controlled substances within one business day of discovery of the theft or loss. The supplier is responsible for reporting all in-transit losses of controlled substances by the common or contract carrier selected pursuant to paragraph (e) of this section, within one business day of discovery of such theft or loss. The registrant shall also complete, and submit to the Field Division Office in his area, DEA Form 106 regarding the theft or loss. Thefts and significant losses must be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them. When determining whether a loss is significant, a registrant should consider, among others, the following factors:

(1) The actual quantity of controlled substances lost in relation to the type of business;

(2) The specific controlled substances lost;

(3) Whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the controlled substances;

(4) A pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses; and, if known,

(5) Whether the specific controlled substances are likely candidates for diversion;

(6) Local trends and other indicators of the diversion potential of the missing controlled substance.

* * * * *

■ 3. Section 1301.76 is amended by revising paragraph (b) to read as follows:

§ 1301.76 Other security controls for practitioners.

* * * * *

(b) The registrant shall notify the Field Division Office of the Administration in his area, in writing, of the theft or significant loss of any controlled substances within one business day of discovery of such loss or theft. The registrant shall also complete, and submit to the Field Division Office in his area, DEA Form 106 regarding the loss or theft. When determining whether a loss is significant, a registrant should consider, among others, the following factors:

(1) The actual quantity of controlled substances lost in relation to the type of business;

(2) The specific controlled substances lost;

(3) Whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the controlled substances;

(4) A pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses; and, if known,

(5) Whether the specific controlled substances are likely candidates for diversion;

(6) Local trends and other indicators of the diversion potential of the missing controlled substance.

* * * * *

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 05–15969 Filed 8–11–05; 8:45 am]

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NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA27

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: In response to the inherent risks of gaming enterprises and the resulting need for effective internal controls in Tribal gaming operations, the National Indian Gaming Commission (Commission or NIGC) first developed Minimum Internal Control Standards (MICS) for Indian gaming in 1999, and then later revised them in 2002. The Commission recognized from the outset that periodic technical adjustments and revisions would be necessary in order to keep the MICS effective in protecting Tribal gaming assets and the interests of Tribal stakeholders and the gaming public. To that end, the following final rule revisions contain certain corrections and revisions to the Commission's existing MICS, which are necessary to clarify, improve, and update other existing MICS provisions. The purpose of these MICS revisions is to address apparent shortcomings in the MICS and various changes in Tribal gaming technology and methods. Public comment on these final MICS revisions was received by the Commission for a period of 48 days after the date of their publication in the **Federal Register** as a proposed rule on March 10, 2005.

After consideration of all received comments, the Commission has made whatever changes to the proposed revisions that it deemed appropriate and is now promulgating and publishing the final revisions to the Commission's MICS Rule, 25 CFR part 542.

DATES: *Effective Date:* August 12, 2005.

Compliance Date: Except for the final revisions to subsection 542.3(f), on or before October 11, 2005, the Tribal gaming regulatory authority shall: (1) In accordance with the Tribal gaming ordinance, establish and implement Tribal internal control standards that shall provide a level of control that equals or exceeds the revised standards set forth herein; and (2) establish a deadline no later than December 12, 2005, by which a gaming operation must come into compliance with the Tribal internal control standards. However, the Tribal gaming regulatory authority may extend the deadline by an additional 60 days if written notice is provided to the Commission no later than December 12, 2005. Such notification must cite the specific revisions to which the extension pertains.

With regard to the final revisions to subsection 542.3(f), on or before October 11, 2005, the Tribal gaming regulatory authority shall: (1) In accordance with the Tribal gaming ordinance, establish and implement Tribal internal control standards that shall provide a level of control that equals or exceeds the revised standards set forth in subsection 542.3(f); and (2) establish a deadline no later than August 14, 2006, by which a gaming operation must come into compliance with the Tribal internal control standards. To further clarify the referenced deadline, the final revisions to subsection 542.3(f) are applicable to fiscal years of the gaming operation ending after August 14, 2006. No extension of the compliance period is allowed for the final revisions to subsection 542.3(f).

FOR FURTHER INFORMATION CONTACT: Vice-Chairman Nelson Westrin, (202) 632–7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999, the Commission first published its Minimum Internal Control Standards (MICS) as a Final Rule. As gaming Tribes and the Commission gained practical experience applying the MICS, it became apparent that some of the standards required clarification or modification to operate as the Commission had intended and to accommodate changes and advances

that had occurred over the years in Tribal gaming technology and methods. Consequently, the Commission, working with an Advisory Committee composed of Commission and Tribal representatives, published the revised MICS rule on June 27, 2002, and has subsequently made less comprehensive revisions thereto. As the result of the practical experience of the Commission and Tribes working with the revised MICS, it has once again become apparent that additional corrections, clarifications, and modifications are needed to ensure that the MICS continue to operate as the Commission intended. To identify which of the current MICS need correction, clarification or modification, the Commission initially solicited input and guidance from NIGC employees, who have extensive gaming regulatory expertise and experience and who work closely with Tribal gaming regulators in monitoring the implementation, operation, and effect of the MICS in Tribal gaming operations. The resulting input from NIGC staff convinced the Commission that the MICS require continuing review and prompt revision on an ongoing basis to keep them effective and up-to-date. To address this need, the Commission decided to establish a Standing MICS Advisory Committee to assist it in both identifying and developing necessary MICS revisions on an ongoing basis. In recognition of its government-to-government relationship with Tribes and related commitment to meaningful Tribal consultation, the Commission requested gaming Tribes, in January 2004, for nominations of Tribal representatives to serve on its Standing MICS Advisory Committee. From the 27 Tribal nominations that it received, the Commission selected 9 Tribal representatives in March 2004 to serve on the Committee. The Commission's Tribal Committee member selections were based on several factors, including the regulatory experience and background of the individuals nominated, the size(s) of their affiliated Tribal gaming operation(s), the types of games played at their affiliated Tribal gaming operation(s), and the areas of the country in which their affiliated Tribal gaming operation(s) are located. The selection process was very difficult, because numerous highly qualified Tribal representatives were nominated to serve on this important Committee.

As expected, the benefit of including Tribal representatives on the Committee who work daily with the MICS has proved to be invaluable. Through their advice and recommendations to the Commission, the Tribal Committee members provide early Tribal perspective and input in assisting the Commission in identifying and developing needed MICS revisions, without binding their nominating Tribes in any way regarding the resulting revisions promulgated by the Commission. This, in turn, helps facilitate and implement the Commission's policy commitment to early and meaningful consultation concerning changes to the MICS and other Commission regulatory policies and procedures that affect gaming Tribes.

Tribal representatives selected to serve on the Commission's Standing MICS Advisory Committee are: Tracy Burris, Gaming Commissioner, Chickasaw Nation Gaming Commission, Chickasaw Nation of Oklahoma; Jack Crawford, Chairman, Umatilla Gaming Commission, Confederated Tribes of the Umatilla Indian Reservation; Patrick Darden, Executive Director, Chitimacha Gaming Commission, Chitimacha Indian Tribe of Louisiana; Mark N. Fox, Compliance Director, Four Bears Casino, Three Affiliated Tribes of the Fort Berthold Reservation; Sherrilyn Kie, Senior Internal Auditor, Pueblo of Laguna Gaming Authority, Pueblo of Laguna; Patrick Lambert, Executive Director, Eastern Band of Cherokee Gaming Commission, Eastern Band of Cherokee Indians; John Meskill, Director, Mohegan Tribal Gaming Commission, Mohegan Indian Tribe; Jerome Schultze, Executive Director, Morongo Gaming Agency, Morongo Band of Mission Indians; and Lorna Skenandore, Assistant Gaming Manager, Support Services, Oneida Bingo and Casino, formerly Gaming Compliance Manager, Oneida Gaming Commission, Oneida Tribe of Indians of Wisconsin. The Advisory Committee also includes the following Commission representatives: Philip N. Hogen, Chairman; Nelson Westrin, Vice-Chairman; Cloyce V. Choney, Associate Commissioner; Joe H. Smith, Acting Director of Audits; Ken Billingsley, Region III Director; Nicole Peveler, Field Auditor; Ron Ray, Field Investigator; and Sandra Ashton, Staff Attorney, Office of General Counsel.

In the past, the MICS were comprehensively revised on a wholesale basis. Such large-scale revisions proved to be difficult for Tribes to implement in a timely manner and unnecessarily disruptive to Tribal gaming operations. The purpose of the Commission's Standing Committee is to conduct a continuing review of the operation and effectiveness of the existing MICS, in order to promptly identify and develop needed revisions of the MICS, on a manageable incremental basis, as they become necessary to revise and keep the MICS practical and effective. By making more manageable incremental changes to the MICS on an ongoing basis, the Commission hopes to be more prompt in developing needed revisions and avoid larger-scale MICS revisions which take longer to implement and may be disruptive to Tribal gaming operations. In accordance with this approach, the Commission has developed the following set of final MICS rule revisions, with the assistance of the Standing MICS Advisory Committee. In doing so, the Commission is carrying out its statutory mandate under the Indian Gaming Regulatory Act, 25 U.S.C. Section 2706(b)(10), to promulgate necessary and appropriate regulations to implement the provisions of the Act. In particular, the following final MICS rule revisions are intended to address Congress' purpose and concern stated in Section 2702(2) of the Act, that the Act ''provide a statutory basis for the regulation of gaming by an Indian Tribe adequate to shield it from organized crime and other corrupting influences, to ensure the Indian Tribe is the primary beneficiary of the gaming operation, and to ensure the gaming is conducted fairly and honestly by both the operator and the players.''

The Commission, with the Committee's assistance, identified three specific objectives for the following final MICS rule revisions: (1) To ensure that the MICS are reasonably comparable to the internal control standards of established gaming jurisdictions; (2) to ensure that the interests of the Tribal stakeholders are adequately safeguarded; and (3) to ensure that the interests of the gaming public are adequately protected.

The Standing Advisory Committee met on October 24, 2004, January 25, 2005, and May 10, 2005, to discuss the revisions set forth in the following set of final MICS revisions. The input received from the Committee Members has been invaluable to the Commission in its development of these revisions.

In furtherance of the Commission's established Government-to-Government Tribal Consultation Policy, the Commission also provided a preliminary working draft of the entire final MICS rule revisions contained herein to gaming Tribes on November 24, 2004, for a 30-day informal review and comment period, before formulation of the proposed rule. The proposed rule was published in the **Federal Register** on March 10, 2005, and comments were accepted for 48 days. In response to its requests for comments, the Commission

received 40 comments from Commission and Tribal Advisory Committee members, individual Tribes, and other interested parties regarding the final revisions. A summary of these comments is presented below in the discussion of each revision to which they relate.

General Comments to Final Rule MICS Revisions

For reasons stated above in this preamble, the National Indian Gaming Commission is revising the following specific sections of its MICS rule, 25 CFR part 542. The following discussion includes the Commission's responses to general comments concerning the MICS and is followed by a discussion regarding each of the specific final revisions, along with previously submitted informal comments to the final revisions and the Commission's responses to those comments. As noted above, prior commenters include Commission and Tribal Advisory Committee members, gaming Tribes, and others.

Comments Questioning NIGC Authority To Promulgate MICS for Class III Gaming

Many of the previous informal comments to the preliminary working draft of the MICS revisions pertained to the Commission's authority to promulgate rules governing the conduct of Class III gaming. Positions were expressed asserting that Congress intended the NIGC's Class III gaming regulatory authority to be limited exclusively to the approval of Tribal gaming ordinances and management contracts. Similar comments were received concerning the first proposed MICS regulations in 1999. At that time, the Commission determined in its publication of the original MICS that it possessed the statutory authority to promulgate Class III MICS. As stated in the preamble to those MICS: ''The Commission believes that it does have the authority to promulgate this final rule. * * * [T]he Commission's promulgation of MICS is consistent with its responsibilities as the Federal regulator of Indian gaming.'' 64 FR 509 (Jan. 5, 1999). The current Commission reaffirms that determination. The Indian Gaming Regulatory Act, which established the regulatory structure for all classes of Indian gaming, expressly provides that the Commission ''shall promulgate such regulations as it deems appropriate to implement the provisions of (the Act).'' 25 U.S.C. 2707(b)(10).

Pursuant to this clearly stated statutory duty and authority under the Act, the Commission has determined that MICS are necessary and appropriate to implement and enforce the regulatory provisions of the Act governing the conduct of both Class II and Class III gaming and accomplish the purposes of the Act.

The Commission believes that the importance of internal control systems in the casino operating environment cannot be overemphasized. While this is true of any industry, it is particularly true and relevant to the revenue generation processes of a gaming enterprise, which, because of the physical and technical aspects of the games and their operation and the randomness of game outcomes, makes exacting internal controls mandatory. The internal control systems are the primary management procedures used to protect the operational integrity of gambling games, account for and protect gaming assets and revenues, and assure the reliability of the financial statements for Class II and Class III gaming operations. Consequently, internal control systems are a vitally important part of properly regulated gaming. Effective internal control systems are dependent upon the gaming enterprise's governing board, management, and other personnel who are responsible for providing reasonable assurance regarding the achievement of the enterprise's objectives. These objectives typically include operational integrity, effectiveness, and efficiency, reliable financial statement reporting, and compliance with all applicable laws and regulations. The Commission believes that strict regulations, such as the MICS, are not only appropriate but necessary for it to fulfill its responsibilities under the IGRA to establish necessary baseline, or minimum, Federal standards for all Tribal gaming operations on Indian lands. 25 U.S.C. 2702(3). Although the Commission recognizes that many Tribes had sophisticated internal control standards in place prior to the Commission's original promulgation of its MICS, the Commission also continues to strongly believe that promulgation and revision of these standards is necessary and appropriate to effectively implement the provisions of the Indian Gaming Regulatory Act and, therefore, within the Commission's clearly expressed statutory power and duty under Section 2706(b)(10) of the Act.

Comments Recommending Voluntary Tribal Compliance With MICS

Comments were also received suggesting that the NIGC should re-issue the MICS as a bulletin or guideline for Tribes to use voluntarily, at their discretion, in developing and implementing their own Tribal gaming ordinances and internal control standards. The Commission disagrees. The MICS are common in established gaming jurisdictions and, to be effective in establishing a minimum baseline for the internal operating procedures of Tribal gaming enterprises, the rule must be concise, explicit, and uniform for all Tribal gaming operations to which they apply. Furthermore, to nurture and promote public confidence in the integrity and regulation of Indian gaming and ensure its adequate regulation to protect Tribal gaming assets and the interests of Tribal stakeholders and the public, the Commission's MICS regulations must be reasonably uniform in their implementation and application and regularly monitored and enforced by Tribal regulators and the NIGC to ensure Tribal compliance.

Final Revisions to Section 542.3(f) CPA Testing

The Commission has revised the referenced regulation to clarify the type of report being requested and more accurately define the scope and function of the process deemed necessary to ensure consistency and reliability of the reports produced. The text of the final revision is set forth following the conclusion of this preamble in which all of the final revisions to the Commission's MICS rule, 25 CFR part 542, are discussed.

Since the MICS were initially adopted, the CPA testing standard has been the subject of much concern and question due to its lack of specificity. Numerous inquiries have been received from Tribal regulators, gaming operators and accounting practitioners. As a result of the issues raised, in June 2000, guidelines were issued by the Commission to aid in the interpretation of the regulation; however, questions and inconsistencies in the reports continue to exist. Therefore, the final revision is intended to clarify or define (1) the type of reporting required of the independent accountant, (2) that the Commission does not possess an expectation that the independent accountant render an opinion regarding the overall quality of the gaming operation's internal control systems, (3) more accurately the scope and breath of the testing and observations to be performed by the practitioner in conjunction with the engagement, and (4) that reliance by the CPA upon the work of the internal auditor is an acceptable option, subject to satisfaction of certain conditions and the determination by the practitioner that

the work product of the internal auditor is sufficient to justify reliance.

Comments were received acknowledging the need to define explicitly the regulation's expectations. Furthermore, it was stated that the final revision may result in a reduction in costs to many Tribes and will likely improve the quality of the data produced by the CPA.

As initially drafted, the proposed revision contained rather exacting criteria that the CPA should consider in determining whether to rely on the work of the internal auditor. The criteria addressed such items as education, professional certification, and experience. Several commenters misinterpreted the noted conditions as establishing minimum criteria for hiring an internal auditor; practitioners noted that even though an internal auditor or internal audit department failed to satisfy the criteria the work product produced might still be of sufficient quality to warrant reliance. The Commission reconsidered the explicit criteria and deleted them. As reflected in the final revision, the CPA is advised that reliance is at the discretion of the practitioner provided the internal audit department can demonstrate satisfaction of the MICS requirements contained within the internal audit sections, as applicable.

One commenter noted that the current regulation requires the CPA to test for material compliance; whereas, the final revision indicates that all instances of procedural noncompliance be reported, without regard to materiality. A concern was expressed whether the change represents a more stringent condition. Although the Commission appreciates the concern, we do not believe the striking of the reference to material compliance should have a significant impact on the work performed by practitioners. The term ''material'' has a financial connotation that is misplaced in a regulation possessing the intent of measuring regulatory compliance with a codified set of minimum internal control procedures. In essence, the term is simply ambiguous when utilized in the context of compliance testing. However, it is important to recognize that the ultimate beneficiary of the information is the gaming operation's management. The report produced is intended to provide compliance data to the operator that will facilitate the initiation of a proactive response to the findings. Obviously, inherent in the merit of disclosing compliance exceptions is the need for corrective action. We do not believe the final regulation precludes the CPA from exercising professional judgment in determining whether an exception warrants disclosure. For example, the Commission would not consider a report to be noncompliant if, during the sampling of a large number of items, the CPA detected a minimal number of compliance exceptions and determined that they represented only isolated incidents of noncompliance, which did not justify a remedial response.

Furthermore, if during testing of transactions at the beginning of an audit period items of noncompliance were detected but the CPA was able to confirm that corrective action had been effectively implemented by the end of the period, it would be entirely appropriate for the practitioner to exercise professional judgment in deciding whether there was any worthwhile benefit to disclosure.

Since initial adoption, concerns have been expressed regarding the regulation because it stipulates the benchmark for measuring compliance to the internal control standards adopted by the Tribal gaming regulatory authority. Specifically, it was noted that it is not uncommon for Tribal standards to be more stringent than the federal rule or require procedures not in the MICS. The propriety of requiring the CPA to report incidences of noncompliance on standards not representing noncompliance with the NIGC MICS was questioned. In consideration of the Commission's stated objective of creating a minimum baseline for internal control systems, we concur with the expressed concern. Therefore, in conjunction with the revision of the section, it was changed to require compliance testing against the federal rule; however, at the discretion of the Tribe, the Tribe may opt to engage the external accountant to audit for compliance against the standards adopted by the Tribal gaming regulatory authority. If the alternative testing criteria are desired, the final revision require the CPA to first confirm that the applicable Tribal regulations provide a level of control that equals or exceed those set forth in part 542.

One commenter objected to the explicit nature of the testing criteria contained within the final revision. The concern was specific as to whether any deviation from the stipulated testing would be permissible: the Tribal gaming regulatory authority should have the latitude to require testing of greater scope and depth, and the CPA should be able to expand or contract testing based on a risk analysis.

The Commission does not concur with the concern expressed. To ensure consistency and reliability of the reports produced, it is necessary that a minimum level of testing be performed by practitioners. Although the final revision states that the NIGC MICS compliance checklist or other comparable testing procedures be performed, the Commission does not believe the final regulation should be so narrowly interpreted as to preclude any deviation. For example, a Tribal gaming regulatory authority might require the CPA to conduct more in depth testing of gaming machines located in a high stakes area or might permit a lesser level of testing for table games possessing exceedingly low bet limits. Such determinations would simply be based on an analysis of the risk posed by specific games. Furthermore, the CPA has the latitude to exercise professional judgment in determining sample size and scope. For example, a firm possessing several years of experience with a client that has had an exemplary record of addressing compliance exceptions might result in the external accountant's contraction of testing. Whereas, if the converse situation existed in which management had been non-responsive to exceptions, the external accountant might deem it prudent to expand testing since the control environment would likely be at a higher risk of compromise.

Another commenter questioned whether it would be permissible for a CPA to perform the required observations subsequent to the fiscal year end. Although the Commission questions the wisdom of performing observations at a time outside the period subject to review, we do not believe the final regulation explicitly prohibits it. However, recognizing that the results of such observation would have diminished value, expanded compensating document testing relevant to the audit period would seem to be a logical action.

One commenter recommended that the Commission should codify in the rule that the CPA testing period be the fiscal year of the gaming enterprise. The Commission disagrees with the need to stipulate in the rule that the period subject to audit must be the fiscal year. Inherent in the filing requirement that the report be submitted within 120 days of the gaming operation's fiscal year end, it is the presumption that the period subject to review will be the business year. The Commission is unaware of this concern being of any significance within the industry.

A commenter suggested that the final revisions require the CPA to submit a copy of internal audit reports when there is reliance. Furthermore, the commenter represented that in accordance with the referenced Agreed-

Upon-Procedures pronouncement, the practitioner is precluded from extracting data from the internal audit reports. Other commenters have not agreed with this position when the CPA has performed such testing as necessary to gain sufficient assurance in the quality of the internal audit work to rely thereon. Although the Commission has received internal audit reports from CPA firms, we do not concur that such submissions should be required. Our position is founded upon the fact that the filings frequently include findings unrelated to the MICS, *i.e.* incidents of noncompliance with internal policies and procedures such as personnel or recommendations to management regarding productivity and efficiency.

Another commenter recommended that the final revisions require the inclusion of management responses to the compliance audit findings. Although occasionally submissions do include comments or anticipated remedial actions plans from management, the Commission believes that including such a requirement in the rule would unduly hinder satisfaction of the filing deadline of 120 days past fiscal year end. It is important to note that the primary beneficiary of the independent report is management, who should require, as a component of the enterprise's overall operational objectives, compliance with all applicable laws and regulations. Although the Commission utilizes the data submitted to evaluate the internal control systems and their compliance with the federal rule, the CPA testing report is only one of several sources of information drawn upon to perform the analysis. It is the position of the Commission that the lack of management responses will not significantly impede that evaluation.

A commenter suggested that the CPA, in testing of internal audit work performed, be allowed to accept digital copies or facsimile of original documents. The Commission concurs with the suggestion. It is not uncommon for such reproductions to carry the same weight as the original, and the final regulation is not intended to preclude the procedure.

Another commenter suggested that the count observations be required to be initiated at the beginning of the drop/count process, as such a procedure would facilitate observation of the key control and surveillance notification functions.

The Commission disagrees with the suggestion. The objective of entering the count room after commencement of the count is to detect irregularities and internal control deficiencies, which would not be as likely if count personnel were aware that observations were going to be performed. Furthermore, with regards to the required key controls and notification of surveillance, documentation of such events is mandated by the MICS, which enables a subsequent audit.

One commenter raised a concern that the final revisions will supersede the authority of the Tribe to determine the scope and depth of the testing to be performed in accordance with the Agreed-Upon-Procedures pronouncement and, in effect, transfer accountability of the CPA to the Commission. The Commission disagrees with the commenter's interpretation of the final revision. Contained therein is the representation that an independent Certified Public Accountant shall be engage to perform the compliance testing. The statement is purposeful in its lack of specificity regarding the entity within the Tribe that would assume responsibility for executing the engagement letter. It is the position of the Commission that such a decision should be left to the discretion of the Tribe. Although in practice most engagement letters are signed by an authorized management person or audit committee representative, the Commission has also noted engagements originating with the Tribal gaming regulatory authority. Without regard to the entity or individual possessing the authority to engage the independent accountant, there should be no misunderstanding that the objective of the final revision is to establish only the minimum criteria that must be incorporated in the engagement letter. Furthermore, the CPA should be well aware that their client is the engaging party, not the Commission.

Another commenter noted that the auditing profession has established methods and procedures to guide CPA firms in documenting and conducting their reviews through the AICPA's Casino Audit and Accounting Guide and the Auditing Standards Board's Statement on Standards for Attestation Engagements, specifically SSAE10. The commenter observed that these standards provide CPA firms pertinent guidance regarding the process, procedures, and reporting format and requirements to be employed.

The Commission disagrees with the commenter; not because we believe the Audit and Accounting Guide for casinos conflicts with any standard contained within the MICS, but because the professional pronouncement simply lacks sufficient specificity to effectively confirm compliance with the federal rule or the Tribal internal control standards. With regard to the pronouncement relevant to performance of attestation engagements, the Commission embraces the concepts contained therein and considers the final revision to complement the directive. However, we do not accept the premise that the professional directive is adequate to ensure reliability and consistency in the reports; considering the report's objective of identifying incidences of noncompliance with a codified set of control procedures, which can be rather exacting.

Another commenter objected to the CPA firm's personnel performing observations in the count room while the count is in progress because they would have potential access to unaccounted for funds. Although the Commission appreciates the concern expressed, it is our position that for the practitioner to effectively test the internal control systems for compliance there must be unfettered access to all applicable areas and records of the gaming operation. Of course, the Commission would consider it prudent for management or the Tribal regulatory authority to initiate compensating controls to offset the risk posed by persons external to the casino being in areas in which access is restricted; however, in consideration of such controls, they should not unduly interfere with the objectives of the engagement.

Initial drafts of the final rule contained a requirement that the gaming operation must provide the CPA with written assurance regarding compliance by the internal auditor or internal audit department with applicable standards contained within the internal audit sections of the MICS. Comments were received questioning the need for the CPA to receive such written assurance since the external accountant would still be expected to confirm the representation. The Commission concurs with the commenter and has struck the noted requirement from the final rule.

One commenter suggested that any additional procedures performed at the request of the Tribal gaming regulatory authority or management be limited to gaming related transactions or activities. The Commission disagrees with the suggestion. The anticipated scope of testing reflected in the final revisions to Section 542.3(f) is well defined, and no additional clarification is necessary. Furthermore, the Tribal gaming regulatory authority or management should have the discretion to expand the scope of testing as they deem warranted.

Another commenter recommended that the CPA reperformance of internal audit testing criteria, such as the three percent sample selection for the gaming machine and table games departments, include a minimum number of tests to be reperformed or a minimum number of transactions to retest. The Commission disagrees with the recommendation. In determining sample size, the objective is to gain reasonable assurance regarding the true characteristics of the population being tested. The conceptual basis for determining sample size does not change based on the size of the population, assuming consistency is maintained within the population. Considering that absolute assurance is not an expectation, the sample selection criteria contained in the final revision should produce acceptable results.

Final Revisions to the Following Sections: 542.7(d) (Bingo) Accountability Form; 542.8(f) (Pull-Tab) Accountability Form; 542.10(f) (Keno) Checkout Standards at the End of Each Keno Shift; 542.11(e) (Pari-Mutuel Wagering) Checkout Standards; 542.13(f) (Gaming Machines) Gaming Machine Department Funds Standards; 542.14(d) (Cage) Cage and Vault Accountability Standards

Revisions to the referenced sections of the MICS are intended to clarify the respective existing regulations. Specifically, the change is to state explicitly that unverified transfers of cash or cash equivalents accountability are prohibited.

Initially, the proposed revision stated that blind drops are prohibited but several commenters noted that the term had rather diverse interpretations. It was recommended that the revision would be more precise to state, ''Unverified transfers of cash and/or cash equivalents are prohibited.'' The Commission concurs with the recommendation and revised the initial draft accordingly.

Comment was received recommending that the final revision also be added to the relevant standards contained within the MICS drop and count sections. The Commission disagrees with the recommendation. The standards contained within the drop and count sections are sufficiently clear that no additional clarification is needed. The standards are effective in precluding unverified transfers.

Final Revision to Section 542.14(d)(4) Cage and Vault Accountability Standards

Based on the result of compliance audits conducted by the Commission and research performed, it has been determined that the referenced standard is incorrect with respect to its placement within the MICS. The standards were intended to codify the minimum components of the cage/vault accountability. Unfortunately, included within the list of items is gaming machine hopper loads. Generally accepted gaming regulatory standards and common industry practice would dictate that the value of the hoppers be reflected in a general ledger account, not the cage/vault accountability. To correct the error, the Commission is striking the referenced control.

No comments were received concerning the final revision.

Final Revisions to Section 542.17 Complimentary Services or Items

In June 2002, a revision was made to the referenced section in which a stated value of 50 dollars was replaced by a non-specified amount that was required to be merely reasonable. The threshold dictates when a complimentary ''comp'' transaction must be included in a report for review by management. The objective of the report is to facilitate supervisory oversight of the comps process for the purpose of ensuring compliance with the gaming operation's comp policy.

Unfortunately, confusion and conflict have resulted from the 2002 revision. Therefore, the Commission is revising the regulation to require that individual comp transactions equal to or exceeding 100 dollars be included in the report, unless the Tribal gaming regulatory authority determines that the threshold should be a lesser amount.

As initially drafted, the proposed revision did not acknowledge that the Tribal gaming regulatory authorities had the latitude of establishing an amount less than 100 dollars. A commenter recommended that the draft be revised to grant such an option. The Commission has accepted and effectuated the recommendation.

Other comments were received supporting the revision.

Final Revisions to the Following Sections: 542.21(f)(12) (Tier A—Drop and Count) Gaming Machine Bill Acceptor Count Standards; 542.31(f)(12) (Tier B—Drop and Count) Gaming Machine Bill Acceptor Count Standards; 542.41(f)(12) (Tier C—Drop and Count) Gaming Machine Bill Acceptor Count Standards

The referenced standards represent duplicate controls to identical requirements contained within the respective sections Gaming Machine Bill Acceptor Drop Standards, Sections 542.21(e)(4), 542.31(e)(5), and 542.41(e)(5). Specifically, the standard requires that each bill acceptor canister be posted with a number corresponding to that of the machine from which it was extracted. The subject control pertains to a drop function, as opposed to the count process. Therefore, the Commission is deleting the above subsections.

No comments were received concerning the final revision.

Final Revisions to 542.21(f)(4)(ii) Drop and Count for Tier A; 542.31(f)(4)(ii) Drop and Count for Tier B; 542.41(f)(4)(ii) Drop and Count for Tier C

The Commission is deleting the referenced standards, which require a second count of the gaming machine bill acceptor drop by a count team member who did not perform the first count. In justification of the final revision, it is important to note that the Commission has attempted to rely on the advice and experience of the established gaming jurisdictions in defining its minimum internal control regulation. Such a methodology is deemed to be not only efficient but prudent. Generally, the MICS represent a rather simplistic abbreviation of commensurate controls of the established gaming jurisdictions, which has left much room for Tribal gaming regulators to complement. However, consistent with such a concept is the need for the Commission to be cognizant of any standards enacted that are overreaching. In other words, before requiring a control more stringent than the established gaming jurisdictions, the Commission should have a compelling reason for its action. The deletion of the noted standards is founded upon the premise that they are inconsistent with the established gaming jurisdictions and are lacking in a compelling reason justifying a more stringent procedure for Tribal gaming. Unlike the drop originating with table games, meter data should be available to confirm the gaming machine bill acceptor count, which sufficiently mitigates the risk of compromise associated with that process. Based on research performed, it is the belief of the Commission that the double count requirement resulted from a drafting error in June 2002, which originated from the reformatting of the drop and count sections. Therefore, it is the position of the Commission that the standards in question should be struck.

One commenter expressed the position that the second count of the currency is appropriate and should remain in the MICS. The Commission disagrees with the commenter for the reasons previously stated. However, as

echoed throughout the MICS and within the preamble, the Tribal gaming regulatory authorities have primary responsibility for the regulation of their respective gaming operation(s) and have the latitude of requiring controls more stringent than those of the federal rule.

Another commenter suggested that the rule should be made conditional such that only when the gaming operation employs an effective on-line accounting system should the second count be foregone. The Commission disagrees, since verification of the drop to the currency in meter reading is required by the MICS, without regard to whether the meter data is collected electronically or manually.

One commenter questioned the consistency of the Commission's action to delete the subject standards with its position regarding the prohibition against unverified transfers of an individual's accountability. The Commission does not recognize an inconsistency. The count team takes possession of the drop proceeds and is responsible for those funds until they are transferred to the cage/vault (buy process). The count team executes a count of the monies and, in conjunction with the transfer of the accountability, the vault or cage supervisory performs another count to verify the amount being conveyed to their accountability. Consequently, no cash inventories are being transferred from one person to another without mutual verification and acceptance.

Final Addition of Section 542.22(g) Internal Audit Guidelines—Tier A; 542.32(g) Internal Audit Guidelines—Tier B; 542.42(g) Internal Audit Guidelines—Tier C

The Commission added the referenced regulations to the MICS, which represents a simple notification to internal auditors and internal audit departments that the Commission will provide recommended guidelines to aid in satisfaction of the testing requirements contained within the internal audit sections of the MICS. The guidelines do not represent a rule requiring adherence but an aid for internal auditors to take advantage of as they deem appropriate.

No comments were received concerning the final revision.

Final Revision to 542.23(n)(3) Tier A Surveillance—Wide Area Progressive Gaming Machines; 542.33(q)(3) Tier B Surveillance—Wide Area Progressive Gaming Machines; and 542.43(r)(3) Tier C Surveillance—Wide Area Progressive Gaming Machines

Prior to June 2002, the referenced regulations required certain dedicated camera coverage over wide area progressive machines with a potential payout of 3 million dollars or more. In conjunction with the revisions of 2002, the standards were revised to require the additional camera coverage over the noted machines if the base amount was more than 1.5 million dollars, irrespective of potential payout.

Based on the experience gained by the Commission, it has been determined that the referenced revision negated the effectiveness of the regulation, which is to require a heightened level of surveillance coverage over wide area progressive devices commensurate with the risk posed to Tribal assets and operational integrity. Such risk is directly related to the size of the potential awards but is mitigated somewhat by the fact that a third party, the wide area progressive vendor, is involved in the transaction.

The final revision is intended to regain the effectiveness of the original regulation, consistent with the industry's regulatory standards. Specifically, the threshold is being lowered to a starting base amount of 1 million dollars or more.

One commenter concurred with the final revision and acknowledged the limited effectiveness of the 1.5 million dollar base threshold. Another commenter recommended that the control be modified to require surveillance to utilize a real time standard for monitoring and recording a video of the activity in question. The Commission enthusiastically supports the position expressed by the commenter, since it is our belief that this critical function should require a surveillance standard employing a sufficient clarity criterion and be observed and recorded at 30 frames or images per second, as applicable. However, the MICS currently defines sufficient clarity as requiring only 20 frames per second. Since we believe that the term ''real time'' is generally understood to mean at least 30 frames per second, injecting it into the final revision would likely create an ambiguity within the MICS.

One commenter questioned whether the additional cost resulting from the expansion of the standard's applicability is justified. The Commission appreciates the commenter's concern; however, performance of a cost benefit analysis in conjunction with the evaluation of a control can be a challenging exercise. For example, measuring the economic impact of an irregularity that did not occur because it was deterred by an effective internal control system is a highly speculative endeavor. However, a truism of gaming widely accepted by industry professionals is that as the potential reward increases so does the likelihood of compromise. This characteristic of gaming is not unrelated to the final revision. There is much wisdom within a process that learns from the experience of our peers who are more seasoned in the regulation of gaming. The final revision is founded upon this concept. Therefore, considering that the lowered threshold will only bring the applicability of the control closer to that of the established gaming jurisdictions, the Commission believes the commenter's concern does not justify reconsideration of the final revision.

Regulatory Matters

Regulatory Flexibility Act

The Commission certifies that the final rule revisions to the Minimum Internal Control Standards contained within this regulation will not have a significant economic impact on small entities, 5 U.S.C. 605(b). The factual basis for this certification is as follows:

Of the 367 Indian gaming operations across the country, approximately 115 of the operations have annual gross revenues of less than 5 million dollars. Of these, approximately 59 operations have gross revenues of under 1 million dollars. Since the final revisions will not apply to gaming operations with gross revenues under 1 million dollars, only 59 small operations may be affected. While this is a substantial number, the Commission believes that the final revisions will not have a significant economic impact on these operations for several reasons.

Even before implementation of the original MICS, Tribes had internal controls because they are essential to gaming operations in order to protect assets. The costs involved in implementing these controls are part of the regular business costs incurred by such an operation. The Commission believes that many Indian gaming operation internal control standards are more stringent than those contained in these regulations. Further, the final rule revisions are technical and minor in nature.

Under the final revisions, small gaming operations grossing under 1 million dollars are exempt from MICS compliance. Tier A facilities (those with gross revenues between 1 and 5 million dollars) are subject to the yearly requirement that independent certified public accountant testing occur. The purpose of this testing is to measure the gaming operation's compliance with the Tribe's internal control standards. The cost of compliance with this requirement for small gaming operation is estimated at between 3,000 and 5,000 dollars. The cost of this report is minimal and does not create a significant economic effect on gaming operations. What little impact exists is further offset because other regulations require yearly independent financial audits that can be conducted at the same time. For these reasons, the Commission has concluded that the final rule revisions will not have a significant economic impact on those small entities subject to the rule.

Small Business Regulatory Enforcement Fairness Act

These final revisions do not constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The revisions will not have an annual effect on the economy of 100 million dollars or more. The revisions also will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that the final rule revisions do not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector, of more than 100 million dollars per year. Thus, this is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has, however, determined that the final rule revisions may have a unique effect on Tribal governments, as they apply exclusively to Tribal governments, whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands, as defined by the Indian Gaming Regulatory Act. Thus, in accordance with Section 203 of the Unfunded Mandates Reform Act, the Commission undertook several actions to provide Tribal governments with adequate notice, opportunity for ''meaningful'' consultation, input, and shared information, advice, and education regarding compliance. These actions included the formation of a Tribal Advisory Committee and the request for input from Tribal leaders.

Section 204(b) of the Unfunded Mandates Reform Act exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings with Tribal elected officials (or their designees) for the purpose of exchanging views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. In selecting Committee members, consideration was placed on the applicant's experience in this area, as well as the size of the Tribe the nominee represented, geographic location of the gaming operation, and the size and type of gaming conducted. The Commission attempted to assemble a Committee that incorporates diversity and is representative of Tribal gaming interests. The Commission met with the Advisory Committee and discussed the public comments that are received as a result of the publication of the proposed MICS rule revisions and considered all Tribal and public comments and Committee recommendations before formulating the final rule revisions. The Commission also plans to continue its policy of providing necessary technical assistance, information, and support to enable Tribes to implement and comply with the MICS as revised. The Commission also provided the proposed revisions to Tribal leaders for comment prior to publication of this final rule and considered these comments in formulating the final rule.

Takings

In accordance with Executive Order 12630, the Commission has determined that the following final MICS rule revisions do not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the following final MICS rule revisions do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The following final MICS rule revisions require information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*, as did the rule it revises. There is no change to the paperwork requirements created by these final revisions. The Commission's OMB Control Number for this regulation is 3141–0009.

National Environmental Policy Act

The Commission has determined that the following final MICS rule revisions do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 25 CFR part 542

Accounting, Auditing, Gambling, Indian-lands, Indian-Tribal government, Reporting and recordkeeping requirements.

■ Accordingly, for all of the reasons set forth in the foregoing preamble, the National Indian Gaming Commission amends 25 CFR part 542 as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

■ 1. The authority citation for Part 542 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

■ 2. Amend § 542.3 by revising paragraph (f) to read as follows:

§ 542.3 How do I comply with this part?

* * * * *

(f) *CPA testing.* (1) An independent certified public accountant (CPA) shall be engaged to perform ''Agreed-Upon Procedures'' to verify that the gaming operation is in compliance with the minimum internal control standards (MICS) set forth in this part or a Tribally approved variance thereto that has received Commission concurrence. The CPA shall report each event and procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy the minimum standards or Tribally approved variance that has received Commission concurrence. The ''Agreed-Upon Procedures'' may be performed in conjunction with the annual audit. The CPA shall report its findings to the Tribe, Tribal gaming regulatory authority, and management. The Tribe shall submit two copies of the report to the Commission within 120 days of the gaming operation's fiscal year end. This regulation is intended to communicate the Commission's position on the minimum agreed-upon procedures to be performed by the CPA. Throughout these regulations, the CPA's engagement and reporting are based on Statements

on Standards for Attestation Engagements (SSAEs) in effect as of December 31, 2003, specifically SSAE 10 (''Revision and Recodification Agreed-Upon Procedures Engagements.''). If future revisions are made to the SSAEs or new SSAEs are adopted that are applicable to this type of engagement, the CPA is to comply with any new or revised professional standards in conducting engagements pursuant to these regulations and the issuance of the agreed-upon procedures report. The CPA shall perform the ''Agreed-Upon Procedures'' in accordance with the following:

(i) As a prerequisite to the evaluation of the gaming operation's internal control systems, it is recommended that the CPA obtain and review an organization chart depicting segregation of functions and responsibilities, a description of the duties and responsibilities of each position shown on the organization chart, and an accurate, detailed narrative description of the gaming operation's procedures in effect that demonstrate compliance.

(ii) Complete the CPA NIGC MICS Compliance checklists or other comparable testing procedures. The checklists should measure compliance on a sampling basis by performing walk-throughs, observations and substantive testing. The CPA shall complete separate checklists for each gaming revenue center, cage and credit, internal audit, surveillance, information technology and complimentary services or items. All questions on each applicable checklist should be completed. Work-paper references are suggested for all ''no'' responses for the results obtained during testing (unless a note in the ''W/P Ref''' can explain the exception).

(iii) The CPA shall perform, at a minimum, the following procedures in conjunction with the completion of the checklists:

(A) At least one unannounced observation of each of the following: Gaming machine coin drop, gaming machine currency acceptor drop, table games drop, gaming machine coin count, gaming machine currency acceptor count, and table games count. The AICPA's ''Audits of Casinos'' Audit and Accounting Guide states that ''observations of operations in the casino cage and count room should not be announced in advance * * *'' For purposes of these procedures, ''unannounced'' means that no officers, directors, or employees are given advance information regarding the dates or times of such observations. The independent accountant should make arrangements with the gaming operation and Tribal gaming regulatory authority to ensure proper identification of the CPA's personnel and to provide for their prompt access to the count rooms.

(*1*) The gaming machine coin count observation would include a weigh scale test of all denominations using pre-counted coin. The count would be in process when these tests are performed, and would be conducted prior to the commencement of any other walk-through procedures. For computerized weigh scales, the test can be conducted at the conclusion of the count, but before the final totals are generated.

(*2*) The checklists should provide for drop/count observations, inclusive of hard drop/count, soft drop/count and currency acceptor drop/count. The count room would not be entered until the count is in process and the CPA would not leave the room until the monies have been counted and verified to the count sheet by the CPA and accepted into accountability. If the drop teams are unaware of the drop observations and the count observations would be unexpected, the hard count and soft count rooms may be entered simultaneously. Additionally, if the gaming machine currency acceptor count begins immediately after the table games count in the same location, by the same count team, and using the same equipment, the currency acceptor count observation can be conducted on the same day as the table games count observation, provided the CPA remains until monies are transferred to the vault/cashier.

(B) Observations of the gaming operation's employees as they perform their duties.

(C) Interviews with the gaming operation's employees who perform the relevant procedures.

(D) Compliance testing of various documents relevant to the procedures. The scope of such testing should be indicated on the checklist where applicable.

(E) For new gaming operations that have been in operation for three months or less at the end of their business year, performance of this regulation, section 542.3(f), is not required for the partial period.

(*2*) Alternatively, at the discretion of the Tribe, the Tribe may engage an independent certified public accountant (CPA) to perform the testing, observations and procedures reflected in paragraphs (f)(1)(i), (ii), and (iii) of this section utilizing the Tribal internal control standards adopted by the Tribal gaming regulatory authority or Tribally approved variance that has received Commission concurrence. Accordingly, the CPA will verify compliance by the gaming operation with the Tribal internal control standards. Should the Tribe elect this alternative, as a prerequisite, the CPA will perform the following:

(i) The CPA shall compare the Tribal internal control standards to the MICS to ascertain whether the criteria set forth in the MICS or Commission approved variances are adequately addressed.

(ii) The CPA may utilize personnel of the Tribal gaming regulatory authority to cross-reference the Tribal internal control standards to the MICS, provided the CPA performs a review of the Tribal gaming regulatory authority personnel's work and assumes complete responsibility for the proper completion of the work product.

(iii) The CPA shall report each procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy paragraph (f)(2)(i) of this section.

(3) *Reliance on Internal Auditors.* (i) The CPA may rely on the work of an internal auditor, to the extent allowed by the professional standards, for the performance of the recommended procedures specified in paragraphs (f)(1)(iii)(B), (C), and (D) of this section, and for the completion of the checklists as they relate to the procedures covered therein provided that the internal audit department can demonstrate to the satisfaction of the CPA that the requirements contained within § 542.22, 542.32, or 542.42, as applicable, have been satisfied.

(ii) Agreed-upon procedures are to be performed by the CPA to determine that the internal audit procedures performed for a past 12-month period (includes two 6-month periods) encompassing a portion or all of the most recent business year has been properly completed. The CPA will apply the following Agreed-Upon Procedures to the gaming operation's written assertion:

(A) Obtain internal audit department work-papers completed for a 12-month period (includes two 6-month periods) encompassing a portion or all of the most recent business year and determine whether the CPA NIGC MICS Compliance Checklists or other comparable testing procedures were included in the internal audit work-papers and all steps described in the checklists were initialed or signed by an internal audit representative.

(B) For the internal audit work-papers obtained in paragraph (f)(3)(ii)(A) of this section, on a sample basis, reperform the procedures included in CPA NIGC MICS Compliance Checklists or other comparable testing procedures prepared

by internal audit and determine if all instances of noncompliance noted in the sample were documented as such by internal audit. The CPA NIGC MICS Compliance Checklists or other comparable testing procedures for the applicable Drop and Count procedures are not included in the sample reperformance of procedures because the CPA is required to perform the drop and count observations as required under paragraph (f)(1)(iii)(A) of this section of the Agreed-Upon Procedures. The CPA's sample should comprise a minimum of 3 percent of the procedures required in each CPA NIGC MICS Compliance Checklist or other comparable testing procedures for the gaming machine and table game departments and 5 percent for the other departments completed by internal audit in compliance with the internal audit MICS. The reperformance of procedures is performed as follows:

(*1*) For inquiries, the CPA should either speak with the same individual or an individual of the same job position as the internal auditor did for the procedure indicated in their checklist.

(*2*) For observations, the CPA should observe the same process as the internal auditor did for the procedure as indicated in their checklist.

(*3*) For document testing, the CPA should look at the same original document as tested by the internal auditor for the procedure as indicated in their checklist. The CPA need only retest the minimum sample size required in the checklist.

(C) The CPA is to investigate and resolve any differences between their reperformance results and the internal audit results.

(D) Documentation is maintained for 5 years by the CPA indicating the procedures reperformed along with the results.

(E) When performing the procedures for paragraph (f)(3)(ii)(B) of this section in subsequent years, the CPA must select a different sample so that the CPA will reperform substantially all of the procedures after several years.

(F) Any additional procedures performed at the request of the Commission, the Tribal gaming regulatory authority or management should be included in the Agreed-Upon Procedures report transmitted to the Commission.

(4) *Report Format.* (i) The NIGC has concluded that the performance of these procedures is an attestation engagement in which the CPA applies such Agreed-Upon Procedures to the gaming operation's assertion that it is in compliance with the MICS and, if applicable under paragraph (f)(2) of this section, the Tribal internal control standards and approved variances, provide a level of control that equals or exceeds that of the MICS. Accordingly, the Statements on Standards for Attestation Engagements (SSAE's), specifically SSAE 10, issued by the Auditing Standards Board is currently applicable. SSAE 10 provides current, pertinent guidance regarding agreed-upon procedure engagements, and the sample report formats included within those standards should be used, as appropriate, in the preparation of the CPA's agreed-upon procedures report. If future revisions are made to this standard or new SSAEs are adopted that are applicable to this type of engagement, the CPA is to comply with any revised professional standards in issuing their agreed upon procedures report. The Commission will provide an Example Report and Letter Formats upon request that may be used and contain all of the information discussed below:

(A) The report must describe all instances of procedural noncompliance regardless of materiality) with the MICS or approved variations, and all instances where the Tribal gaming regulatory authority's regulations do not comply with the MICS. When describing the agreed-upon procedures performed, the CPA should also indicate whether procedures performed by other individuals were utilized to substitute for the procedures required to be performed by the CPA. For each instance of noncompliance noted in the CPA's agreed-upon procedures report, the following information must be included:

(*1*) The citation of the applicable MICS for which the instance of noncompliance was noted.

(*2*) A narrative description of the noncompliance, including the number of exceptions and sample size tested.

(5) *Report Submission Requirements.* (i) The CPA shall prepare a report of the findings for the Tribe and management. The Tribe shall submit 2 copies of the report to the Commission no later than 120 days after the gaming operation's business year. This report should be provided in addition to any other reports required to be submitted to the Commission.

(ii) The CPA should maintain the work-papers supporting the report for a minimum of five years. Digital storage is acceptable. The Commission may request access to these work-papers, through the Tribe.

(6) *CPA NIGC MICS Compliance Checklists.* In connection with the CPA testing pursuant to this section and as referenced therein, the Commission will provide CPA MICS Compliance Checklists upon request.

* * * * *

■ 3. Amend § 542.7 by revising paragraph (d)(2) to read as follows:

§ 542.7 What are the minimum internal control standards for bingo?

* * * * *

(d) * * *

(2) All funds used to operate the bingo department shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

■ 4. Amend § 542.8 by revising paragraph (f)(2) to read as follows:

§ 542.8 What are the minimum internal control standards for pull tabs?

* * * * *

(f) * * *

(2) All funds used to operate the pull tab game shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

■ 5. Amend § 542.10 by revising paragraph (f)(1)(ii) to read as follows:

§ 542.10 What are the minimum internal control standards for keno?

* * * * *

(f) * * *

(1) * * *

(ii) Signatures of two employees who have verified the net cash proceeds for the shift and the cash turned in. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

■ 6. Amend § 542.11 by revising paragraph (e)(2)(ii) to read as follows:

§ 542.11 What are the minimum internal control standards for pari-mutuel wagering?

* * * * *

(e) * * *

(2) * * *

(ii) Signature of two employees who have verified the cash turned in for the shift. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

■ 7. Amend § 542.13 by revising paragraph (f)(1) to read as follows:

§ 542.13 What are the minimum internal control standards for gaming machines?

* * * * *

(f) * * *

(1) The gaming machine booths and change banks that are active during the shift shall be counted down and reconciled each shift by two employees utilizing appropriate accountability documentation. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

■ 8. Amend § 542.14 by revising paragraphs (d)(2) and (3) to read as follows and by removing paragraph (d)(4):

§ 542.14 What are the minimum internal control standards for the cage?

* * * * *

(d) * * *

(2) The cage and vault (including coin room) inventories shall be counted by the oncoming and outgoing cashiers. These employees shall make individual counts for comparison for accuracy and maintenance of individual accountability. Such counts shall be recorded at the end of each shift during which activity took place. All discrepancies shall be noted and investigated. Unverified transfers of cash and/or cash equivalents are prohibited.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with a minimum bankroll formula to ensure the gaming operation maintains cash or cash equivalents (on hand and in the bank, if readily accessible) in an amount sufficient to satisfy obligations to the gaming operation's customers as they are incurred. A suggested bankroll formula will be provided by the Commission upon request.

* * * * *

■ 9. Amend § 542.17 by revising paragraphs (b) introductory text and (c) to read as follows and by removing paragraph (d):

§ 542.17 What are the minimum internal control standards for complimentary services or items?

* * * * *

(b) At least monthly, accounting, information technology, or audit personnel that cannot grant or receive complimentary privileges shall prepare reports that include the following information for all complimentary items and services equal to or exceeding $100 or an amount established by the Tribal gaming regulatory authority, which shall not be greater than $100:

* * * * *

(c) The internal audit or accounting departments shall review the reports required in paragraph (b) of this section at least monthly. These reports shall be made available to the Tribe, Tribal gaming regulatory authority, audit committee, other entity designated by the Tribe, and the Commission upon request.

■ 10. Amend § 542.21 by revising paragraph (f)(4)(ii) to read as follows and by removing paragraphs (f)(4)(iii) and (f)(12):

§ 542.21 What are the minimum internal control standards for drop and count for Tier A gaming operations?

* * * * *

(f) * * *

(4) * * *

(ii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

* * * * *

■ 11. Amend § 542.22 by adding paragraph (g) to read as follows:

§ 542.22 What are the minimum internal control standards for internal audit for Tier A gaming operations?

* * * * *

(g) *Internal Audit Guidelines.* In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

■ 12. Amend § 542.23 by revising paragraph (n)(3) introductory text to read as follows:

§ 542.23 What are the minimum internal control standards for surveillance for Tier A gaming operations?

* * * * *

(n) * * *

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an on-line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

* * * * *

■ 13. Amend § 542.31 by revising paragraph (f)(4)(ii) to read as follows and by removing paragraphs (f)(4)(iii) and (f)(12):

§ 542.31 What are the minimum internal control standards for drop and count for Tier B gaming operations?

* * * * *

(f) * * *

(4) * * *

(ii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

* * * * *

■ 14. Amend § 542.32 by adding paragraph (g) to read as follows:

§ 542.32 What are the minimum internal control standards for internal audit for Tier B gaming operations?

* * * * *

(g) *Internal Audit Guidelines.* In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

■ 15. Amend § 542.33 by revising paragraph (q)(3) introductory text to read as follows:

§ 542.33 What are the minimum internal control standards for surveillance for Tier B gaming operations?

* * * * *

(q) * * *

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an on-line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

* * * * *

■ 16. Amend § 542.41 by revising paragraph (f)(4)(ii) to read as follows and by removing paragraphs (f)(4)(iii) and (f)(12):

§ 542.41 What are the minimum internal control standards for drop and count for Tier C gaming operations?

* * * * *

(f) * * *

(4) * * *

(ii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

* * * * *

■ 17. Amend § 542.42 by adding paragraph (g) to read as follows:

§ 542.42 What are the minimum internal control standards for internal audit for Tier C gaming operations?

* * * * *

(g) *Internal Audit Guidelines.* In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

■ 18. Amend § 542.43 by revising paragraph (r)(3) introductory text to read as follows:

§ 542.43 What are the minimum internal control standards for surveillance for Tier C gaming operations?

* * * * *

(r) * * *

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an on-line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

* * * * *

Signed in Washington, DC, this 8th day of August, 2005.

Philip N. Hogen,

Chairman.

Nelson Westrin,

Vice-Chairman.

Cloyce Choney,

Commissioner.

[FR Doc. 05–16056 Filed 8–12–05; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9205]

RIN 1545–BE17

Credit for Increasing Research Activities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects temporary regulations (TD 9205) that were published in the **Federal Register** on Tuesday, May 24, 2005 (70 FR 29596). The document contains temporary regulations relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations or a group of trades or businesses under common control.

DATES: This correction is effective on May 24, 2005.

FOR FURTHER INFORMATION CONTACT: Nicole R. Cimino, (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9205) that is the subject of this correction are under section 41(f).

Need for Correction

As published, the temporary regulations (TD 9205) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income Tax, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.41–6T [Corrected]

■ 1. Section 1.41–6T(e) *Example 2* (i), the first line in the table is revised to read as follows:

	D	E	F	G	Group Aggregate
Credit Year QREs	$580x	$10x	$70x	$15x	$675x
* * * *	*		*		*

■ 2. Section 1.41–6T(e) *Example 2* (i), second line in the table is revised to read as follows:

	D	E	F	G	Group Aggregate
* * * *	*		*		*
	$500x	$25x	$100x	$25x	$650x

■ 3. Section 1.41–6T(e) *Example 2* (ii)(B)(*1*), the first sentence is revised to read as follows: ''The group's base amount equals the greater of: the group's fixed-base percentage (3.10 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($17,000x), or the group's minimum base amount ($337.50x).''

■ 4. Section 1.41–6T(e) *Example 2* (iii), the eighth sentence is revised to read as follows: ''Because the group credit of $29.76x is greater than the sum of the stand-alone entity credits of all the members of the group ($21.67x), each member of the group is allocated an amount of the group credit equal to that member's stand-alone equity credit.''

■ 5. Section 1.41–6T(e) *Example 2* (iii), the ninth sentence is revised to read as follows: ''The excess of the group credit over the sum of the members' stand alone entity credits ($8.09x) is allocated among