

the subsequent publication of a final rule.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

#### List of Subjects in 7 CFR Part 340

Administrative practice and procedure, Biotechnology, Genetic engineering, Imports, Packaging and containers, Plant diseases and pests, Transportation.

#### PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 340 and that was published at 68 FR 46434–46436 on August 6, 2003.

Done in Washington, DC, this 28th day of April 2005.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

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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 correct erroneous citations or references in the MICS and to clarify, improve, and update other existing MICS provisions. The purpose of these final MICS revisions is to address apparent shortcomings in the MICS and various changes in Tribal gaming technology and methods. Public comment to 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 December 1, 2004. Thereafter, the comment period was extended for an additional 31 days until February 18, 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: May 4, 2005.

**Compliance Date:** On or before July 5, 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 September 1, 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 September 1, 2005. Such notification must cite the specific revisions to which the extension pertains.

**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 new final revised MICS rule on June 27, 2002. As the result of the practical experience of the Commission and Tribes working with the newly 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 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 and 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 Okalahoma; 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 large 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, while, at the same time, avoiding larger-scale MICS revisions which take longer to implement and can be unnecessarily disruptive to Tribal gaming operations. In accordance with this approach, the Commission has developed the following final MICS rule revisions, with the assistance of its 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. 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 initially met on April 8, 2004, and then again on October 21, 2004, and January 25, 2005, to discuss the revisions set forth in the following final MICS rule revisions. The input received from the Committee Members has been invaluable to the Commission in its development of the following final MICS rule revisions.

In furtherance of the Commission's established Government-to-Government Tribal Consultation Policy, the Commission also provided a preliminary working draft of all of the final MICS rule revisions contained herein to gaming Tribes on June 22, 2004, for a 30-day informal review and comment period, before formulation of a proposed rule, which was published

in the **Federal Register** on December 1, 2004. In response to its requests for comments, the Commission received 89 comments from Commission and Tribal Standing 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 final revision to which they relate.

#### **General Comments to Final Rule MICS Revisions**

For reasons stated above in this preamble, the National Indian Gaming Commission has revised 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 specifically final rule revisions, along with previously submitted comments to the proposed 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 comments to the published proposed 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 back in 1999. The Commission, at that time, determined in its publication of the original MICS in 1999 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 III gaming operations. Consequently, internal control systems are a vitally important part of properly regulated gaming. Effective internal control systems are dependent upon the support of 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, which typically include operational integrity, effectiveness and efficiency, reliable financial statement reporting, and compliance with 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 a 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, many did not. Accordingly, the Commission continues to believe strongly that promulgation and revision of these standards is necessary and appropriate to implement effectively the provisions of the Indian Gaming Regulatory Act throughout Indian country and, therefore, is 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 Rule New or Revised Definitions in Section 542.2 of the MICS**

The Commission has added or revised definitions of the following four terms in section 542.2. A discussion of each new or revised definition follows in alphabetical order. The text of the new or revised definition is set forth following the conclusion of this preamble in which of all of the final rule revisions to the Commission's MICS rule, 25 CFR part 542, are discussed.

##### *Drop Period*

This is a new definition. Several Tribal and Commission Committee members recommended that a definition of the term "drop period" be added to the current existing MICS definitions. In conjunction with other final rule revisions to the MICS which include this term, the NIGC has determined that to ensure that such revisions are clear and unambiguous, insertion of the definition of the term "drop period" into the MICS Definitions section 542.2 is worthwhile. This definition was included in the proposed rule publishing for review and comment prior to formulation of the final new definition, and no comments were received objecting to the definition.

##### *Gaming Machine*

The Commission has revised the existing MICS definition of this term to more accurately define the scope of the referenced term, as it is used in the MICS. Commission and Committee members recommended that the existing definition for "gaming machine" be revised to cover central server based

linked gaming machines or player stations that are being increasingly utilized in Indian gaming. Comments were subsequently received supporting the proposed rule revision, which was published in the **Federal Register** prior to formulation of the final rule revised definition. Comments were received suggesting that the definition should differentiate Class II and Class III gaming machines. Comments were also received suggesting that instead of attempting to list all the various cash equivalents a machine might accept, it would be better simply to refer to the items as cash, coin or cash equivalents. The Commission disagrees with the comment that the definition should attempt to narrow or define the applicability of the definition based on game classification. The definition is intended to be broadly applied to all gaming machines that are not otherwise separately defined in the MICS, such as an electronic bingo machine.

The Commission agrees with the suggestion that the term "cash equivalents" should be used in the definition. We believe the term is more representative of the various items that could be wagered, in addition to cash and coin.

Comment was received recommending that a definition be added to the MICS for the term "cash equivalents." The Commission agrees with this suggestion and will develop such a definition in subsequent proposed revisions after further input from the Advisory Committee and gaming Tribes regarding its text.

##### *Promotional Progressive Pots and/or Pools*

The Commission has revised the existing MICS definition of this term to more accurately define the applicability of the referenced term. Committee members recommended that the definition of "promotional progressive pots and/or pools" be revised to also apply to poker games. The revision was included in the proposed rule revision, which was published in the **Federal Register** for review and comment before the following final rule revision definition was formulated. Comments were subsequently received supporting the final rule revision since most progressive promotional pots are utilized in poker games. One commenter contended that the final rule revision to the progressive promotional pots and/or pools definition would create a conflict with the definition of secondary jackpots. The Commission will further consider this comment and examine how the two referenced terms are used in the MICS. If necessary, we may

consider in the future whether there is any contradiction between the two terms that requires modification of the definition of secondary jackpots.

#### *Series Number*

This is a new definition. The referenced term is used in the current MICS but is not defined. Since it has been the frequent subject of inquiry regarding its meaning, the NIGC has determined that a definition of the term is warranted. Comments to the proposed rule published in the **Federal Register** uniformly supporting the addition of this final rule definition being added to section 542.2 of the MICS.

#### **Final Rule Correction of Referencing and Citation Errors in Sections 542.7, 542.8, 542.12, and 542.13 of the MICS**

The Commission identified and is correcting several referencing and citation errors in the current MICS. The relevant sections include the following: §§ 542.7(g)(1)(i), 542.8(h)(1)(i), 542.12(i)(4), 542.12(k)(1)(v), 542.12(k)(1)(ix), 542.12(k)(1)(xvii), and 542.13(l)(4).

Each of the referencing and citation corrections was set forth in the proposed rule published in the **Federal Register** for review and comment before this final rule was formulated. No comments were received objecting to the corrections.

#### **Final Rule Revisions to Section 542.13(h) Standards for Evaluating Theoretical and Actual Hold Percentages**

It is common practice in the gaming industry that gaming machine manufacturers provide gaming operators with a Pay Analysis Report (PAR) or PAR sheet for each gaming machine that they supply to the operator. The PAR sheet provides information regarding certain design specifications for the gaming machine, including the statistical theoretical percentage(s) that the gaming machine is designed to win or hold for the operator (house), based on an adequate level of wagering activity after payment of game winnings to players. A theoretical hold worksheet also accompanies the PAR sheet and provides additional theoretical hold information for the gaming machine, frequently including probability calculations of the machine's theoretical hold percentages for different specified levels of coin-in wagering activity. The converse to a gaming machine's theoretical hold percentage is its theoretical payback percentage, which is the percentage of total money wagered that the machine is designed to pay back to players as game winnings based on

adequate levels of wagering activity. A gaming machine's theoretical payback percentage can be calculated by deducting its specified theoretical hold percentage(s) from one.

Periodic statistical tracking of actual gaming machine performance, by comparing each machine's actual hold and payback percentages in relation to its theoretical hold and/or payback percentages, has become a necessary standard of management practice to ensure the integrity of gaming machine operations and safeguard related machine revenues and assets. To effectively monitor gaming machine operations for performance irregularities, whether due to machine defect, malfunction, embezzlement, cheating, or other improper tampering, gaming operators are required to periodically prepare a gaming machine analysis report that compares each machine's actual hold percentages to its specified theoretical hold percentage(s), based on the levels of coin-in wagering activity for each reporting period. Any material deviations between the actual and theoretical hold percentages must be thoroughly investigated by gaming machine department management and other management personnel independent of the gaming operation's gaming machine department. The ultimate objective of the gaming machine analysis report and investigative process is to ensure that any material uncharacteristic deviation between actual and theoretical hold is not due to machine defect, malfunction, embezzlement, cheating, or other improper tampering; but instead, a reasonably expected mathematical deviation based on the randomness of the machine's game outcome selection mechanism and the number of game plays and outcomes analyzed.

The standards set forth in section 542.13(h) of the MICS are intended to provide a minimum benchmark for effective use of gaming machine performance analysis by Tribal gaming enterprises to safeguard the integrity of their gaming machine operations and related Tribal gaming assets. In establishing these standards, the Commission has attempted to keep them as practical and effective as possible for the diverse nature and scale of the Tribal gaming machine operations to which they apply. For that reason, the Commission has made several revisions to section 542.13(h).

#### *Final Rule Deletion of Subsection 542.13(h)(2)*

The Commission's deletion of subsection 542.13(h)(2) will eliminate the current requirement that Tribal

operators utilize a weighted average calculation to adjust and determine the appropriate theoretical hold percentages for periodic analysis of complex gaming machines (excluding multi-game multi-denominational gaming machines), which have manufacturer's PAR or theoretical hold worksheets that specify multiple theoretical hold or payback percentages, with a spread of more than 4% between their minimum and maximum specified theoretical hold/payback percentages. Although the manufacturer's PAR sheets and theoretical hold worksheets for most gaming machines specify a single theoretical hold percentage, which can be reliably used for analysis of the machine's actual performance, there are other more complex gaming machines (excluding multi-gaming and multi-denominational gaming machines) that have multiple specified theoretical hold percentages. Identifying the most reliable theoretical hold percentage to use for analysis of the performance of these more complex gaming machines can be difficult and challenging, because the most appropriate theoretical hold percentage is so dependent upon the different amounts of permitted coin-in betting wagers (e.g. 1-coin, 2-coin, 3-coin, etc.) that players may actually decide to make during a given reporting period. The weighted average calculation, which is currently required by subsection 542.13(h)(2), essentially weighs the different permitted player wagering decisions, by multiplying the total amount wagered for each permitted coin-in wager amount times the specified theoretical hold percentage for that wager. Then the sum of the individual theoretical hold results for each permitted coin-in wager amount is divided by the total coin-in, to give a weighted average theoretical hold percentage for use in analyzing that gaming machine's overall performance during the reporting period.

Based on past MICS compliance audits and consultation with other gaming jurisdictions, the Commission has determined that the currently required weighted average calculation may not be necessarily to produce an acceptable adjusted theoretical hold percentage for analyzing the performance of complex gaming machines (other than multi-gaming and multi-denominational gaming machines) which have multiple specified theoretical hold percentages. Practical experience also demonstrates that this is also true regardless of whether the spread between the minimum and maximum specified theoretical hold percentages for such

complex gaming machines exceeds 4%. Accordingly, the Commission is deleting subsection 542.13(h)(2) in its entirety. In particular, the Commission has determined that, excluding multi-game and multi-denominational gaming machines, most other complex gaming machines with multiple specified theoretical hold percentages possess certain characteristics that generally result in most bettors making the maximum allowed coin-in wager. Typically, the pay tables for such machines provide for a disproportionately larger payout for maximum coin-in wagers. This naturally causes most players to bet the maximum allowable number of coins-in. Consequently, the weighted average calculation generally produces an adjusted theoretical hold percentage that is not significantly different than simply selecting the machine's most conservative or smallest specified theoretical hold percentage. Therefore, the required weighted average calculations in subsection 542.13(h)(2) for complex gaming machines, other than multi-game and multi-denomination gaming machines, is being deleted regardless of the spread between the machines' minimum and maximum specified multiple theoretical hold percentages. Although no longer required, circumstances may still dictate use of the weighted average calculation for such gaming machines, instead of simply selecting the most conservative or smallest specified theoretical hold percentage for the machine. In those circumstances, it will remain the responsibility of Tribal gaming management, subject to Tribal Gaming Regulatory Authority (TGRA) oversight, to utilize appropriate weighted average calculations to determine the proper adjusted theoretical hold percentages for accurate and reliable analysis of gaming machine performance.

*Final Rule Revisions Renumbering Subsection 542.13(h)(4) as New Subsection 542.13(h)(2); Extending the Weighted Average Calculation Requirement to Both Multi-Game and Multi Denomination Gaming Machines; and Deleting the 4% Theoretical Payback Spread Standard*

The Commission has revised subsection 542.13(h)(4) by renumbering it as the new subsection 542.13(h)(2); extending the required use of weighted average calculations to determine the adjusted theoretical hold percentage for both multi-game and multi-denominational gaming machines; and deleting the 4% or greater spread criteria regarding the minimum and maximum specified theoretical payback

percentage for such machines. While concluding that weighted average calculations need not be required for determining the most appropriate adjusted theoretical hold percentage for other complex gaming machines with multiple specified theoretical hold percentages, the Commission has determined that such calculations are essential for reliable analysis of the performance of multi-game and multi-denominational gaming machines, regardless of whether the spread between their minimum and maximum specified theoretical hold percentages is more or less than 4%. Therefore, the Commission is adding multi-denominational gaming machines to the weighted average calculation requirement in current subsection 542.13(h)(4), and is deleting the current requirement that the spread between the minimum and maximum specified multiple theoretical hold percentages must exceed 4% before any weighted average calculations are required to determine the appropriate adjusted theoretical hold percentage for either multi-game or multi-denominational gaming machines. In contrast to other complex gaming machines with multiple specified theoretical hold percentages, multi-game and multi-denominational gaming machines do not possess common characteristics that result in reasonably predictable player decisions regarding the individual programmed games of the multi-game gaming machine they elect to play or the denomination of their wager. Instead, player wagering decisions can vary widely and player game/denomination selections are also highly unpredictable and often subject to the effects of intervening management decisions, such as the activation/cancellation of game options, device location, gaming floor mix, and payable alternatives. Thus, to effectively identify a reliable adjusted theoretical hold percentage for analysis of multi-game and multi-denominational gaming machine performance requires a weighted average calculation of player coins-in-wagering for each wager/game/denomination payable player option. Furthermore, it is the Commission's considered judgment that such calculations are required and necessary regardless of whether the spread between the minimum and maximum specified multiple theoretical hold percentage for the multi-game and/or multi-denominational gaming machine exceeds 4%.

*Final Rule Revisions Renumbering Subsection 542.13(h)(19) as New Subsection 542.13(h)(18) and Replacing the Six Month Play Threshold With a Threshold of at Least 100,000 Wagering Transactions for Required Investigation of Large Variances Between Actual and Theoretical Hold*

Based on past experience and interaction with Tribal gaming regulatory authorities, the Commission has determined that the current six months play threshold in subsection 542.13(h)(19) for determining when a gaming machine is required to be included in the gaming machine analysis report is not practical or appropriate. Consequently, to define more accurately when the comparison and investigation of large variances between actual and theoretical hold is required, the Commission has revised subsection 542.13(h)(19) by renumbering it as subsection 542.13(h)(18) and replacing the six months play threshold with a play threshold of at least 100,000 wagering transactions.

*Final Rule Revisions to Subsection 542.13(m)(6) and (7) Accounting/Audit Standards for Gaming Machines*

In recognition of the varying processes that exist in the gaming industry relative to the time period between currency drops for gaming machines, the Commission has determined that the current standard in subsection 542.13(m)(6) requiring weekly comparison of the bill-in meter readings to the total bill acceptor drop is impractical and too inflexible. Accordingly, the Commission is deleting the currently required weekly comparison and replace it with an every "drop period" requirement. In conjunction with these final rule revisions, the term "drop period" is being defined in section 542.2 as the period of time between sequential drops.

Furthermore, in consideration of the above revision, the Commission is revising subsection 542.13(m)(7) by deleting the current \$200.00 threshold for required follow-up investigation of an unresolved variance between actual currency drop and bill-in meter reading and replacing it with a threshold amount that is "both more than \$25.00 and at least 3 percent (3%) of the actual currency drop."

*Comments Regarding Final Rule Deletion of 4% Theoretical Payback Spread Standard and Elimination of the Weighted Average Calculation Requirements for Complex Gaming Machines With Multiple Theoretical Hold Percentages (Excluding Multi-Game or Multi-Denominational Gaming Machines)*

Comments were received supporting the deletion of both standards, indicating that the process will potentially become simpler. Comment was received supporting the deletion of the standards and the willingness of the Commission to accept alternative methods of identifying the appropriate theoretical payback/hold percentage for the machines in question, which will often involve simply selecting the most conservative theoretical hold percentage within the range of acceptable parameters established by the game manufacturer. Such a procedure is founded upon the premise that patrons will generally opt for max coin bet.

Comment was received objecting to the striking of the weighted average calculation for complex gaming machines with a spread between theoretical payback percentages greater than 4%. It was noted that on-line computerized accounting systems for gaming machines capture the required data and facilitate the identification of an optimal theoretical payback/hold percentage for game analysis. Consequently, the commenter contended there is no compelling need to strike the standard. Comment was received questioning whether the standard requires the data to be collected by hard meter or whether soft meters are acceptable.

The Commission concurs with the commenter that the selection of the most conservative hold percentage will generally produce a benchmark for analysis of complex gaming machines, other than multi-game and multi-denominational machines, that will enable the gaming machine analysis report to be accurate and effective. However, should such a procedure not be reflective of the method of play of the gaming operation's patrons, the weighted average calculation would become the desired alternative. By striking the standard, the Commission is deferring to the Tribal Gaming Regulatory Authority (TGRA) to ensure Tribal gaming management employs procedures appropriate to identify reliable theoretical payback/hold percentages for analyzing the performance of their complex gaming devices with multiple specified theoretical hold percentages (excluding

multi-gaming and multi-denominational gaming machines). The Commission acknowledges that, in accordance with industry standard, gaming machines and current technology on-line accounting systems greatly aid the process of collecting data. However, such on-line systems are not at this time required by the MICS for all gaming machines. Therefore, we do not agree that the striking of the standard lacks compelling justification.

The Commission refers the commenter to the MICS definitions regarding the question of whether hard or soft meters may be used to collect necessary game data and determine reliable theoretical payback/hold percentages for game performance analysis. In accordance with section 542.2, the term "meter" is defined as either hard or soft. Consequently, to satisfy the standard, either method of collection is permissible.

*Comments Regarding Final Rule Extension of Weighted Average Theoretical Hold Calculation and Other Multi-Game Gaming Machine Analysis Requirements to Multi-Denominational Machines*

Comments were received acknowledging the need to extend the scope of the standard to include multi-denominational gaming machines in addition to multi-game devices. Comment was received supporting the striking of the 4% theoretical payback percentage spread criteria with regard to multi-game and multi-denomination gaming machines. The devices in question generally represent only a small portion of the typical gaming floor. Comment was received suggesting that, instead of quarterly meter reads, the meters should be read annually. Comment was also received questioning the need to make annual adjustments to the theoretical hold percentage for multi-game and multi-denomination devices, since the recalculation of the theoretical hold percentage results in only a nominal change. In addition, comment was also received regarding the task of calculating theoretical payback and hold percentages for multi-game machines that are also multi-denomination. The commenter questioned whether the necessary data could be extracted from such devices and, even if it could be obtained, the multi-tiered calculations would be exceedingly cumbersome.

Finally, comment was received questioning whether the potential annual adjustment to theoretical hold required the gaming machine to be considered a new device for purposes of the gaming machine analysis report. The

Commission does not concur with the commenter recommendation that collecting the meter data on an annual basis is acceptable. With regard to the collection of wagering data from multi-game and multi-denominational gaming machines, the more data collected, the greater the confidence in the analysis of patron betting habits and, consequently, the more reliable the identification of a valid theoretical hold percentage. Due to the changes in machine mix and location that frequently occur on the gaming floor, the Commission believes the subject data should be collected on a quarterly basis. The Commission does not agree with the comment that the annual review and adjustment of the previously determined theoretical hold percentage is of no value. We agree with the premise that, if the gaming floor remained unaltered from one year to the next, the betting habits of the patrons are likely to remain constant. However, changes to the gaming floor are typically frequent, as management attempts to generate the greatest return on the square footage allocated to the gaming machine department. Such modifications may involve additions and removals of devices, movement of machines on the gaming floor, activation/deactivation of various game options (such as bonusing), changing the mix of games offered, or increasing or restricting the different denominations accepted. Each of these management decisions can affect the theoretical hold of the multi-game and multi-denominational gaming machines in question. We can certainly understand management electing not to make an adjustment to the theoretical hold when the amount of the adjustment will have no significant impact on the reliability of the gaming machine analysis reports. However, due to the volatility of the gaming floor and the potential effect such volatility can have on patron betting habits, we believe the annual testing of previously determined theoretical hold percentages to be a necessary management practice.

The Commission appreciates the concern raised by a commenter regarding the process of determining a reliable theoretical hold percentage for multi-game devices that also accept multi-denomination wagers. The Commission acknowledges that the standard is intended to address either multi-game or multi-denomination but is awkward in its application with regard to devices that possess both characteristics. The standard would imply that a multi-tiered level of weighted average calculations would be required and that, for each

denomination within each game, the corresponding theoretical hold would be weighted by patron selection; the resulting game weighted average theoretical hold would be weighted by patron game selection. Although the exercise would certainly produce a theoretical hold percentage for use in the game analysis report possessing a high level of confidence, we question whether such an in depth examination of the various theoretical percentages, weighted by both patron game and denomination selection, is necessary to identify a reasonable benchmark to measure actual game performance. Generally speaking, we believe it would be acceptable to calculate a simple weighted average of the various denominational theoretical hold percentages contained within each game and use that average theoretical hold percentage in the weighted average calculation based on patron game selection. Furthermore, to make additional reductions in the number of calculations, management might consider grouping games with similar theoretical hold percentages, *i.e.* those with a difference of less than 0.5 percentage points.

In summation, it is important not to lose sight of the ultimate objective of the standards relevant to the statistical tracking of gaming performance, which is to employ a process that is effective in identifying deviations of actual performance from the manufacturer's specifications that warrant investigation. Such deviations may simply result from normal play, or be caused by gaming machine defect, malfunction, heating, embezzlement, or other improper tampering. Relevant to this overall process is the fact that many frauds have occurred in Tribal gaming over the past few years involving false or fraudulent gaming machine payouts that could have been detected sooner, if the gaming operation had had an effective process for measuring the appropriateness of actual gaming machine performance.

In response to the question raised by a commenter whether the annual adjustment to theoretical hold percentage requires a gaming machine to be given a new machine (asset) number for purposes of the gaming machine analysis report, the Commission refers the commenter to section 542.13(h)(16). That section explicitly exempts annual theoretical hold adjustments made in accordance with section 542.13(h)(2) from the general requirement that the adjusted machine be treated as a new machine. Consequently, creation of a new

machine number is not required when such adjustments occur.

*Comments Regarding Final Rule Deletion of "Six Month" Play Threshold and Addition of a "100,000 Wagering Transactions" Threshold for Required Analysis of Large Gaming Machine Variances Between Theoretical and Actual Hold*

Comments were received supporting the Commission's recommended change from a specified six (6) month play threshold in section 542.13(h)(18) to a threshold of 100,000 wagering transactions to determine when a gaming machine should be included in the analysis of actual hold performance to theoretical hold.

Comment was also received suggesting that the PAR sheets provide information more relevant to when a particular device has experienced sufficient play to be included in the gaming machine analysis process. Comment was also received suggesting that the recommended range of acceptable deviations from theoretical of  $\pm 3$  percentage points should be struck from the MICS. The commenter noted that it should be left up to the discretion of the TGRA as the primary gaming regulator to make the determination. Additional comment was also received recommending that it should also be left to the TGRA to determine when sufficient play exists to require the machine to be included in the gaming analysis report, since the performance of some devices should be examined prior to 100,000 wagering transactions, while others may require more play before any investigation of deviations between actual and theoretical performance is worthwhile.

Finally, comment was received suggesting that a computerized application utilizing a volatility indexing mathematical program should be an acceptable alternative to the process required by the MICS. Such programs employ a mathematical formula that estimates the minimum and maximum ranges of acceptable theoretical payback/hold percentages for a given machine based on the following: (1) The theoretical payback/hold over the expected life of the machine; (2) the number of winning combinations; (3) the payback/hold for the winning combinations; and (4) the number of games played. In essence, the program considers the game characteristics and determines a tolerable range of accepted performance, which narrows as performance predictability increases. Typically, predictability increases commensurate with increasing levels of wagering activity.

The Commission concurs with the commenter's recommendation that the standard would be better served by replacing the specified time period with a minimum number of wagering transactions. The final revision to section 542.13(h)(18) has, accordingly, been modified to reflect that recommendation. The Commission also appreciates the suggestion made by the commenter that determining when sufficient data exists to perform the analysis of actual game performance should include consideration of the data contained within the PAR sheet. It is important to recognize that the 100,000 wagering transaction standard establishes a minimum threshold for devices to be included in the required gaming machine analysis report; however, it is also well understood that the investigation of unacceptable deviations between actual and theoretical game performance is a complex process. To comment on how the Commission determined the 100,000 wager transaction threshold, a random number generator (RNG) with a 10 million cycle will produce a range between minimum and maximum confidence factors of approximately 3 percentage points, which we believe justifies an investigation of an unacceptable deviation, which industry practice would identify to be  $\pm 3$  percentage points between actual hold and theoretical hold. However, the analyst should also consider the relevant PAR sheet in determining the extent to which follow-up analysis and investigation is warranted. For example, a multi-game device, particularly if it also accepts multi-denomination, may in fact need more than 100,000 wagering transactions before it is worthwhile to review past performance, *i.e.* look for an abnormally large payout within the audit period. With such a device, the analyst may determine that insufficient play has occurred to perform an in depth review of past performance and would merely document his/her determination. Within reason, we would not consider such a determination to be noncompliant with the standard.

The Commission does not agree with the commenter's suggestion that the recommended acceptable deviation range of  $\pm 3$  percentage points be struck from the MICS. We believe the recommended range represents industry practice and is a reasonable threshold to ensure that the gaming machine analysis process will be effective. The Commission also disagrees with the commenter's recommendation that it should be left to the discretion of the TGRA to decide when a device must be

included in the gaming machine analysis report. For the regulations governing the statistical tracking of gaming performance and the comparison of actual performance to the manufacturer's theoretical performance specifications to be effective, the regulation must be precise and reasonably uniform in defining its applicability. However, we do acknowledge that the analysis of the data possesses an element of subjectivity, which in turn necessitates that the analyst have a professional level of expertise. Inclusion of a gaming machine in the required gaming analysis report does not necessarily dictate that an in depth investigation of all variances is warranted, but does require that the gaming performance analyst/reviewer document the results of their determination.

Finally, the Commission appreciates the suggestion by a commenter that a volatility indexing mathematical program may produce results as reliable as, or even more reliable, than the weighted average calculation required for multi-game and multi-denominational gaming machines in the MICS. In response, it is noteworthy that at section 542.3(c), the TGRA is required to adopt regulations that provide a level of control that equals or exceeds the MICS. Although the rule does not condone the TGRA accepting management procedures that are in conflict with the MICS, it does not preclude acceptance of procedures or controls that are different and at least as stringent as those contained within the MICS. Furthermore, at section 542.13(b), computerized applications that provide at least the same level of control as the MICS are deemed to be acceptable under the current MICS. Based on the data provided by the commenter, it is the belief of the Commission that the noted mathematical formula would be an acceptable alternative procedure. However, it is incumbent upon management to adequately document the process and its effectiveness in providing the required level of control and reliability in analyzing game performance.

*Comments Regarding the Final Revision of Section 542.13(m)(6) To Require Comparison of Bill-In Meter Readings With Total Bill Acceptor Drop Amounts for Each Drop Period Instead of Weekly*

Comments were received concurring with the final revision. Comment was also received noting that the standard is stricter, but also acknowledging that the impact on management's gaming machine accounting/audit function should be nominal. Finally, comment

was received supporting the final revision and noting that it should make the follow-up process less cumbersome.

*Comments Regarding the Final Revision of Section 542.13(m)(7) Requiring Follow-Up of Unresolved Variances Between the Currency Drop and Bill-In Meter Readings to Amounts Greater Than \$25 and 3 percent Instead of \$200.00*

Comment was received suggesting language in the initially proposed revision to clarify the applicability of \$25 or 3 percent. Comment was received objecting to the revision because it would allow variances to go uninvestigated that should be subjected to review. Basically, the commenter contends that the rule is too liberal and results in the control being ineffective. Comment was received recommending the threshold be 5 percent and \$25. The Commission accepts the commenter recommendation regarding more explicit language and has modified the final revision accordingly. The Commission understands the commenter concern for the rule becoming less stringent and possibly ineffective. However, the existing rule requires that a variance of \$200 per machine per week must be investigated. Assuming the Tribal gaming operation performs a daily drop, the average variance threshold per day would be \$28.57. Because the drop must exceed \$833.33 before the 3 percent criteria becomes effective, for all practical purposes, the vast majority of variances will be subject to the \$25 threshold. Consequently, we do not believe the revision will have a material impact on the effectiveness of the control. However, by changing the time frame from a week to a drop period, we believe the standard becomes more consistent with the workflows of the revenue audit process.

The Commission does not concur with the recommendation that the threshold be increased to 5 percent or \$25. With regard to drop amounts, the final rule results in the \$25 threshold being applicable to drops of \$25 to \$833.33. The commenter recommendation would cause the \$25 threshold to be applicable to drops of \$25 to \$500, which would, in effect, result in a lessening of the control. We do not believe there is a compelling basis for making the recommended change.

**Final Revisions to Subsection 542.16(a)(1) General Controls for Gaming Hardware and Software**

*Proposed Deletion of Requirement in Vendor Software/Hardware Agreements That Vendors Agree To Adhere to Related Tribal Internal Controls*

Since initial adoption, this standard has often been a troublesome requirement for management and Tribal gaming regulatory authorities to implement and enforce. The NIGC is not unsympathetic to the challenges created by the regulation when a vendor is uncooperative. Although the proposed rule provided for the deletion of section 542.16(a)(1)(i), which requires Tribal management to ensure that vendors agree to adhere to Tribal internal control standards, the Commission has determined that deletion of this standard is not appropriate at this time. It is the common goal of the NIGC and Tribal management and regulators to ensure that vendors adhere to Tribal internal control standards.

Comment was received supporting deletion of the standard, but noting that management should continue to be held accountable by the TGRA to ensure that agreements/contracts are not entered into that would cause the gaming operation to be noncompliant with any Tribal, State, or Federal laws or regulations. Furthermore, the TGRA should not hesitate to enact and enforce such regulations of their own specific to vendor contract requirements. Comment was also received supporting deletion of the standard because it creates an undue hardship on management in the negotiation of vendor agreements. Additional comment was received supporting the deletion of the standard because violations by vendors are often difficult and troublesome to enforce, which causes the regulation to be fairly meaningless. Other comment was received objecting to deletion of the standard because it provides an added level of protection for Tribes from unscrupulous vendors in their gaming enterprises. Additional comment was received from a TGRA noting that, notwithstanding deletion of the standard from the MICS, the Tribe intends to keep the control in their regulations, which is a Tribe's right as primary regulator under IGRA.

After careful consideration of the comments received and relevant public policy issues, the Commission has decided to retain the standard at this time.



**Final Revisions to Section 542.18 Regarding the Process for Commission Review and Determination of Tribal Requests for a Variance From the MICS in Their Tribal Internal Control Standards**

To more clearly describe the current variance process, the NIGC is revising section 542.18 of the MICS. Specifically, the revisions are intended to more clearly describe the authority and duties of the Chairman, his/her designee, the full Commission, as well as the appeal rights of the Tribal petitioner. The final revisions are also intended to ensure that an adequate factual investigation and record is developed for administrative and judicial review of the merits of the Chairman's decision on each variance request.

Comment was received supporting the final revisions. Comment was also received supporting the revisions, except for that part that prohibits the implementation of a TGRA approved variance until after concurrence has been received from the Commission. Comment was received questioning whether the petitioner Tribe has the authority to extend stipulated time frames in the variance process.

Additional comment was received questioning whether the thirty (30) day period associated with a review by NIGC staff of a resubmission was sufficient. Further comment was received questioning the potential result of a petitioner objecting to an extension of a stipulated time period requested by NIGC staff. Specifically, the concern is that refusal of such a request might result in summary denial of the variance request. Comment was also received questioning the need for extensions of the time frames provided. A commenter represented that the stipulated time periods should be sufficient. Finally, comment was received suggesting that the Commission should consider variance requests only after they have been approved by the TGRA.

The Commission understands the commenter's objection to deferring implementation of a TGRA approved variance until receipt of Commission concurrence; however, to preserve the integrity of the MICS, the regulatory body responsible for its enactment must have the latitude to prohibit the implementation of procedures deemed to be unacceptable and contrary to the NIGC's MICS regulations. The Commission also recognizes that the variance concurrence process is one initiated by the petitioner. Therefore, the Commission would not be unreasonable in considering requests for additional time from the petitioner. It is

noteworthy to such a position that the implementation of the proposed alternative procedure is precluded until after the Commission has concurred.

The Commission acknowledges the concern expressed by a commenter regarding the time afforded NIGC staff to review a resubmission. Therefore, language has been added to enable staff to extend the period, subject to concurrence by the petitioner. The Commission understands the concern expressed by a commenter regarding a possible decision not to concur, if acceptance of an extension to a stipulated time period was not agreed. Certainly, the petitioner should be well aware that the investigation of pertinent facts and data associated with a variance request may take hours or many months, depending upon its complexity. Although requests for additional time should be reasonable and based on cause, the petitioner should also be well aware that the undue refusal to grant additional time may result in a determination different than that which would have otherwise been rendered, if the petitioners had agreed to the Chairman's request for more adequate time to investigate and decide their variance request. Notwithstanding the question pertaining to extension of time frames, the petitioner's right to appeal would continue to exist.

The Commission disagrees with the commenter's contention that time period extensions are not warranted. Although some variance requests can be readily addressed, particularly if the staff charged with performing the research has past experience with similar requests, most will involve extensive analysis. Seldom is a petition simply responded to. Instead, a filing will generally initiate a back and forth exchange with the petitioner as staff seeks additional information or clarifications regarding the requested variance. Alternative procedures involving new technology often involve travel by staff to consult with manufacturers and other regulators or operators. Inherent to the analysis of a variance request is the identification of risk and evaluation of compensating controls. The time periods contained within the regulation will generally be appropriate for the more simple concurrence requests; however, complex requests will typically require one or more extensions of the allotted time frame. The Commission concurs with the commenter's suggestion regarding consideration of variance requests only after they have been approved by the TGRA. In accordance with the final rule, a variance request received by the Commission lacking

evidence of the TGRA approval would not be considered. Since such a submission would lack authority.

**Final Revisions To Add New Sections to the MICS Establishing Minimum Standards for Computerized Key Security Systems**

Section 542.21(t)-(w) What are the minimum internal controls for drop and count for Tier A gaming operations?

Section 542.31(t)-(w) What are the minimum internal controls for drop and count for Tier B gaming operations?

Section 542.41(t)-(w) What are the minimum internal controls for drop and count for Tier C gaming operations?

Sections (t) and (u) are new MICS sections. Existing sections (t) and (u) are unchanged and are now designated as sections (v) and (w). In recognition of an increasing number of gaming operations utilizing or considering the utilization of computerized key control systems, the NIGC has determined that regulations addressing such systems are warranted for Tier A, B, and C Tribal gaming operations.

Comment was received supporting the final revisions noting that electronic key control systems are becoming more prevalent. Comment was also received supporting the determination by the Commission to adopt standards specifically covering the use of computerized key control systems in Tier A, B, and C gaming operations and not rely solely on the general MICS regulation covering computerized applications. Comment was also received supporting the new regulation and noting that the controls also provide for an audit function.

Comment was received supporting the new regulation, but noting that the TGRA should also consider more stringent standards. Comment was received recommending that the auditing procedures, particularly the quarterly inventory of keys, be performed by accounting/auditing personnel independent of the key control process. Additional comment was received questioning the need for the regulations since most of the controls are already in the MICS. Comment was received recommending that the regulation more clearly differentiate the function of key custodian from system administrator.

Comment was also received questioning the need for three persons to be involved in accessing the manual override key to open the box to perform repairs. It was noted that the persons accessing the box would not have access

to the slot drop and count keys. For the purpose of making repairs, only two persons should be required to gain access to the manual override key.

The Commission disagrees with the commenter questioning the need for the new regulations. Computerized key control systems have been the subject of several Tribal variance requests over the past few years. Therefore, the Commission believes it appropriate to establish minimum standards specific to such systems. The Commission concurs with the commenter recommendation that the auditing procedures be performed by accounting/auditing personnel independent of the key control process. The final regulation for all three tiers has been changed accordingly. The Commission also concurs with the commenter's recommendation that the key custodian functions be more clearly defined and noted as being separate from those of the system administrator. Accordingly, the final revisions have been modified in all three new sections to more clearly define separation of the two functions.

The Commission also concurs with the commenter's suggestion that only two people be required to access the manual override key to make repairs to the key control box. Such access would not include access to the coin drop and count keys. The final revisions have been modified to reflect the suggestion of the commenter in all three new MICS sections.

## 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 330 Indian gaming operations across the country, approximately 93 of the operations have gross revenues of less than \$5 million. Of these, approximately 39 operations have gross revenues of under \$1 million. Since the final revisions will not apply to gaming operations with gross revenues under \$1 million, only 39 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 that are more stringent than those contained in these regulations. Further, these final rule revisions are technical and minor in nature.

Under the final revisions, small gaming operations grossing under \$1 million are exempted from MICS compliance. Tier A facilities (those with gross revenues between \$1 and \$5 million) 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. 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 following final rule 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 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 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 to discuss the public comments that were 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 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. Section 542.2 is amended by adding in alphabetical order the definitions for "Drop Period" and "Series number," and by revising the definitions for "Gaming Machine" and "Promotional progressive pots and/or pools" to read as follows:

**§ 542.2 What are the definitions for this part?**

\* \* \* \* \*

*Drop period* means the period of time that occurs between sequential drops.

\* \* \* \* \*

*Gaming machine* means an electronic or electromechanical machine that allows a player to play games of chance, some of which may be affected by skill, which contains a microprocessor with random number generator capability for outcome selection or computer terminal that accesses an outcome that is subsequently and randomly selected in drawings that are electronically conducted by central computer or other such methods of chance selection, whether mechanical or electronic. The machine is activated by the insertion of

cash or cash equivalents and which awards cash, cash equivalents, merchandise, or a written statement of the player's accumulated credits, which written statements may be redeemable for cash.

\* \* \* \* \*

*Promotional progressive pots and/or pools* means funds contributed to a table game or card game by and for the benefit of players. Funds are distributed to players based on a predetermined event.

\* \* \* \* \*

*Series number* means the unique identifying number printed on each sheet of bingo paper that identifies the bingo paper as a series or packet. The series number is not the free space or center space number located on the bingo paper.

\* \* \* \* \*

■ 3. Amend § 542.7 by revising paragraph (g)(1)(i) to read as follows:

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

\* \* \* \* \*

(g) \* \* \*  
(1) \* \* \*

(i) If the electronic equipment contains a bill acceptor, then § 542.21(e) and (f), § 542.31(e) and (f), or § 542.41(e) and (f) (as applicable) shall apply.

\* \* \* \* \*

■ 4. Amend § 542.8 by revising paragraph (h)(1)(i) to read as follows:

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

\* \* \* \* \*

(h) \* \* \*  
(1) \* \* \*

(i) If the electronic equipment contains a bill acceptor, then § 542.21(e) and (f), § 542.31(e) and (f), or § 542.41(e) and (f) (as applicable) shall apply.

\* \* \* \* \*

■ 5. Amend § 542.12 by revising paragraphs (i)(4) and (k)(1)(v), (ix), and (xvii) to read as follows:

**§ 542.12 What are the minimum internal control standards for table games?**

\* \* \* \* \*

(i) \* \* \*

(4) The management in paragraph (i)(3) of this section shall investigate any unusual fluctuations in hold percentage with pit supervisory personnel.

\* \* \* \* \*

(k) \* \* \*  
(1) \* \* \*

\* \* \* \* \*

(v) The marker form shall be prepared in at least triplicate form (triplicate form being defined as three parts performing the functions delineated in the standard in paragraph (k)(1)(vi) of this section),

with a preprinted or concurrently printed marker number, and utilized in numerical sequence. (This requirement shall not preclude the distribution of batches of markers to various pits.)

\* \* \* \* \*

(ix) The forms required in paragraphs (k)(1)(v), (vi), and (viii) of this section shall be safeguarded, and adequate procedures shall be employed to control the distribution, use, and access to these forms.

\* \* \* \* \*

(xvii) When partial payments are made in the pit, the payment slip of the marker that was originally issued shall be properly cross-referenced to the new marker number, completed with all information required by paragraph (k)(1)(xv) of this section, and inserted into the drop box.

\* \* \* \* \*

■ 6. Amend § 542.13 by revising paragraph (h), (1)(4), and (m)(6) and (7) to read as follows:

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

\* \* \* \* \*

(h) Standards for evaluating theoretical and actual hold percentages.

(1) Accurate and current theoretical hold worksheets shall be maintained for each gaming machine.

(2) For multi-game/multi-denominational machines, an employee or department independent of the gaming machine department shall:

(i) Weekly, record the total coin-in meter;

(ii) Quarterly, record the coin-in meters for each payable contained in the machine; and

(iii) On an annual basis, adjust the theoretical hold percentage in the gaming machine statistical report to a weighted average based upon the ratio of coin-in for each game payable.

(3) For those gaming operations that are unable to perform the weighted average calculation as required by paragraph (h)(2) of this section, the following procedures shall apply:

(i) On at least an annual basis, calculate the actual hold percentage for each gaming machine;

(ii) On at least an annual basis, adjust the theoretical hold percentage in the gaming machine statistical report for each gaming machine to the previously calculated actual hold percentage; and

(iii) The adjusted theoretical hold percentage shall be within the spread between the minimum and maximum theoretical payback percentages.

(4) The adjusted theoretical hold percentage for multi-game/multi-

denominational machines may be combined for machines with exactly the same game mix throughout the year.

(5) The theoretical hold percentages used in the gaming machine analysis reports should be within the performance standards set by the manufacturer.

(6) Records shall be maintained for each machine indicating the dates and type of changes made and the recalculation of theoretical hold as a result of the changes.

(7) Records shall be maintained for each machine that indicate the date the machine was placed into service, the date the machine was removed from operation, the date the machine was placed back into operation, and any changes in machine numbers and designations.

(8) All of the gaming machines shall contain functioning meters that shall record coin-in or credit-in, or on-line gaming machine monitoring system that captures similar data.

(9) All gaming machines with bill acceptors shall contain functioning billing meters that record the dollar amounts or number of bills accepted by denomination.

(10) Gaming machine in-meter readings shall be recorded at least weekly (monthly for Tier A and Tier B gaming operations) immediately prior to or subsequent to a gaming machine drop. On-line gaming machine monitoring systems can satisfy this requirement. However, the time between readings may extend beyond one week in order for a reading to coincide with the end of an accounting period only if such extension is for no longer than six (6) days.

(11) The employee who records the in-meter reading shall either be independent of the hard count team or shall be assigned on a rotating basis, unless the in-meter readings are randomly verified quarterly for all gaming machines and bill acceptors by a person other than the regular in-meter reader.

(12) Upon receipt of the meter reading summary, the accounting department shall review all meter readings for reasonableness using pre-established parameters.

(13) Prior to final preparation of statistical reports, meter readings that do not appear reasonable shall be reviewed with gaming machine department employees or other appropriate designees, and exceptions documented, so that meters can be repaired or clerical errors in the recording of meter readings can be corrected.

(14) A report shall be produced at least monthly showing month-to-date, year-to-date (previous twelve (12) months data preferred), and if practicable, life-to-date actual hold percentage computations for individual machines and a comparison to each machine's theoretical hold percentage previously discussed.

(15) Each change to a gaming machine's theoretical hold percentage, including progressive percentage contributions, shall result in that machine being treated as a new machine in the statistical reports (i.e., not commingling various hold percentages), except for adjustments made in accordance with paragraph (h)(2) of this section.

(16) If promotional payouts or awards are included on the gaming machine statistical reports, it shall be in a manner that prevents distorting the actual hold percentages of the affected machines.

(17) The statistical reports shall be reviewed by both gaming machine department management and management employees independent of the gaming machine department on at least a monthly basis.

(18) For those machines that have experienced at least 100,000 wagering transactions, large variances (three percent (3%) recommended) between theoretical hold and actual hold shall be investigated and resolved by a department independent of the gaming machine department with the findings documented and provided to the Tribal gaming regulatory authority upon request in a timely manner.

(19) Maintenance of the on-line gaming machine monitoring system data files shall be performed by a department independent of the gaming machine department. Alternatively, maintenance may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified on a monthly basis by employees independent of the gaming machine department.

(20) Updates to the on-line gaming machine monitoring system to reflect additions, deletions, or movements of gaming machines shall be made at least weekly prior to in-meter readings and the weigh process.

\* \* \* \* \*  
(l) \* \* \*

(4) Reports, where applicable, adequately documenting the procedures required in paragraph (l)(3) of this section shall be generated and retained.

(m) \* \* \*

(6) For each drop period, accounting/auditing employees shall compare the

bill-in meter reading to the total bill acceptor drop amount for the period. Discrepancies shall be resolved before the generation/distribution of gaming machine statistical reports.

(7) Follow-up shall be performed for any one machine having an unresolved variance between actual currency drop and bill-in meter reading in excess of an amount that is both more than \$25 and at least three percent (3%) of the actual currency drop. The follow-up performed and results of the investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

\* \* \* \* \*

■ 7. Revise § 542.18 to read as follows:

**§ 542.18 How does a gaming operation apply for a variance from the standards of the part?**

(a) *Tribal gaming regulatory authority approval.* (1) A Tribal gaming regulatory authority may approve a variance for a gaming operation if it has determined that the variance will achieve a level of control sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the Tribal gaming regulatory authority approves a variance, it shall submit to the Chairman of the NIGC, within thirty (30) days, a detailed report, which shall include the following:

- (i) A detailed description of the variance;
- (ii) An explanation of how the variance achieves a level of control sufficient to accomplish the purpose of the standard it is to replace; and
- (iii) Evidence that the Tribal gaming regulatory authority has approved the variance.

(3) In the event that the Tribal gaming regulatory authority or the Tribe chooses to submit a variance request directly to the Chairman, it may do so without the approval requirement set forth in paragraph (a)(2)(iii) of this section and such request shall be deemed as having been approved by the Tribal gaming regulatory authority.

(b) *Review by the Chairman.* (1) Following receipt of the variance approval, the Chairman or his or her designee shall have sixty (60) days to concur with or object to the approval of the variance.

(2) Any objection raised by the Chairman shall be in the form of a written explanation based upon the following criteria:

- (i) There is no valid explanation of why the gaming operation should have received a variance approval from the Tribal gaming regulatory authority on the enumerated standard; or

(ii) The variance as approved by the Tribal gaming regulatory authority does not provide a level of control sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Chairman fails to object in writing within sixty (60) days after the date of receipt of a complete submission, the variance shall be considered concurred with by the Chairman.

(4) The 60-day deadline may be extended, provided such extension is mutually agreed upon by the Tribal gaming regulatory authority and the Chairman.

(c) *Curing Chairman's objections.* (1) Following an objection by the Chairman to the issuance of a variance, the Tribal gaming regulatory authority shall have the opportunity to cure any objections noted by the Chairman.

(2) A Tribal gaming regulatory authority may cure the objections raised by the Chairman by:

(i) Rescinding its initial approval of the variance; or

(ii) Rescinding its initial approval, revising the variance, approving it, and re-submitting it to the Chairman.

(3) Upon any re-submission of a variance approval, the Chairman shall have thirty (30) days to concur with or object to the re-submitted variance.

(4) If the Chairman fails to object in writing within thirty (30) days after the date of receipt of the re-submitted variance, the re-submitted variance shall be considered concurred with by the Chairman.

(5) The thirty (30) day deadline may be extended, provided such extension is mutually agreed upon by the Tribal gaming regulatory authority and the Chairman.

(d) *Appeals.* (1) Upon receipt of objections to a re-submission of a variance, the Tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:

(i) Within thirty (30) days of receiving an objection to a re-submission, the Tribal gaming regulatory authority shall file its notice of appeal.

(ii) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(iii) An appeal under this section shall specify the reasons why the Tribal gaming regulatory authority believes the Chairman's objections should be reviewed, and shall include supporting documentation, if any.

(iv) The Tribal gaming regulatory authority shall be provided with any comments offered by the Chairman to the Commission on the substance of the

appeal by the Tribal gaming regulatory authority and shall be offered the opportunity to respond to any such comments.

(v) Within thirty (30) days after receipt of the appeal, the Commission shall render a decision based upon the criteria contained within paragraph (b)(2) of this section unless the Tribal gaming regulatory authority elects to waive the thirty (30) day requirement and to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision.

(vi) In the absence of a decision within the time provided, the Tribal gaming regulatory authority's resubmission shall be considered concurred with by the Commission and become effective.

(2) The Tribal gaming regulatory authority may appeal the Chairman's objection to the approval of a variance to the full Commission without resubmitting the variance by filling a notice of appeal with the full Commission within thirty (30) days of the Chairman's objection and complying with the procedures described in paragraph (d)(1) of this section.

(e) *Effective date of variance.* The gaming operation shall comply with standards that achieve a level of control sufficient to accomplish the purpose of the standard it is to replace until such time as the Commission objects to the Tribal gaming regulatory authority's approval of a variance as provided in paragraph (b) of this section.

Concurrence in a variance by the Chairman or Commission is discretionary and variances will not be granted routinely. The gaming operation shall comply with standards at least as stringent as those set forth in this part until such time as the Chairman or Commission concurs with the Tribal gaming regulatory authority's approval of a variance.

■ 8. Amend § 542.21 by redesignating paragraphs (t) and (u) as paragraphs (v) and (w) and by adding new paragraphs (t) and (u) to read as follows:

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

\* \* \* \* \*

(t) *Gaming machine computerized key security systems.* (1) Computerized key security systems which restrict access to the gaming machine drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (l), (o), (q) and (s) of

this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (t)(2)(i) of this section.

(2) For computerized key security systems, the following additional gaming machine key control procedures apply:

(i) Management personnel independent of the gaming machine department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that gaming machine drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the gaming machine drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (t)(2)(ii) of this section requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the gaming machine drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to gaming machine drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the gaming machine drop and count keys. Also, determine whether any gaming machine drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual gaming machine drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the gaming machine drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigation being documented.

(u) *Table games computerized key security systems.* (1) Computerized key security systems which restrict access to the table game drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (m), (n), (p) and (r) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (u)(2)(ii) of this section.

(2) For computerized key security systems, the following additional table game key control procedures apply:

(i) Management personnel independent of the table game department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that table game drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the table game drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (u)(2)(ii) of this section requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the table games drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to table games drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the table games drop and count keys. Also, determine whether any table games drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual table games drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the table games drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, table game drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigations being documented.

(v) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(w) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (*e.g.*, prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (*e.g.*, weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person or persons performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), 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 procedures that are equivalent to those described in paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine prior to the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

■ 9. Amend § 542.31 by redesignating paragraphs (t) and (u) as paragraphs (v) and (w) and by adding new paragraphs (t) and (u) to read as follows:

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

\* \* \* \* \*

(t) *Gaming machine computerized key security systems.* (1) Computerized key security systems which restrict access to the gaming machine drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (l), (o), (q) and (s) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (t)(2)(i) of this section.

(2) For computerized key security systems, the following additional gaming machine key control procedures apply:

(i) Management personnel independent of the gaming machine department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that gaming machine drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the gaming machine drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (t)(2)(ii) of this section, requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the gaming machine drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to gaming machine drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security

system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the gaming machine drop and count keys. Also, determine whether any gaming machine drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual gaming machine drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the gaming machine drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigation being documented.

(u) *Table games computerized key security systems.* (1) Computerized key security systems which restrict access to the table game drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards, refer to paragraphs (m), (n), (p) and (r) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (u)(2)(ii) of this section.

(2) For computerized key security systems, the following additional table game key control procedures apply:

(i) Management personnel independent of the table game department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that table game drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the table game drop and count keys, requires the physical

involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (u)(2)(ii) of this section, requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the table games drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to table games drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the table games drop and count keys. Also, determine whether any table games drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual table games drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the table games drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, table game drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys

unaccounted for, with the investigations being documented.

(v) *Emergency drop procedures.*

Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(w) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person or persons performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), 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 procedures that are equivalent to those described in paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine prior to the

actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

■ 10. Amend § 542.41 by redesignating paragraphs (t) and (u) as paragraphs (v) and (w) and by adding new paragraphs (t) and (u) to read as follows:

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

\* \* \* \* \*

(t) *Gaming machine computerized key security systems.* (1) Computerized key security systems which restrict access to the gaming machine drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (l), (o), (q) and (s) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (t)(2)(i) of this section.

(2) For computerized key security systems, the following additional gaming machine key control procedures apply:

(i) Management personnel independent of the gaming machine department assign and control user access to keys in the computerized key security system (i.e., system administrator) to ensure that gaming machine drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the gaming machine drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (t)(2)(ii) of this section requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the gaming machine drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all

participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to gaming machine drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (i.e., system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the gaming machine drop and count keys. Also, determine whether any gaming machine drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual gaming machine drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the gaming machine drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigation being documented.

(u) *Table games computerized key security systems.* (1) Computerized key security systems which restrict access to the table game drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (m), (n), (p) and (r) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (u)(2)(ii) of this section.

(2) For computerized key security systems, the following additional table game key control procedures apply:

(i) Management personnel independent of the table game department assign and control user



access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that table game drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the table game drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (u)(2)(ii) of this section requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) override key) and does not involve the accessing of the table games drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to table games drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the table games drop and count keys. Also, determine whether any table games drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual table games drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the table games drop and count keys to determine that their access to the

assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, table game drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigations being documented.

(v) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(w) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (*e.g.*, prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (*e.g.*, weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person or persons performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), 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 procedures that are equivalent to those described in

paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine prior to the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

Signed in Washington, DC, this 21st day of April, 2005.

**Philip N. Hogen,**  
Chairman.

**Nelson Westrin,**  
Vice-Chairman.

**Cloyce Choney,**  
Commissioner.

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AL90

#### Presumption of Sound Condition: Aggravation of a Disability by Active Service

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations regarding the presumption of soundness of a veteran by adding a requirement that, in order to rebut the presumption of soundness of a veteran on entrance into active service, VA must prove not only that the condition existed prior to entrance into active service, but also that it was not aggravated by the veteran's active service. This amendment reflects a change in VA's interpretation of the statute governing the presumption of sound condition, and is based on a recent opinion of VA's General Counsel as well as a recent decision of the United States Court of Appeals for the Federal Circuit. The intended effect of this amendment is to require that VA, not the claimant, prove that the disability preexisted entrance into military service and that the disability was not aggravated by such service before the presumption of soundness on entrance onto active duty is overcome.

**DATES:** *Effective Date:* May 4, 2005.