



April 22, 2005

Nancy McAlister, Commissioner  
Eastern Shawnee Tribe of Oklahoma  
P.O. Box 350  
Seneca MO 64865

Re: Worldwide Game Technology, Lucky Lotto

Dear Commissioner McAlister:

This is in response to your October 7 and October 27, 2003, letters requesting classification of Worldwide Game Technology's Lucky Lotto game platform. Please accept my sincere apologies for the length of time that has passed since your inquiry.

Given the length of this delay, I can now best be of assistance if you will tell me whether the Tribe is still interested in a classification opinion. If it is, please be so kind as to send some additional information about the game. It would aid our review greatly to have a copy of the pay table(s) and instructions that the game provides to the players, as well as sequential images or screen captures of game play as the a progresses from beginning to end.

That said, based upon the information we do have - the April 30, 2003, opinion letter of Stephen Lenske, Esq., and the October 8, 2003, report of BMM - my preliminary opinion is that Lucky Lotto is Class III. Our current thinking about the features that distinguish Class II games played with technologic aids from Class III games is embodied in the fourth draft of our classification regulations, a copy of which I enclose for your reference. As I understand Lucky Lotto, it automatically daubs matching numbers for the player without the player taking any overt action, and it lacks a designated game-winning pattern. These features make the game Class III. See draft § 546.4(i); § 546.5(e), (g); § 546.6(d).

If you have any questions, or if the Tribe wishes to move forward, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Penny J. Coleman".

Penny J. Coleman  
Acting General Counsel

Encl.



## *FOURTH DRAFT (Version 4.0)*

### **25 C.F.R. PARTS § 502 and § 546**

1. Revise § 502.8 to read as follows:

#### **§ 502.8 Electronic or electromechanical facsimile.**

(a) *Electronic or electromechanical facsimile* means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game.

(b) Bingo, lotto, and other games similar to bingo are facsimiles when:

(1) the electronic or electromechanical format replicates a game of chance by incorporating all of the characteristics of the game, or

(2) an element of the game's format allows players to play with or against a machine rather than broadening participation among competing players.

2. Revise § 502.9 to read as follows:

#### **§ 502.9 Other games similar to bingo.**

*Other games similar to bingo* means any game played in the same location as bingo (as defined in 25 USC 2703(7)(A)(i)) constituting a variant on the game of bingo, provided that such game requires players to compete against each other for a common prize or prizes.

3. Add new Part 546 to read as follows:

#### **Part 546**

**CLASSIFICATION STANDARDS FOR BINGO, LOTTO, OTHER GAMES SIMILAR TO BINGO, PULL TABS AND INSTANT BINGO AS CLASS II GAMING WHEN PLAYED THROUGH ELECTRONIC MEDIUM USING "ELECTRONIC, COMPUTER, OR OTHER TECHNOLOGIC AIDS"**

### 1. What is the purpose of this part?

This part clarifies the terms Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, et seq. (IGRA or "Act"). Specifically this part explains the criteria for determining whether a game of bingo or lotto, an "other game similar to bingo," or a game of pull-tabs or "instant bingo," meets the statutory requirements when these games are played primarily through an "electronic, computer or other technologic aid." This part also establishes a process for establishing Class II certification for "electronic, computer, or other technologic aids" and the games they facilitate. These standards for classification are intended to ensure that Class II gaming using "electronic, computer, or other technologic aids" can be distinguished from forms of Class III gaming that employ "electronic or electromechanical facsimiles" of a game of chance or slot machines.

### 2. What is the scope of this part?

This part is intended to address only games played with electronic components. It does not address live session bingo unless that game is played electronically through networked player stations or, if such session bingo play utilizes electronic or electromechanical card minding devices, then pertinent provisions herein address the use of such card minding devices.

### 3. What are the definitions for this part?

- a. What is a "*game*" of bingo or other game similar to bingo? A "game" of the "game of chance commonly know as bingo" or an "other game similar to bingo" consists of the random draw or electronic determination and release of numbers or other designations necessary to form the pre-designated game-winning pattern on a card held by the winning player and the participation of competing players to cover (daub) the numbers or other designations which appear on their card(s) when the selected numbers or other designations are released for play. A "game" ends when a participating player claims the win after obtaining and covering (daubing) the pre-designated game-winning pattern and consolation prizes, if any, are awarded in the game.
- b. 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.
- c. 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 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 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.

- d. What does it mean to "*sleep*" in the game of bingo or an "other game similar to bingo"? To "*sleep*" or to "*sleep a bingo*" means that a player fails, within the time allowed by the game: (i) to cover (daub) the previously released numbers or other designations on that player's card(s) constituting a game-winning pattern or other pre-designated winning pattern, or (ii) to claim the prize to which the player is entitled, having covered (daubed) a previously designated winning pattern.
  
- e. 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 or other tangible card with hidden or covered symbols. When those symbols are revealed, there is an arrangement of numbers or symbols indicating whether the player has won a prize. Winning cards with pre-established prizes 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.
  
- f. What is an "*electronic pull-tab*"? An electronic pull-tab is an electronic facsimile of a pull-tab that is displayed on a video screen.
  
- g. 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 the same as pull-tabs.
  
- h. What is a "*card minding device*"? A "*card minding device*" is any electronic or electromechanical device used in a live session bingo game played with paper cards that may assist a player to identify and monitor multiple bingo cards used by that player in the game. The device electronically stores data from the paper bingo cards purchased by the player, provides a means for players to input

numbers or other designations when those numbers or other designations are drawn or electronically determined in a live session bingo game, compares the number or other designation input by the player to the paper bingo cards electronically stored in the device, and identifies to the player those electronically stored bingo cards that contain the number or other designation input made by the player.

**4. What are the criteria for meeting the first statutory requirement that the game of bingo, lotto, or other games similar to bingo be “played for prizes, including monetary prizes, with cards bearing numbers or other designations?”**

- a. Each player in the game must play with one or more cards. Each player in the game must obtain the card or cards to be used by that player in the game before numbers or other designations for the game are randomly drawn or electronically determined. Players cannot change cards once play of a particular bingo game has commenced. Electronic cards are permissible.
- b. Electronic cards in use by a player must be displayed prominently on the video screen of the electronic player station utilized by the player and must be clearly visible to that player at all times during game play. If multiple electronic cards are used by a player, only the electronic card closest to a bingo win must be displayed. When displayed, each electronic card must measure at least two (2) inches by two (2) inches or four (4) square inches if other than a square card shape is used. Each individual space on the card must measure at least .4 inches by .4 inches.
- c. For a game of bingo, each card must contain a five (5) by five (5) grid of spaces. Each space will contain a unique number or other designation which may not appear twice on the same 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.
- d. In an “other game similar to bingo,” each card must contain at least three (3) equally sized spaces. Each space will contain a unique number or other designation which may not appear twice on the same card. One space may be designated a “free space” provided the card has at least three (3) other spaces.
- e. Cards must indicate when a player has covered a space. Color attributes on the card must permit covered spaces to be readily distinguishable.
- f. 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.

- g. 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.
- h. The designated winning patterns and the prizes available must be explained in the Rules of the Game, which must be made available to the players upon request.
- i. Each game must have a winning player and a game-winning prize must be awarded in every game. The pattern designated as the game-winning pattern does not need to pay the highest prize available in the game. A game-winning prize may be less than the amount wagered provided that the prize is no less than 20% of the amount wagered and at least one cent.
- j. 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.
- k. 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.
- l. A Progressive Jackpot prize may be awarded only if the game also provides a game-winning prize as described elsewhere in this Part. 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.
- m. All prizes in a game must be awarded based on the outcome of the game of bingo 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.

- n. A player station may offer an alternative display of the results of the game in addition to the display of the game results on the bingo card available to the player on the video screen. Each game must give the player the option to select only the bingo card display and to play the game using that display alone. If the alternative display is presented, the video screen must continue to display the bingo card, the current bet amount, the ball draw, and the results of the game to the player.

**5. What are the criteria for meeting the second statutory requirement that bingo, lotto, or other games similar to bingo be one "in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?"**

- a. In a game of bingo, the numbers or other designations used in the game must be randomly drawn or determined electronically from a non-replaceable pool containing 75 such numbers or other designations and used in the sequence in which they are drawn. Each game will permit the random draw and release or electronic determination of all numbers or designations in the pool. A common draw or electronic determination of numbers or designations may be utilized for separate games that are played simultaneously.
- b. As a variant of bingo, in an "other game similar to bingo," the numbers or other designations used in the game must be randomly drawn or determined electronically from a non-replaceable pool of such numbers or other designations which is equal to or greater than three (3) times the number of spaces on the card used in the game.
- c. Cards containing pre-selected numbers or other designations may not be used.
- d. The numbers or other designations randomly drawn or electronically determined must be used in real time and not stored for later use. The numbers or other designations must be used in the sequence in which they are drawn.
- e. To "cover," a player in a game must take overt action after numbers or designations are released. A player covers (daubs) by touching either the screen or a designated button on the player station one time in each round after a set of numbers or other designations is released.

- f. Players must have an opportunity to cover (daub) after every release. Each released number or designation does not have to be covered (daubed) 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. However, the player must have to opportunity to cover (daub) by touching the screen or a designated button at least one time in each round when those numbers or other designations are released, if those numbers or other designations appear on the player's card. 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.
  
- g. Games may not include a feature whereby covering (daubing) after a release occurs automatically or without overt action taken by the player following the release.
  
- h. All players in a game, and not just a winning player, must be required by the rules of the game to cover (daub) the selected numbers or other designations that appear on their card when those numbers or other designations are released as an indication of their participation in a common game.
  
- i. A minimum of two (2) seconds must be provided after each release of numbers or other designations for players to complete each cover (daub) opportunity. The game may proceed as soon as all players have covered (daub) the selected numbers or other designations appearing on their cards. The game may not proceed until at least one player has covered (daubed) the selected numbers or other designations appearing on her card
  
- j. Players must cover after each release in order to achieve any winning pattern except that a player may later cover numbers or designations slept following a previous release ("catch up") for use in obtaining the game-winning (game-ending pattern). Failure to cover after each release results in the player forfeiting use of those numbers or other designations in any other pattern in the game. For bonus prizes (interim and consolation) and progressive prizes, if a player "sleeps," i.e. fails to cover one or more numbers or other designations, that player cannot be awarded such prize based on a winning pattern which contains one or more of the numbers or other designations slept by the player For game-winning (game-ending) prizes, if a player sleeps, the player may later cover the number(s) or other designations and win such prize if that player is the first player to cover all other numbers or designations making up the game-winning pattern.



- k. If a player sleeps the game-winning pattern the game must continue until a player subsequently obtains and covers (daubs) the game-winning pattern.
  
- l. All numbers or other designations slept by a player 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. A player who sleeps a winning pattern must be notified by visible message on the video screen that the pattern was slept. Players who fail to cover (daub) numbers or other designations that establish patterns yielding bonus or progressive prizes also must be notified by visible message on the video screen that the pattern was slept.
  
- m. 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 returned to players and prizes canceled.
- n. The gaming facility or its employees may not play as a substitute for a player.

**6. What are the criteria for meeting the third statutory requirement that bingo, lotto, or other games similar to bingo be "won by the first person covering a previously designated arrangement of numbers or designations on such cards?"**

- a. Because the game must be won by a "first person," each game must be played by multiple players. Players in an electronic game must be linked through a networked system. The system must require a minimum of two players for each game but not limit participation to two players and must be designed to broaden participation in each common game by providing reasonable and sufficient opportunity for at least six players to enter the game. Games cannot begin until two (2) seconds have elapsed from the time that the first player elects to play unless six players enter. Nothing in this section is intended to limit games to six players.
  
- b. In order for players to participate in a common game, and to meet the requirements for the minimum number of players, each player must be eligible to compete for all winning patterns in the game. A game may offer players the opportunity to play at different entry wagers and the prizes in the game may be increased or a progressive prize offered based on a higher entry wager so long as all prizes are based on achieving pre-designated winning patterns common for all players.
  
- c. The game must provide for the release of the selected numbers or other

designations to players in multiple rounds to establish the game as a contest in which players play against one another. Each game must provide for a minimum of two such rounds. Each round will provide for the release of at least one number or other designation randomly selected or electronically determined. 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.

- d. Each game must have one game-winning pattern or arrangement. Each game winning pattern or arrangement must consist of at least three (3) spaces. The game winning pattern or arrangement must be available to players before the game begins.
  
- e. Other patterns or arrangements consisting of at least two (2) spaces each may be used for award of bonus or progressive prizes if the patterns or arrangements are designated and made available to players before the game begins.
  
- f. Events outside the play of bingo may not be used to determine the eligibility for a prize award or the value of a prize.
  
- g. The set of selected numbers or other designations released in the first round may not contain all of the numbers or other designations necessary to form the game-winning pattern on a card in play in the game, although the numbers or other designations necessary to form any other winning pattern for a bonus or progressive prize may be released in the first round. The quantity of numbers or designations released in the second round or each subsequent round 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.
  
- h. Prizes cannot be claimed following the release of numbers or other designations in the first round. Two or more rounds are required before a player can claim any prize in any game.
  
- i. Bonus or progressive prizes may be awarded based on pre-designated patterns provided the award of these prizes is based on the play of bingo in the same manner as for the game-winning prize. Bonus or progressive prizes 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, or on a

combination of these criteria. Bonus or progressive prizes may be awarded as interim prizes before or as the game winning prize is awarded or as consolation prizes after the game winning prize is awarded.

- j. A game may offer players the opportunity to play at different entry levels (wagers) and the prizes in the game may be increased based on a higher entry wager so long as all prizes are based on achieving pre-designated winning patterns common for all players.
- k. Each game must provide an equal chance of obtaining any 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.
- l. The use of a paytable is permitted. 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. A multiplier to the prize based on a winning pattern containing a specified number or other designation is permitted.
- m. A game-winning prize must be awarded in every game. If the first player or a subsequent player obtaining the pre-designated game-winning prize pattern sleeps that pattern, the game 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.
- n. 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.

**7. What are the criteria for ensuring that pull-tabs or instant bingo played with an electronic component meet the statutory requirement for Class II gaming that the game not be an "electronic or electromechanical facsimile?"**

- a. Each pull-tab card or instant bingo ticket for the game must exist in a tangible medium such as paper. Hereafter the term "pull tabs" also includes the term "instant bingo." A pre-printed pull-tab must be distributed to the player as paper or other tangible medium at the time the pull-tab is purchased. The 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. The information must be

- presented to the player in a readable format.
- b. A pull-tab card may contain more than one arrangement of numbers or symbols, but each arrangement must comport with the requirements of this section. The player must pay for all of the arrangements on that pull-tab card in advance.
  - c. 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. 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.
  - d. The player may also purchase a 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.
  - e. If pull-tabs contain multiple arrangements of numbers or numbers or symbols, the rules for game play must indicate the disposition of a pull-tab in a technologic aid that is only partially played, i.e. all arrangements have not been viewed in the technologic aid.
  - f. The pull-tab 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. The results may also be displayed on mechanical 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.
  - g. 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 elsewhere this section.
  - h. A pull-tab may not be generated at the player station from an electronic storage file.
  - i. A pull-tab game that otherwise meets the requirements for Class II gaming

established by this Part 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 "electronic, computer or other 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. 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 and no longer available for play.

**8. What is a pull tab or instant bingo game that is an "electronic or electromechanical facsimile?"**

- a. A pull tab game is an "electronic facsimile" if the pull tab does not exist in tangible medium at the point of sale and is displayed only electronically.
- b. Pull-tabs that exist in a tangible medium but that 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."

**9. What are the criteria for distinguishing "card minding devices" as "electronic, computer or other technologic aids" used in the play of a live session game of Class II bingo from an "electronic facsimile" of the game?**

- a. Information from paper bingo cards purchased by a player may be programmed into an electronic or electromechanical card minding device. Bingo cards, when so programmed into a card minding device under the control of the player, are considered held by the player.
- b. The card minding device 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.
- c. The card minding device shall (1) allow the player to input each number or other designation when that number or other designation is called in the live session bingo game, and/or (2) allow the player to touch a daub button in response to a number called and displayed on the device, thereby allowing the player to cover (daub) the numbers called on the electronic images of the bingo cards in use by

the player.

- d. The card minding device may interface directly with the equipment used to conduct the live session 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. However, the card minding device must not function in a manner such that it automatically covers (daubs) the selected numbers or other designations for the player without the player directing that action when those selected numbers or other designations are released.
  - e. The card minding device 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 unless all players in the game are using the card minding device for this purpose.
  - f. The card minding device may be used to identify the card containing the pre-designated winning pattern and display the winning card to the operator for verification.
  - 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 card minding device screen, or by other electronic verification means. However, the card minding device 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 card minding device or the cards held in its electronic storage after those cards are sold to the player for use in the bingo game.
- 10. What is the process for approval, introduction, and verification of “electronic, computer, or other technologic aids” under the classification standards established by this part?**
- a. An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the requesting party) wishing to have games and associated “electronic, computer, or other technologic aids” certified as meeting the classification standards established by this part must submit the games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party must support the submission with materials and software sufficient to establish that the game and equipment meets classification standards and provide any other information requested by the testing laboratory.

- b. For an "electronic, computer, or other technologic aid" to be accepted as certified as meeting the classification standards under this part, the tribe shall require the following.
1. The testing laboratory will evaluate and test the submission to the standards established by this part. Issues that concern an interpretation of the standards or the certification procedure 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 Commission Chairman who may decide the issue. Questions regarding additional tribal standards will be addressed to the appropriate tribal gaming regulatory authority.
  2. 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 Commission. The testing laboratory will also forward a copy of its report to the Commission. The report may be made available to any interested tribal gaming regulatory authority by the requesting party or by the testing laboratory on request.
  3. 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 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 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. A supplemental report addressing additional game themes or other non-play features may follow as necessary, and will contain a statement verifying that gaming conducted with the aid continues to meet the requirements of this part.
  4. 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." In the case of disk based machines, a standard directory checking program and the data files and documentation to verify the correct operational software will be provided. In the case of EPROMs, a unique signature or checksum will be provided based upon standard algorithms. The purpose of the unique signature(s) or checksum values is to permit later verification that the games and the "electronic, computer or other technologic 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.

5. In certifying a game or "an electronic, computer, or other technologic aid" for Class II play, a requesting party or a tribe may not rely on a report from a testing laboratory owned or operated by that requesting party or that tribe.
- c. The Commission will maintain a generalized listing of games and "electronic, computer, or other technologic aids" certified by recognized testing laboratories as meeting the classification standards established by this Part. Each testing laboratory will maintain a detailed listing of the "electronic, computer or other technologic aids" it certifies. The Commission will make its listing available on its website. Reports and certifications by testing laboratories provided to the Commission will be available for review in Commission 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.
  - d. Additional requirements established by a tribal gaming regulatory authority.
    1. A tribal gaming regulatory authority may establish additional classification 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.
    2. 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." 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 equipment 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.
  - e. Objections to a testing laboratory certification by the Commission.
    1. The Commission 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 Commission does not interpose an objection. Nothing herein shall preclude the Commission Chairman from objecting to a testing laboratory certification subsequent to the 60 day period.

2. The Commission 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 Commission, 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 Commission has objected to the certification and that the certification is no longer valid.
3. An objection by the Commission Chairman or a designee, upheld after review by the Commission, will be a final agency action for purposes of suit under the Administrative Procedure Act by the requesting party.

f. Recognition of Testing Laboratories.

1. The Commission will maintain a listing of testing laboratories recognized as qualified to perform testing and evaluation for games played using "electronic, computer, or other technologic aids" that are offered for use in Class II gaming. To obtain Commission recognition a testing laboratory will demonstrate its integrity, independence and financial stability by providing evidence of licensing obtained from a competent jurisdiction that has conducted a thorough background check of the testing laboratory.

2. The testing laboratory will demonstrate its relevant technical skill and capability by providing evidence of suitable testing previously conducted for state or tribal regulatory authorities. The Commission will conduct an onsite review of the testing laboratory's facilities as part of its evaluation and will be satisfied that the testing laboratory is qualified and competent to perform the testing required by this part before recognizing the testing laboratory.

3. A testing laboratory recognized by the Commission will notify the Commission immediately if any license issued by a state or tribe is revoked or not renewed.

4. The Commission may offer provisional recognition to a new testing laboratory that does not meet the requirements of sub-paragraphs (1) and (2) above based on its own review of suitability and technical qualifications of the testing laboratory.

**11. What are the steps for a compliance program administered by a tribal gaming regulatory authority to ensure that "electronic, computer, or other technologic aids" in play in Class II tribal game facilities meet the classification**

**standards of this part?**

- a. In regulating Class II gaming, a tribal gaming regulatory authority will institute a compliance program that ensures bingo, lotto, and other games similar to bingo and pull-tabs and instant bingo in use in its gaming facilities, which are operated and played with "electronic, computer, or other technologic aids" covered by this part, are certified as meeting the pertinent classification standards established by this part and any additional tribal standards adopted by the tribal gaming regulatory authority. The program must include the following elements:
  1. Initial certification of an "electronic, computer, or other technologic aid" along with the games played thereon as meeting the standards established by this part before the equipment is placed for use in the gaming operation;
  2. Internal controls that prevent unauthorized access to game control software to preclude modifications that would cause the "electronic, computer, or other technologic aid" and the games played thereon to no longer meet the standards established by this part;
  3. Periodic testing of the "electronic, computer, or other technologic aid," conducted at least annually, to validate that the 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 this Part, 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 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 maintain a record for each individual Class II "electronic, computer or other 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. Effective date for operation of games under the classification standards.
  1. For Class II gaming operations open on the effective date of this part or that open within six months of the effective date, certification of the "electronic, computer, or other technologic aids" must be completed and authorization provided by the tribal gaming regulatory authority within six months of the effective date . Games and associated equipment not certified within that period must be removed until certification is obtained and authorization given. The Commission Chairman may extend the period for obtaining certification by an additional six months at the request of a tribal gaming regulatory authority based on good cause shown.

2. For Class II gaming operations opening six months after the effective date, certification and authorization to operate by the tribal gaming regulatory authority must be completed before opening.
3. Games played with "electronic, computer, or other technologic aids," subject to certification under this part and not in a tribe's operation prior to the effective date, must be authorized for use as Class II by the tribal gaming regulatory authority using the processes described in this Part prior to play in that tribe's gaming operation.

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