

#### § 542.4

#### 25 CFR Ch. III (4–1–06 Edition)

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

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

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

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

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

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

(g) *Enforcement of Commission Minimum Internal Control Standards.* (1) Each Tribal gaming regulatory authority is required to establish and implement internal control standards pursuant to paragraph (c) of this section. Each gaming operation is then required, pursuant to paragraph (d) of this section, to develop and implement an internal control system that complies with the Tribal internal control standards. Failure to do so may subject the Tribal operator of the gaming operation, and/or the management contractor, to penalties under 25 U.S.C. 2713.

(2) Recognizing that Tribes are the primary regulator of their gaming operation(s), enforcement action by the Commission will not be initiated under this part without first informing the Tribe and Tribal gaming regulatory authority of deficiencies in the internal controls of its gaming operation and allowing a reasonable period of time to address such deficiencies. Such prior notice and opportunity for corrective action is not required where the threat to the integrity of the gaming operation is immediate and severe.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47104, Aug. 12, 2005]

#### § 542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?

(a) If there is a direct conflict between an internal control standard established in a Tribal-State compact and a standard or requirement set forth in this part, then the internal control standard established in a Tribal-State compact shall prevail.

(b) If an internal control standard in a Tribal-State compact provides a level of control that equals or exceeds the level of control under an internal control standard or requirement set forth in this part, then the Tribal-State compact standard shall prevail.

(c) If an internal control standard or a requirement set forth in this part provides a level of control that exceeds the level of control under an internal control standard established in a Tribal-State compact, then the internal control standard or requirement set forth in this part shall prevail.

#### § 542.5 How do these regulations affect state jurisdiction?

Nothing in this part shall be construed to grant to a state jurisdiction in class II gaming or extend a state's jurisdiction in class III gaming.

#### § 542.6 Does this part apply to small and charitable gaming operations?

(a) *Small gaming operations.* This part shall not apply to small gaming operations provided that:

(1) The Tribal gaming regulatory authority permits the operation to be exempt from this part;