



Nez Perce

TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

FAX TRANSMISSION

TO: Penny Coleman Action General Counsel	FAX #: 202-632-0045
CC:	
DATE: July 10, 2006	PAGES: 4, including cover
FROM: Rebecca A. Miles, Chairman	
SUBJECT: Comments on Class II Classification Standards	
COMMENTS: + Electromechanical Facsimile Definitions	

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July 10, 2006

Comments on Class II Classification Standards
National Indian Gaming Commission, Suite 9100
1141 I Street, NW
Washington D.C. 20005
Attn: Penny Coleman, Action General Counsel
Via facsimile: (202) 632-0045

**Re: Comments on Class II Classification Standards
and Electromechanical Facsimile Definitions**

Dear Chairman Hogen and Vice Chairman Choney:

The Nez Perce Tribe would like to comment on the NIGC's proposed rules for Class II Classification Standards and Definitions. On an administrative level, the Nez Perce Tribe believes the current rule-making process lacked meaningful consultation with Indian Tribes. It is the understanding of the tribe that the tribal advisory committee that was assembled by NIGC was not invited to participate in the drafting of the proposed regulations and the committee's input was not incorporated in the proposed rules. Also, it is unclear if any tribal comments were considered during the drafting process.

Substantively, the Nez Perce Tribe asks that the agency refrain from placing arbitrary restraints on Class II gaming. The proposed broadening of the definition of "electromechanical facsimile" is not acceptable. The current definition is clear on its face. If an electronic format broadens participation among players and is not played against the machine, games such as bingo and lotto are not facsimiles. This proposed definitions should be deleted.

In addition, the classification standards are contrary to established case law. The restrictions related to game display, ball draw, daubing, prize amounts and player interaction should be removed. The new requirements do not clarify existing regulations but they do appear to repudiate most variants of bingo, slow the play of those that remain and prevents any meaningful electronic play of pull tabs.

The Nez Perce Tribe also objects to the redefinition of the statutory term "game of bingo." In enacting IGRA, Congress placed only three requirements on a game of bingo.

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Notably, the federal courts have continuously held that these requirements "constitute the sole legal requirements for a game to count as class II bingo." The NIGC's current imposition of additional requirements prohibits the growth of class II gaming and micro-manages tribal business judgment and regulatory responsibilities. The proposed regulations would eliminate virtually all games that Congress intended to allow as "similar to bingo."

The following proposed provisions place arbitrary restrictions on bingo and games similar to bingo and should be removed:

1. Required use of five by five grid cards (546.4(c));
2. Games can only use ball draws numbered from 1 through 75 (546.5(a));
3. Elimination of "pre-drawn" balls;
4. Mandatory time periods to play of the bingo game as this is not supported under current law;
5. Requirement for multiple ball releases (546.6(c)); and
6. Elimination of auto-daub and requirement for two seconds of daub time before next release is permitted (546.5(I)).

Also, the proposed process uses independent gaming laboratories as licensed by the NIGC to certify games as complying with the regulations. Without "grandfathering" in current games, few existing games will comply with the proposed regulations, even those already approved by the courts or NIGC itself. The proposed rules should grandfather games currently approved by courts or NIGC.

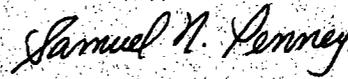
Finally, under the proposed rules, only the NIGC Chairman may object to a classification decision. Tribes have no such option, except in defense of an enforcement action. Certification laboratories must be approved annually and may lose that approval if the NIGC is dissatisfied with its certification decisions. As the primary regulators of class II gaming, tribes should be afforded the opportunity to challenge such an opinion on a government-to-government basis, without having to first subject itself to an enforcement action.

Overall, the regulations redefine established regulatory terms and limit the intentions of Congress when IGRA was adopted. Under IGRA, Congress clearly permits the use of electronic equipment in class II games. Congress understood that technology would advance and evolve in the use of such games. The Senate Report states: "The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility."

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The NIGC should honor both the spirit and the language of IGRA, the current definition regulations and the federal court cases. Thank you for your consideration of the above comments to refrain from placing unwanted restrictions on gaming.

Sincerely,



Rebecca A. Miles
Chairman

