draft.)*

**12) 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?**

*(This section will be set out in a future draft.)*

The Tribe is concerned that so many sections of the draft standards are deferred to a future draft. By deferring these sections, the Advisory Committee will have far less time to evaluate and comment on such standards.