TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION

NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING CONCERNING INTERIM APPROVAL OF BINGO CARD-MINDING DEVICES
CGCC-GCA-2008-04-C

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest. Any interested person, or his or her authorized representative, may present statements or arguments orally or in writing relevant to the action proposed at a public hearing to be held at 10:00 a.m. on July 2, 2009, at 2399 Gateway Oaks Drive, First Floor Hearing Room, Sacramento, CA 95833-4231.

WRITTEN COMMENT PERIOD

Written comments relevant to the proposed regulatory action, including those sent by mail, facsimile, or e-mail, may be submitted to the Commission at any time during the public comment period, or may be received by the Commission at the above referenced hearing. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than 5:00 p.m. on July 2, 2009.** Written comments not submitted at the hearing should be directed to one of the individuals designated in this notice as a contact person. **Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

ADOPTION OF PROPOSED ACTION

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19850.5 and 19850.6 of the Business and Professions Code, and section 326.5 of the Penal Code; and to implement, interpret or make specific Sections 19850.5 and 19850.6 of the Business and Professions Code, and section 326.5 of the Penal Code; the Commission is proposing the following changes to Chapter 8 of Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

INTRODUCTION:

The California Gambling Control Commission (Commission) has been specifically directed, pursuant to Business and Professions Code section 19850.6, subdivision (a), to adopt regulations to implement the California Remote Caller Bingo Act (CRCBA[1]). The Commission is proposing to adopt regulations that will establish a process for granting interim approval of bingo card-minding devices used in the play of bingo games. The adoption of the proposed regulations will implement one element of the CRCBA, as mandated by Penal Code section 326.5.

SPECIFIC PROPOSAL:

This proposal would make permanent the emergency regulations in Section 12486 of Chapter 8 of Division 18 of Title 4 of the California Code of Regulations. Section 12486 establishes a process and criteria for the interim approval of bingo card-minding devices and any modifications to approved devices, as required by Penal Code section 326.5(p). This proposal requires the chief executive officer of the card-minding device manufacturer to self-certify, under penalty of perjury, that the device meets all requirements under the Penal Code, and establishes a process for the review and consideration of applications by the Commission.

EXISTING LAW:

Effective January 1, 2009, Penal Code section 326.5, subdivision (o), provides that electronic or video displays shall not be used in connection with the game of bingo, except in connection with the caller's drawing of the numbers or symbols, public display of that drawing, and except in connection with the use of hand-held, portable card-minding devices used by players who are physically present at a bingo game. Subdivision (p) provides that players who are physically present at a bingo game may use hand-held, portable card-minding devices that meet specified requirements to assist in monitoring the numbers or symbols announced in a live game. This subdivision also requires that the Commission approve any card-minding device in advance of its use.

Section 12486, Title 4, Division 18, Chapter 8, California Code of Regulations, currently establishes requirements for the interim approval of card-minding devices, and any modifications to approved devices, as well as the use of those devices in the play of bingo.

EFFECT OF REGULATORY ACTION:

This proposed action permanently establishes Chapter 8 in Division 18 of Title 4 of the California Code of Regulations, as follows:

- Article 2 is established to reflect the title "Bingo Equipment, Devices, and Supplies."

- Section 12486 is established within Article 2 to reflect the title "Approval of Card-Minding Devices" to create an interim approval process for card-minding devices until such time as additional criteria for approval are established in Commission regulation. Subsection (a) imposes the following conditions for approval:

[1] Chapter 748, Statutes of 2008 (SB 1369, Cedillio and Battin, et al.)

1) Paragraph (1) sets the interim approval term at one year from the date granted or until regulations specifying additional criteria for approval become effective, whichever is later.

2) Paragraph (2) states that an interim approval does not obligate the Commission to grant a regular approval and does not create a vested right in the holder to either an extension of an interim approval or the granting of a subsequent regular approval.

3) Paragraph (3) states that an interim approval does not change the legal requirement that the applicant bears the burden of establishing device compliance.

4) Paragraph (4) clarifies that interim approval of a specific card-minding device has no bearing on whether the manufacturer of the device will qualify for a Commission license, and states that an interim approval for a device will be cancelled if the manufacturer is ineligible for licensure.

5) Paragraph (5) establishes a procedure for the cancellation of an interim approval. A notice will be given to the manufacturer, by the Executive Director of the Commission, in the form of an order to show cause as to why the device's approval should not be cancelled. The manufacturer will have at least 30 days, but not more than 90 days, to respond to the order in writing. The matter will then be set for consideration at a Commission hearing, which will be conducted in accordance with applicable provisions of Section 12050(b).

- Subsection (b) states that a specific model of card-minding devices and its designated software version shall be deemed approved if specified requirements are satisfied.

  1) Paragraph (1):
     - Requires the chief executive officer or other authorized representative of the entity that manufacturers the card-minding device to self-certify, under penalty of perjury, that the specific card-minding device meets requirements established in statute.

     - Provides for the use of Form CGCC-615, "Application for Interim Approval of Bingo Card-Minding Devices" (Rev.05/09).

     - Establishes a $50 application fee for each model and its designated software for which approval is being requested.

- Subsection (c) requires a new approval of any device that has undergone a material software upgrade, as required pursuant to Penal Code section 326.5(p)(3)(A).

- Subsection (d) requires that players, when using a card-minding device, manually input the numbers or symbols announced in the game into the device, and specifically prohibits automatic daubing, as defined. This subsection also requires that any card-minding device

possessing automatic daubing capability have that capability disabled as a condition of approval.

- Subsection (e) establishes the process for review and consideration of applications for approval by the Commission.

- Attachment (A) to Chapter 8 provides the form to collect information regarding the manufacturer of the bingo card-minding device and the specifications of the device [CGCC-615 (Rev. 05/09)]. The included form is an amendment to the form CGCC-615 (New 11/08), and has been amended to clarify that a bingo card-minding device must be both hand-held and portable to qualify for approval.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

None.

NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:

None.

LOCAL MANDATE:

None.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500 – 17630 REQUIRE REIMBURSEMENT:

None.

IMPACT ON BUSINESS:

The Commission has made an initial determination that the adoption of these regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, and that are known to the Commission are:

- $50 application fee for each card-minding device or associated software for which approval is being sought.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The Commission has determined that the proposed regulatory action may affect small businesses if any bingo card-minding device manufacturer qualifies as a small business.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

INITIAL STATEMENT OF REASONS, INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833-4231.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the backup contact person named below.

Upon its completion, the Final Statement of Reasons will also be available. A copy of the Final Statement of Reasons may be obtained, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's Web site listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person:

James B. Allen, Regulatory Actions Manager
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-4024; Fax: (916) 263-0499; E-mail: Jallen@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Joy Calkin, Staff Services Analyst
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-0700; Fax: (916) 263-0499; E-mail: Jcalkin@cgcc.ca.gov

WEB SITE ACCESS

Materials regarding this proposed action are also posted on the Commission's Web site at www.cgcc.ca.gov.

CALIFORNIA GAMBLING CONTROL COMMISSION

SPECIFIC LANGUAGE OF PROPOSED REGULATIONS

INTERIM APPROVAL OF CARD-MINDING DEVICES
CGCC-GCA-2009-04-C

TITLE 4. BUSINESS REGULATIONS.
DIVISION 18. CALIFORNIA GAMBLING CONTROL COMMISSION.

CHAPTER 8. BINGO.

ARTICLE 2. BINGO EQUIPMENT, DEVICES AND SUPPLIES.

Section 12486. Approval of Card-Minding Devices.

(a) Beginning January 1, 2009, any card-minding device that is used in the play of any bingo game, as described in subdivision (p) of section 326.5 of the Penal Code, shall be approved by the Commission in advance as meeting the requirements of section 326.5. An interim approval process is established to further the legislative intent of avoiding disruption of fundraising efforts by nonprofit organizations as expressed in Business and Professions Code section 19850.6. Until such time as the Commission establishes in regulation specific additional criteria for the approval of card-minding devices, interim approval may be obtained from the Commission pursuant to this section, subject to the following conditions:

(1) An interim approval shall be valid for one year from the date it is granted by the Commission or until regulations specifying additional criteria for card-minding devices become effective, whichever is later.

(2) An interim approval does not obligate the Commission to grant a regular approval and does not create a vested right in the holder to either an extension of the interim approval or to the granting of a subsequent regular approval.

(3) An interim approval does not in any way change the legal requirement that the applicant bears the burden of establishing that a specific device is manufactured to be used in compliance with all of the provisions of paragraphs (1) and (2) of subdivision (p) of section 326.5 of the Penal Code.

(4) Issuance of an interim approval concerning a specific card-minding device has no bearing on the question of whether the manufacturer of the device, or any affiliated person, will qualify for issuance of any Commission permit, registration, or license. Any interim approval will be cancelled in the event that the manufacturer of the device is subsequently determined to be ineligible for licensure.

(5) If, during the term of an interim approval, it is determined that any particular card-minding device is not qualified for approval, the Executive Director shall prepare an order to show cause why that device's interim approval should not be cancelled. The manufacturer of the device shall be given at least 30 days, but not more than 90 days, to respond in writing. After receipt of the manufacturer's response, or if the manufacturer fails to respond within the specified time, the matter shall be set for consideration at a noticed Commission meeting. The manufacturer may address the Commission by way of an oral statement at the Commission meeting and, either in writing not less than ten days prior to the meeting or at the meeting itself, may request an evidentiary hearing. Any evidentiary hearing shall be conducted in accordance with applicable provisions of subsection (b) of Section 12050 of this division.

(b) A specific model of card-minding device and its designated software version shall be deemed approved on an interim basis by the Commission if the following requirements are satisfied:

(1) The chief executive officer or other authorized representative of the business entity that manufactures the card-minding device certifies under penalty of perjury using the form "Application for Interim Approval of Bingo Card-Minding Device," CGCC-615 (~~New 11/08~~Rev. 05/09), which is attached in Appendix A to this chapter, that the specific model and its designated software version satisfies all the requirements set out in Penal Code section 326.5(p)(1)(A-D) and (2)(A-D). An application fee of $50 for each specified model and its designated software version for which approval is being requested shall accompany the application.

(2) The Commission has issued an interim approval for the specified model and its designated software version, having found that the certification has satisfied the requirements of this section.

(c) Any material change in the software used in a previously approved card-minding device shall require application for approval of the subject model and its revised software version, as provided in subsection (b)(1), and approval by a designated member of the Commission staff.

(d) When using any card-minding device, players shall manually input or daub each individual number or symbol announced by a live caller into the individual player-operated units or components of the device; automatic daubing shall not be permitted. Any card-

minding device possessing automatic daubing capabilities shall have that capability disabled as a condition of approval.

(e) Each application for interim approval shall be reviewed and, if found to be complete and correct, shall be set for consideration at a noticed Commission meeting. If the application does not satisfy the requirements of this section, the manufacturer shall be provided a written list of deficiencies.

Note: Authority cited: Sections 19850.5 and 19850.6, Business and Professions Code; Sections 326.3 and 326.5, Penal Code. Reference: Sections 19850.5 and, 19850.6, Business and Professions Code; Sections 326.3 and 326.5, Penal Code.

APPENDIX A

State of California
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231
(916) 263-0700; Fax: (916) 263-0452
www.cgcc.ca.gov

APPLICATION FOR INTERIM APPROVAL OF BINGO CARD-MINDING DEVICE

CGCC-615 (Rev. 05/09)

Pursuant to California Code of Regulations, Title 4, section 12482 and California Penal Code (PC) section 326.5(p)(3), the California Gambling Control Commission (Commission) shall approve in advance any card-minding device to be used in the play of any bingo game. Card-minding devices must be both portable and hand-held, must meet all requirements indicated in PC section 326.5(p)(1)(A-D), and must not perform any of the functions indicated in PC section 326.5(p)(2)(A-D). Stationary devices are prohibited pursuant to PC section 326.5.

Send the completed *Application for Interim Approval of Bingo Card-minding Device* form with a **$ 50.00** application fee for each card-minding device model and its designated software version to: California Gambling Control Commission, 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231. Please make all checks payable to the California Gambling Control Commission.

APPROVAL TYPE

☐ **Initial Approval** ☐ **Modification of Commission-Approved Device**

SECTION 1a – MANUFACTURER BUSINESS INFORMATION

Name of Business		
Principal Place of Business Address		
Mailing Address (If different than business address)		
Telephone Number ( )	Fax Number ( )	Website Address (If any)
Name of Contact Person	Title	
Telephone Number ( )	Fax Number ( )	E-mail Address (If any)

SECTION 1b – MANUFACTURER LICENSE INFORMATION

If additional space is needed, please attach a listing of the requested information on a separate sheet of paper.

Has the business been licensed with any gaming agency including any other State, City, County, Federal, Country, or Tribal agency? ☐ Yes ☐ No

If yes, please list the gaming agency and the license, certificate, registration, etc. information below.

Gaming Agency Name	License Number	Expiration Date

SECTION 2 – CARD-MINDING DEVICE INFORMATION

Complete the information below for each card-minding device model and its designated software version you are certifying as meeting the requirements indicated in PC 326.5(p)(1) and (2). Any material change in the software used in a previously approved card-minding device requires a modification approval. If you are requesting interim approval of more than four devices, please make an additional copy of this page and attach to the application.

Model Name	Model Number
Software (Firmware) Version	Software (Firmware) Build Date

Answer the following questions regarding the card-minding device model and its designated software version listed above.

1. Is ~~the~~ this device model ~~a~~ both hand-held~~,~~ and portable ~~device~~?	☐ Yes	☐ No
2. Has this device model and software version been previously tested and certified by an independent laboratory? **If yes, attach copies of certification documents.**	☐ Yes	☐ No
3. Is this device model and its designated software version capable of automatic daubing?	☐ Yes	☐ No
Complete only if you answered "Yes" to question 3. 4. Can the automatic daubing function be disabled?	☐ Yes	☐ No

Model Name	Model Number
Software (Firmware) Version	Software (Firmware) Build Date

Answer the following questions regarding the card-minding device model and its designated software version listed above.

1. Is ~~the~~ this device model ~~a~~ both hand-held~~,~~ and portable ~~device~~?	☐ Yes	☐ No
2. Has this device model and software version been previously tested and certified by an independent laboratory? **If yes, attach copies of certification documents.**	☐ Yes	☐ No
3. Is this device model and its designated software version capable of automatic daubing?	☐ Yes	☐ No
Complete only if you answered "Yes" to question 3. 4. Can the automatic daubing function be disabled?	☐ Yes	☐ No

Model Name	Model Number
Software (Firmware) Version	Software (Firmware) Build Date

Answer the following questions regarding the card-minding device model and its designated software version listed above.

1. Is ~~the~~ this device model ~~a~~ both hand-held~~,~~ and portable ~~device~~?	☐ Yes	☐ No
2. Has this device model and software version been previously tested and certified by an independent laboratory? **If yes, attach copies of certification documents.**	☐ Yes	☐ No
3. Is this device model and its designated software version capable of automatic daubing?	☐ Yes	☐ No
Complete only if you answered "Yes" to question 3. 4. Can the automatic daubing function be disabled?	☐ Yes	☐ No

Model Name	Model Number
Software (Firmware) Version	Software (Firmware) Build Date

Answer the following questions regarding the card-minding device model and its designated software version listed above.

1. Is ~~the~~ this device model ~~a~~ both hand-held~~,~~ and portable ~~device~~?	☐ Yes	☐ No
2. Has this device model and software version been previously tested and certified by an independent laboratory? **If yes, attach copies of certification documents.**	☐ Yes	☐ No
3. Is this device model and its designated software version capable of automatic daubing?	☐ Yes	☐ No
Complete only if you answered "Yes" to question 3. 4. Can the automatic daubing function be disabled?	☐ Yes	☐ No

SECTION 3 – CERTIFICATION / SIGNATURE

An authorized representative of the manufacturer must sign on behalf of the business.

I certify under penalty of perjury under the laws of the State of California that I have personally completed this form and know that the contents thereof, the information contained herein and in any attachments, is true, accurate, and complete. I also certify that any card-minding device and its designated software version indicated on this form meets the requirements of PC 326.5(p) and understand that the interim approval is subject to the following conditions:

(1) An interim approval shall be valid for one year from the date it is granted by the Commission or until regulations specifying additional criteria for card-minding devices become effective, whichever is later.

(2) An interim approval does not obligate the Commission to grant a regular approval and does not create a vested right in the holder to either an extension of the interim approval or to the granting of a subsequent regular approval.

(3) An interim approval does not in any way change the legal requirement that the applicant bears the burden of establishing that a specific device complies with all of the provisions of paragraphs (1) and (2) of subdivision (p) of section 326.5 of the Penal Code.

(4) Issuance of an interim approval concerning a specific card-minding device has no bearing on the question of whether the manufacturer of the device, or any affiliated person, will qualify for issuance of any Commission permit, registration, or license. Any interim approval will be cancelled in the event that the manufacturer of the device is subsequently determined to be ineligible for licensure.

(5) If, during the term of an interim approval, it is determined that any particular card-minding device is not qualified for approval, the Executive Director shall prepare an order to show cause why that device's interim approval should not be cancelled. The manufacturer of the device shall be given at least 30 days to respond in writing. After receipt of the manufacturer's response, the matter shall be set for consideration at a noticed Commission meeting. The manufacturer may address the Commission by way of an oral statement at the Commission meeting and, either in writing not less than ten days prior to the meeting or at the meeting itself, may request an evidentiary hearing.

(6) Any card-minding device and its designated software version that possess an automatic daubing capability shall have that capability disabled.

Name of Individual Completing this Application (*typed or printed*)	Title
Signature	Date

CALIFORNIA GAMBLING CONTROL COMMISSION

INITIAL STATEMENT OF REASONS
CGCC-GCA-2008-04-C

HEARING DATE: July 2, 2009

SUBJECT MATTER OF PROPOSED REGULATIONS: Interim Approval of Bingo Card-Minding Devices.

SECTIONS AFFECTED: Title 4, California Code of Regulations, Section 12486.

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

Introduction:
The California Gambling Control Commission (Commission) has been specifically directed, pursuant to Business and Professions Code section 19850.6, subdivision (a), to adopt regulations to implement the California Remote Caller Bingo Act (CRCBA),[1] as soon as possible. The Commission is proposing to adopt regulations that will establish a process for granting interim approval of card-minding devices used in the play of bingo games. The adoption of the proposed regulations will implement one element of the CRCBA, as mandated by Penal Code section 326.5.

Background:
SB 1369 authorizes "remote caller bingo" as a game that would allow specific nonprofit organizations to use audio or video technology to remotely link designated in-state facilities to cosponsor live bingo games, if authorized pursuant to a local ordinance and approved by the Commission. The Commission is required to regulate remote caller bingo, including but not limited to, the development of regulations for approval of card-minding devices.

According to the author, SB 1369 is intended to provide nonprofit organizations an opportunity to increase their fundraising ability by authorizing remote caller bingo, which will allow charities across the State to combine their games and offer larger prizes than allowed under current law. The author states, "The demand for services from California charities is increasing due to the economy, unemployment and our state budget cuts. At the same time, charitable donations are down and charities are faced with turning away people for whom it is their mission to serve. Charities desperately need new tools to increase their ability to raise funds to keep up with the demand for their services."

[1] Chapter 748, Statutes of 2008 (SB 1369, Cedillio and Battin, et al.)

The bill directs the Commission to adopt appropriate emergency regulations as soon as possible, with the initial regulatory action to be filed with the Office of Administrative Law (OAL) by May 1, 2009. Effective January 1, 2009, Penal Code section 326.5(p)(3)(A) requires that any card-minding device used pursuant to the CRCBA be approved in advance by the Commission. An interim approval process has been established in Section 12482, which was adopted by the Commission as an emergency regulation to further the legislative intent expressed in the CRCBA of avoiding disruption of fundraising efforts by nonprofit organizations. The emergency adoption of Section was approved by OAL on December 22, 2008, to become effective January 1, 2009.[2] Minor, technical amendments, including a change to the section number, were approved by OAL and became effective April 24, 2009[3]. Section 12482 will remain in effect for 180 days during which time this proposed action is being pursued in order to make the regulation permanent in Section 19486.

Proposed Action:
This proposed action permanently establishes Chapter 8 in Division 18 of Title 4 of the California Code of Regulations, as follows:

- Article 2 is established to reflect the title "Bingo Equipment, Devices, and Supplies."

- Section 12486 is established within Article 2 to reflect the title "Approval of Card-Minding Devices" to create an interim approval process for card-minding devices until such time as additional criteria for approval are established in Commission regulation. The requirement to approve card-minding devices is an entirely new responsibility for the Commission and it will take time to determine the appropriate approval criteria. In order to comply with the requirements of Penal Code sections 326.3 and 326.5, the Commission will establish an interim approval while appropriate approval criteria are ascertained. At that time, the Commission will begin the rulemaking process to establish the criteria in regulation. Subsection (a) imposes the following conditions for approval:

    1) Paragraph (1) sets the interim approval term at one year from the date granted or until regulations specifying additional criteria for approval become effective, whichever is later. The Commission is in the process of determining appropriate approval criteria, but as this is a new responsibility, we are unsure of the expected timeline. Setting the term of the approval at the latter of one year or the effective date of additional regulations is intended to minimize the burden on both the Commission and the device manufacturer. The manufacturer will not be required to reapply for an interim approval if the regulations are not yet established at the one-year expiration of the approval, saving time and money for the manufacturer and decreasing the workload on the Commission.

    2) Paragraph (2) states that an interim approval does not obligate the Commission to grant a regular approval and does not create a vested right in the holder to either an extension of an interim approval or the granting of a subsequent regular approval. This section is intended to clarify that a card-minding device that receives an interim approval will not be guaranteed to receive a regular approval. All conditions

[2] OAL File No. 2008-1218-06 E
[3] OAL File No. 2009-0414-01 E

established by the Commission in future regulations applicable to card-minding devices will need to be met, regardless of whether or not the device has received an interim approval.

3) Paragraph (3) states that an interim approval does not change the legal requirement that the applicant bears the burden of establishing device compliance. This requirement is consistent with the provision in Business and Professions Code section 19856 stating that the burden of proof regarding qualifications for a license rests on the applicant.

4) Paragraph (4) clarifies that interim approval of a specific card-minding device has no bearing on whether the manufacturer of the device will qualify for a Commission license, and states that an interim approval for a device will be cancelled if the manufacturer is ineligible for licensure. Pursuant to Penal Code section 326.5(p)(3)(B), any person that manufactures card-minding devices must be licensed by the Commission. Manufacturers are licensed through a separate licensing process established in Section 12492. The qualifications to receive a license to manufacture a card-minding device are unrelated to the criteria required for the device itself to be approved.

5) Paragraph (5) establishes a procedure for the cancellation of an interim approval. A notice will be given to the manufacturer, by the Executive Director of the Commission, in the form of an order to show cause as to why the device's approval should not be cancelled. The manufacturer will have at least 30 days, but not more than 90 days, to respond to the order in writing. The matter will then be set for consideration at a Commission hearing, which will be conducted in accordance with applicable provisions of Section 12050(b). The process established in paragraph (5) affords due process and an opportunity to be heard before cancellation of an interim approval.

- Subsection (b) states that a specific model of card-minding devices and its designated software version shall be deemed approved if specified requirements are satisfied.

  1) Paragraph (1):

     - Requires the chief executive officer or other authorized representative of the entity that manufacturers the card-minding device to self-certify, under penalty of perjury, that the specific card-minding device meets requirements established in statute. The approval of card-minding devices is a new program for the Commission, and it will take time for the appropriate approval criteria to be determined. Furthermore, the Commission does not have the resources at this time to preemptively examine every make and model of card-minding device used in California without serious disruption to charities' fundraising efforts. Until appropriate approval criteria are established and sufficient resources are available, the Commission must rely

on a self-certification process. If a device is later found to be non-compliant, the interim approval can be revoked.

- Provides for the use of Form CGCC-615, "Application for Interim Approval of Bingo Card-Minding Devices" (Rev. 05/09). The application form is needed in order to collect necessary information regarding the business and the types of devices manufactured, and to obtain the manufacturer's self-certification that the device complies with all statutory requirements.

  Amendments have been made to Form CGCC-615 to make specific reference to the fact that a bingo card-minding device must be both portable and hand-held in order to meet the statutory requirements for approval. The wording of the form in its original format focuses attention on requirements contained in subparagraphs (A) through (D) of paragraph (1) of subdivision (p) of section 326.5 and does not specifically mention a key requirement articulated in the portion of the text of paragraph (1) of subdivision (p) of Penal Code section 326.5, which precedes subparagraphs (A) through (D): the requirement that a card-minding device must be both "hand-held" and "portable."

- Establishes a $50 application fee for each model and its designated software for which approval is being requested. The $50 fee is intended to be a nominal fee to cover the cost of processing applications, including a cursory review of the device and its software. To the extent that additional workload data becomes available, this fee may be increased once additional approval criteria are established in regulation.

- Subsection (c) requires a new approval of any device that has undergone a material software upgrade, as required pursuant to Penal Code section 326.5(p)(3)(A). Because the software is crucial to the operation of the card-minding device, a material software upgrade could significantly change the performance of the device.

- Subsection (d) requires that players, when using a card-minding device, manually input the numbers or symbols announced in the game into the device, and specifically prohibits automatic daubing, as defined. This subsection also requires that any card-minding device possessing automatic daubing capability have that capability disabled as a condition of approval. Penal Code section 326.5(p)(1)(B) requires that card-minding devices provide a means for bingo players to manually input each individual number or symbol, and section 326.5(p)(2) limits the functions performed by the card-minding device to those specified in statute. The Commission has interpreted these two provisions to prohibit the use of an automatic daubing feature in card-minding devices.

- Subsection (e) establishes the process for review and consideration of applications for approval by the Commission. The Commission will consider each application at a noticed meeting in order to provide transparency to the public and the manufacturer of the device. This subsection also provides that, if the application does not meet the requirements of this section, the manufacturer shall be notified of the deficiencies. A notification of deficiencies

will allow the manufacturer to correct any shortfalls in the application, rather than have the application disapproved.

UNDERLYING DATA:

Technical, theoretical or empirical studies or reports relied upon: None.

BUSINESS IMPACT:

The Commission has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

The proposed regulatory action does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

No reasonable alternative has been considered or otherwise identified and brought to the attention of the Commission.

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION

NOTICE OF RESCHEDULED PUBLIC HEARING
INTERIM APPROVAL OF BINGO CARD-MINDING DEVICES

CGCC-GCA-2008-04-C

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) has rescheduled the public hearing originally set for July 2, 2009 in the Notice of Proposed Action duly published in the *California Regulatory Notice Register* (Z-2009-0505-05, Register 2009, No. 20-Z, 05/15/2009), and subsequently rescheduled for October 15, 2009. Due to unforeseen scheduling conflicts, the public hearing has been rescheduled. The new date and location of the public hearing is October 20, 2009, at 10:00 a.m., at 2399 Gateway Oaks Drive, First Floor Hearing Room, Suite 100, Sacramento, CA 95833-4231.

PUBLIC COMMENT PERIOD

The written comment period has **not** been extended. Written comments relevant to the proposed regulatory action **must be received by the Commission no later than 5:00 p.m. on October 15, 2009**. Comments may be submitted by mail, facsimile, or e-mail, and should be directed to the contact person named below. Written comments will also be accepted at the above referenced hearing.

CONTACT PERSON

All comments and inquiries concerning the substance of the proposed action should be directed to the following contact person:

James B. Allen, Regulatory Actions Manager
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231
Telephone: (916) 263-4024
Fax: (916) 263-0499
E-mail: Jallen@cgcc.ca.gov

LAW OFFICES OF DAVID M. FRIED

1975 Adams Av.
San Leandro, CA 94577

Phone: (510) 562-8906
Fax: (510) 562-8911

July 6, 2009

James Allen
Regulations Coordinator
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

re: Bingo Regulations §12486 Card Minding Approval Regulations

Dear Jim:

I am writing on behalf of LIF Capital Group LLC, a California based manufacturer of cardminders. I am writing to suggest one addition to the regulations relating to product tests.

We need to be able to test software and equipment in a bingo hall under real conditions, which is far different than testing it in our warehouse. The regulations contemplate that equipment and software be approved before being "implemented", but if construed to mean any use even for testing, that would leave us unable to test software updates or fixes locally. For these last few months, we have been sending software and equipment to Florida to test, but the distance makes the testing and monitoring difficult as our technical staff is here. The alternative is to submit software updates to the Commission for approval, which approval would precede even our determination that software is working correctly and should be released.

Therefore, we would like to add a new section as follows:

12486 (a)(6) Prior to implementation, a manufacturer may test material software changes or cardminding prototypes in a single location during live bingo games for up to 30 days if the manufacturer notifies the Commission and Bureau in writing at least 5 days in advance of the dates and the location for the testing, and certifies in writing that the software and card minder (if not approved previously) are designed to comply with Penal Code §326.5.

Thank you for this opportunity to comment on the proposed regulations.

Sincerely,

David M. Fried

Cc Aisha Martin-Walton, Bureau
EBMA: Tamara Dietrich, Andy Bunkse
Mark Newton, Video King