

COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS

MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING ESTABLISHMENTS EMERGENCY PREPAREDNESS, SECURITY AND SURVEILLANCE CGCC-GCA-2009-06-R

45-DAY COMMENT PERIOD ENDING AUGUST 11, 2009

The following comments/objections/recommendations were made regarding the proposed action, either in writing or orally, during the 45-day public comment period and/or at the public hearing on August 11, 2009. The Commission approved the responses to these comments at the public hearing on August 11, 2009.

1. As amended by this action, Section 12370(a) requires gambling establishments (cardrooms) to comply with the emergency planning and preparedness regulations of the State Fire Marshal (Title 24 CCR, Part 9, Ch. 4, and Title 19, Section 3.09).
 - a. Bureau of Gambling Control (Bureau): The current Emergency Preparedness language in Subsection (a) should remain, as it may cover more contingencies than fire safety and evacuation plans alone.

Response: This comment was rejected in part. Section 12370 currently provides specific emergency preparedness and evacuation plan requirements for cardrooms. However, these requirements are outdated and may not be consistent with those of the State Fire Marshal. Since the State Fire Marshal has primary jurisdiction over these issues, this proposed regulatory action would amend Section 12370 by simply requiring cardrooms to comply with the emergency planning and preparedness regulations of the State Fire Marshal. The State Fire Marshal already has a *complete* set of emergency planning and preparedness regulations in Title 24 and Title 19. Further, the State Fire Marshal periodically revises and amends these regulations. This change would insure that the Commission's regulations for cardrooms do not conflict with those of the State Fire Marshal.

Further, those elements of the current Section 12370(a) that are not in the Fire Marshal's regulations, such as those relating to criminal incidents, have been moved to the new Section 12372, entitled "Security and Surveillance Plan."

However, the title of section 12370 was changed to read: "*Emergency Planning and Preparedness*", which is consistent with the title of the Fire Marshal's regulations. Conforming changes were also made to the Title of Article 2.

- b. Thomas Williams – Limelight Cardroom: Although large cardrooms who have retained counsel should find no problem in obtaining copies of the State Fire Marshal's regulations, smaller cardrooms may find the task monumental. I have been informed that Title 24 is a copyright document that must be purchased. The Commission should do more to provide licensees with access to these regulations.

- c. Bureau: Suggest having a link to this regulation posted on the Commission's website so that it is more readily available.

Response (b. & c. above): These comments were accepted. Although Title 24 may be a copyrighted document that is not available on the website of the Office of Administrative Law (OAL), it is readily available for viewing at no cost at over 100 California State Depository Libraries. California Law requires that state regulations be made available to the public at these depository libraries.¹ OAL's website provides a link to a list of these libraries (state depository libraries), which at the time of this writing totaled 114 throughout the state. The International Code Council also posts a copy of Title 24, Part 9, Chapter 4 on their website at: <http://publicecodes.citation.com/st/ca/st/>. The Commission will provide these same links on its own website, once these proposed regulations are approved.

Further, most city, county or fire district jurisdictions throughout the state have assumed the Fire Marshal's role with respect to facility inspections and approval of fire safety and evacuation plans. As a result, cardrooms need only to contact their local fire department for these services. Section 12370 already takes this into consideration in Subsection (e), by providing the option for local authorities to review and approve cardroom fire safety and evacuation plans.

2. Sections 12372(a)&(b) require cardrooms to promptly develop and implement a security and surveillance plan. Section 12372(c)(3) requires cardrooms to submit a copy of their security and surveillance plan with the first biennial license renewal application that is submitted six months after the effective date of the section. Section 12395(f) requires that cardrooms comply with security standards no later than the first day of the first full month six months following the effective date of the section. Finally, Section 12396(e) requires that cardrooms comply with surveillance standards no later than the first day of the first full month eighteen months following the effective date of the section.
 - a. Thomas Williams – Limelight Cardroom: Sections 12372(a)&(b) require cardrooms to *promptly* implement a security and surveillance plan, whereas the other sections (12372(c)(3), 12395(f) and 12396(e)), establish a six or eighteen month compliance period. Sections 12372(a)&(b) should be reworded to be consistent with the six or eighteen month implementation schedule established in the other regulations.

Response: This comment was accepted and Sections 12372(a)&(b) amended as part a first 15-day change to allow eighteen months for cardrooms to develop and implement their security and surveillance plans. Sections 12372(c)(3) and 12395(f) were also amended to conform to the eighteen month implementation schedule already set by Section 12396(e).

3. Section 12372(a)(1) requires Tiers I and II cardrooms to develop a security and surveillance plan that includes close monitoring and control of all gambling activity.

¹ Government Code, sections 14900, 14901 and 14902.

- a. **Bureau:** Suggest using the words "...close monitoring and control of all *controlled games and gaming activity*" to remain more consistent with other MICS.

Response: This comment was accepted and Section 12372(a)(1) amended as requested by the Bureau as part of a first 15-day change to these regulations.

4. Section 12372(b) requires Tiers III – V cardrooms to develop a security and surveillance plan that includes a list of the names of security personnel, uniformed security officers, formal surveillance procedures, procedures for stopping business, and a security/surveillance employee training schedule.

- a. **Bureau:** All tiers of cardrooms should be included in the requirements of subsection (b).

Response: This comment was rejected. The Gambling Control Act (Act) requires the Commission to consider the operational differences between small and large cardrooms when developing regulations.² Tier I and II cardrooms range from one to ten tables. These cardrooms usually hold their gambling operations in only one room, with a capacity of less than 50 persons. These cardrooms can easily comply with the security and surveillance requirements of proposed Sections 12372(a), 12395, and 12396 without the need to list the names of security personnel, have uniformed security officers, formal surveillance procedures, procedures for stopping business, and a security/surveillance employee training schedule.

5. Section 12372(c)(1) requires that each security and surveillance plan be consistent with state and local requirements.

- a. **Bureau:** Suggest using the words "...each security and surveillance plan shall be consistent with, *identify and comply with all* state and local requirements."

Also suggest requiring the licensee to provide documentation for applicable local ordinances when the security and surveillance plan is submitted. If the local jurisdiction issues the licensee a certificate of compliance for these areas, the licensee should submit a copy of it along with copies of the ordinances.

Response: This comment was accepted and Section 12372(c)(1) amended as requested by the Bureau as part of a first 15-day change to these regulations. If a licensee knows that a local ordinance applies to them, a copy should be readily available.

6. Section 12395(a)(2) requires all cardrooms to provide adequate lighting for surveillance video in all attached and adjacent parking areas owned, leased, rented, operated and/or otherwise controlled by the licensee for use by its patrons.

- a. **Mark Kelegian – Crystal Casino:** This lighting requirement should be limited to only those parking areas *owned, operated or otherwise controlled* by the licensee. Some cardrooms may not have any control over parking areas, as they may be part of a lease by multiple businesses/tenants for use by everyone's customers.

² Business and Professions Code section 19840.

Response: This comment was accepted and Section 12395(a)(2) amended as part of a first 15-day change to limit lighting requirements only to those parking areas that are *owned, operated or otherwise controlled* by the licensee, deleting the “leased, rented” language. This change would also replace the words *attached and adjacent* with *adjoining*.

7. Section 12395(a)(3)(A)&(B) requires licensees to file an incident report with the Bureau within five business days following any reasonably suspected violation of the Act, Commission or Bureau regulations, or any of the following laws:
- Any statute set forth in sections 330 through 337z of the Penal Code that pertains to gambling,
 - Section 1916-3(b) of the Civil Code (loan-sharking),
 - Chapter 1 (commencing with section 11000) of division 10 of the Health and Safety Code (illegal possession or distribution of controlled substances),
 - Section 4022 of the Business & Professions Code (illegal possession or distribution of dangerous drugs), or
 - Other serious criminal offenses, including but not limited to violation of the following Penal Code sections: 186.10 (money laundering), 211 (robbery), 245 (assault with deadly weapon), 266h (pimping), 266i (pandering), 459 (burglary), 470 (forgery), 476 (fraud), 487 (grand theft), 488 (petty theft), 503 (embezzlement), 518 (extortion), 641.3 (commercial bribery), 648 (counterfeit currency), 653.22 (loiter for prostitution), 653.23 (pimping), or 647(b) (prostitution).
- a. David Fried – California Gaming Association (CGA)/Mark Kelegian- Crystal Casino: The requirement to file an incident report with the Bureau should be limited to offenses that are related to gaming, such as those listed in disciplinary actions regulation Section 12560(b); specifically, paragraphs: (13) cheating, (14) extortion, (15) loan-sharking, (16) narcotic sales, (17) bribery and (18) money laundering. Proposed Section 12395(a)(3)(A)&(B) is currently too broad in scope by including petty offenses that shouldn’t concern the Bureau, such as petty theft, pandering, loitering for prostitution and pimping. Further, this proposed regulation is not sufficiently specific, as it requires incident reports for “other serious criminal offenses”.
- b. Mark Kelegian – Crystal Casino: Petty theft should not be on the list, as it is common for *chip grabbers* to scoop steel chips and go out the door.
- c. Alan Titus – Artichoke Joe’s: What does the term reasonably suspected mean? The regulation should require an incident report only when crimes are reported to police, a police report is taken, or when there’s an arrest. Further, the phrase “other serious criminal offenses” is vague and uncertain.
- d. Bureau: In response to the CGA’s comment, this list includes offenses beyond just those that may merit action against the licensee, such as issues that could pose a serious threat to public health and safety.

Following further discussion at the hearing, the Bureau agreed that the phrase “*other serious criminal offenses*” may be too broad.

Response (a. – d. above): These comments were accepted in part and the words “*other serious criminal offenses, including but not limited to*” were deleted from Section 12395(a)(3)(A) as part of a first 15-day change to these regulations, as this phrase may be too broad and could promote inconsistent interpretations.

However, the list of reportable offenses in the Penal Code was retained as written to include Penal Code sections 266h (pimping), 266i (pandering), 488 (petty theft), 653.22 (loiter for prostitution), 653.23 (pimping) and 647(b) (prostitution), as the Bureau has the assigned responsibility to insure that a gambling operation is not conducted in a manner that is harmful to public health, safety or welfare.³ The list of reportable offenses is not intended for the sole purpose of taking disciplinary action against the licensee. These incident reports may assist the Bureau in seeking a safe environment for the public.

Use of the term “reasonably suspected” was discussed at the public hearing, and the Commissioners agreed that this term did not require removal or definition. Further, if this language was changed to read *when a police report was filed*, many crimes may not be reported or investigated, leaving the safety and welfare of patrons in jeopardy. Reporting an incident to the Bureau does not in itself accuse someone of a crime. It only means that the Bureau may choose to investigate it, or involve other law enforcement.

8. Section 12395(a)(4) requires that an incident report include the following identifying information about the perpetrator or suspect: name, address, date of birth and driver’s license number.
 - a. Alan Titus – Artichoke Joe’s: The Bureau does not have the statutory responsibility to collect information about cardroom patrons or investigate cases against them. The law assigns the Bureau the responsibility to enforce the Act against licensees, not patrons. Further, collection of the names of suspects and witnesses implicates the rights to privacy under the Constitution (see # 15 below). Finally, collection of patron information is not necessary for the Bureau to accomplish its purpose of regulating cardrooms. As a result, collection of patron information would be a violation of the Information Practices Act.⁴

Response: This comment was rejected. This proposed regulation does not specify that the information is in reference to a patron. It only requires that the incident report identify the *perpetrator or suspect* in a crime, which in many incidents may be an employee of the cardroom. Further, Title 11 CCR, Division 3, Section 2052(c), already requires a written report to be filed with the Bureau, which must *identify* those persons involved in a violation of the Act or its regulations. This would include patrons, to the extent that a patron can be involved in a violation of the Act or its regulations. Section 2052(c) has the effect of law. This action merely brings that same language into Title 4. Also, Business and Professions Code section 19826(c) allows the Bureau to investigate violations of all laws related to gambling, which would include patrons.

Finally, this same comment was made during the informal comment period of this proposed

³ Business and Professions Code, subdivision (b) of section 19826.

⁴ Civil Code section 1798.14.

action. At that time, the list of identifying information included a Social Security number, telephone number, photograph, physical description and vehicle license number. During the informal comment period, the list was reduced to only minimal identifying information about the perpetrator (name, address, date of birth and driver's license number).

9. Section 12395(b)(4) requires Tier III – V cardrooms to have at least one security officer on duty during nighttime business hours to periodically patrol the outside of the cardroom, including all attached and adjacent parking areas that are owned, leased, rented, operated and/or otherwise controlled by the licensee for use by its patrons. Also requires these cardrooms to obtain a work permit for a security officer that meets the definition of a “gambling enterprise employee”. Security officers that do not enter the cardroom are exempt from this requirement.

- a. Mark Kelegian – Crystal Casino: California law does not require a business owner to provide security guards in parking areas unless there is a high foreseeability of criminal conduct.⁵ The requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of crime on the landowner's or possessor's premises.⁶

Further, some cardrooms may not have any control over parking areas, as they may be part of a lease by multiple businesses/tenants for use by everyone's customers. In this case, they would be providing security to benefit both their own patrons as well as all other patrons of the joint complex. As a result, this regulation should be amended to require security only in those parking areas that are *owned, operated or otherwise controlled* by the licensee.

- b. Bureau: For security purposes, cardroom security guards should patrol rented or leased parking areas. If a cardroom rents or leases an adjacent parking area, they need to provide surveillance.

Response (a. & b. above): The Crystal Casino's comment was accepted and Sections 12395(b)(4) and 12395(e)(1) amended as part of a first 15-day change to these regulations. These changes would require security patrols only in those parking areas that are *owned, operated or otherwise controlled* by the licensee, deleting the “leased, rented” language. Cardroom's should not be required to provide security for parking areas that they cannot control. For non-substantive technical reasons, this change would also replace the word *attached* with *adjoining*, requiring security patrols in all *adjoining* and adjacent parking areas.

- c. David Fried – CGA/Mark Kelegian – Crystal Casino: In emergency situations involving physical safety, smaller (Tier III) cardrooms may need to call upon their independently-contracted outside security guards to enter the club. These contract security officers who, only on occasion, enter the club should not be required to hold a work permit.

⁵ Ann M. v. Pacific Plaza Shopping Center, 6 Cal.4th 666, 25 Cal.Rptr.2d 137, 863 P.2d 207 (1993); Wiener v. Southcoast Childcare Centers Inc., 32 Cal.4th 1138, 1147, 12 Cal.Rptr.3d 615, 88 P.3d 517 (2004).

⁶ Ann M. v. Pacific Plaza Shopping Center, 6 Cal.4th 666, 25 Cal.Rptr.2d 137, 863 P.2d 207 (1993)]; Sharon P. v. Arman Ltd., 21 Cal.4th 1181, 1190-1191 91 Cal.Rptr.2d 35, 40-42, 989 P.2d 121 (1999)

Response: This comment was rejected, as the Act requires a work permit for any employee, independent agent or person whose employment duties requires or authorizes access to restricted gambling establishment areas.⁷

- d. Bureau: Suggest adding the word *contract* when referring to security officers who do not need a work permit when their duties are exclusively outside of the cardroom. This change would apply the work permit exemption only to *contract* security guards.

Response: This comment was accepted and Section 12395(b)(4) amended as requested by the Bureau as part of a first 15-day change to these regulations. An exception from requiring a work permit for contract security guards that do not enter the cardroom is appropriate and consistent with the Act.

10. Section 12395(c)(1) requires Tier IV & V cardrooms to have a backup generator that is sufficient to provide for the continued operation of those systems that are necessary for the safety and security of patrons, patrons' property, employees and the licensee's assets and property. Further, Section 12395(e)(2) on page 10, line 30 requires the generator for Tier V cardrooms to provide for the continued full operation of all lighting systems, all information systems, and all surveillance and recording systems.

- a. Bureau: Tier IV cardrooms should have the same generator requirements as Tier V, capable of providing for the continued full operation of all lighting systems, all information systems, and all surveillance and recording systems. Both Tier IV and V cardrooms are large facilities that are roughly 15 to 175 million dollar establishments. A power failure at either of these two tiers could cause complete chaos.

Following further discussion at the hearing, the Bureau recommended that only in those instances where Tier IV and V cardrooms *did not shut down* after a power failure, would their generators need to be capable of full operation, as noted above.

- b. Alan Titus – Artichoke Joe's: Although not sure what the generator capabilities are at Artichoke Joe's, Tiers IV and V should not be lumped together. The incomes and revenues of Tier IV and Tier V cardrooms are very different and should not be treated the same. If a cardroom has sufficient backup generation to shut down the operation during a power failure, then the state should not require that you have enough backup power to keep operating.
- c. Mark Kelegian – Crystal Casino: Regulations should only require backup lighting.

Response (a. - c. above): The Bureau's comments were accepted in part, and the following changes made as part of a first 15-day change to these regulations:

- Amend Section 12395(c)(1) to read: *"Licensees shall install and maintain a backup generator that is sufficient, during a power outage, to provide for the operation of lighting systems, information systems, and surveillance and recording systems for a time necessary to protect the safety and security of patrons and employees, patrons' property, and the*

⁷ Business and Professions Code, subdivision (m) of section 19805, and paragraph (1), subdivision (a) of section 19912.

licensee's assets and property while gambling operations are terminated and patrons exit the premises."

- Add new Section 12395(c)(2) to read: "Any gambling establishment that elects to continue gambling operations during a power outage shall install and maintain a backup generator that is sufficient to provide for the full and continued operation of all lighting systems, all information systems, and all surveillance and recording systems."
 - Delete Section 12396(e)(2), which would apply Sections 12395(c)(1 & 2) to both Tiers IV and V cardrooms. Both Tiers will have the same backup generator requirements.
11. Section 12395(d) requires Tier IV cardrooms to have a security officer on duty during all hours of operation, who must periodically patrol the outside of the cardroom, including all attached and adjacent parking areas. Section 12395(e)(1) on page 10, line 26 requires Tier V cardrooms to have *two* uniformed security officers on duty during all hours of operation, one of which shall continuously patrol the exterior of the cardroom, including all attached and adjacent parking areas.
- a. Bureau: Tier IV cardrooms should have the same security officer requirements as Tier V. That is, two security officers on duty during all hours of operation, one of which shall continuously patrol the exterior of the cardroom, including all attached and adjacent parking areas. The gaming industry has said in the past that the parking areas can be dangerous for patrons.

Following further discussion at the hearing, the Bureau was willing to compromise by requiring that Tier IV have two security guards, one of which *periodically* patrols the outside.

- b. Mark Kelegian – Crystal Casino/Alan Titus- Artichoke Joe's: To require two security guards at all times for Tier IV is excessive. The amount of patrons at Tier IV cardrooms can be minimal during non-peak hours. The amount of security officers on duty during non-peak hours should be left to the discretion of the cardroom.
- c. Alan Titus – Artichoke Joe's: It is not necessary or appropriate to require Tier IV cardrooms to invest money, manpower and equipment to the degree of that required for Tier V. In Tier IV parking lots, there would be times when a security officer is patrolling a lot where no one is coming or going. If you have two guards perform the drop collection, then under the Bureau's proposal, you would need a total of three guards, since you couldn't bring the one in from outside. Two full time guards would be acceptable, if one only *periodically* patrols the outside.

Response (a. – c. above): The Bureau's comments were accepted in part, and Section 12395(d) amended as part of a first 15-day change to these regulations. These changes would require *two* security officers to be on duty during all hours of operation. The exterior and adjoining/adjacent parking areas of Tier IV cardrooms would continue to be patrolled on a *periodic* basis, unlike Tier V, where one of the two security officers must *continuously* patrol outside the cardroom, including all adjoining and adjacent parking areas.

12. Section 12396(a)(1) requires surveillance systems at all cardrooms to monitor and record gambling activity, the payment of player drop fees, the collection of drop boxes, the drop count processes, cage and cashier activities, and the interior of cardroom entrances and exits.

- a. **Bureau:** The surveillance system should also monitor and record *any area used for the storage or control of gambling equipment*. This will help to ensure that these items are not tampered with or compromised.
- b. **Joy Fernbach-Harn – Bicycle Casino:** The storage of tables and chairs should not be included in this surveillance monitoring requirement.

Response (a. & b. above): The Bureau's comment was accepted in part and Section 12396(a)(1) amended as part of a first 15-day change to these regulations. These changes would state that *gambling equipment storage areas, except for furniture storage areas*, must be monitored and recorded by video surveillance.

13. Section 12396(a)(3) requires all cardrooms to locate surveillance recording and monitoring equipment in a secure room or area of the cardroom so that access may be reasonably controlled.

- a. **Bureau:** The phrase "... so that access may be *reasonably* controlled" is not defined and is vague. The regulation should read, "... so that access *shall be* controlled."

Response: This comment was accepted and Section 12396(a)(3) amended as part of a first 15-day change to these regulations. These changes would cause Section 12396(a)(3) to read, "... so that access *is* controlled".

14. Section 12396(a)(4) requires that all cardrooms functionally check their surveillance systems regularly.

- a. **Bureau:** The term "regularly" is not defined and is vague. Surveillance systems should be checked *daily* to ensure appropriate operation. During a recent investigation, the Bureau discovered that the licensee's surveillance system had been disengaged. Had the system been checked on a daily basis, the licensee would have obtained a critical surveillance recording of the crimes being investigated.

Response: This comment was accepted and Section 12396(a)(4) amended as part of a first 15-day change to these regulations. These changes would require *daily* checks of surveillance systems.

15. Section 12396(a)(7) requires all cardrooms to retain surveillance recordings for a minimum of three complete days of operation.

- a. **Bureau:** Three days of surveillance recording is not sufficient for investigative purposes. Surveillance recordings should be retained for at least 14 days, as is required in Florida, Illinois, and Mississippi.

Following further discussion at the hearing, the Bureau was willing to consider a phase-in period for larger cardrooms. The regulation should require seven days at first, then phase into the 14 days.

- b. Joy Fernbach-Harn – Bicycle Casino: The Bureau's recommendation for a 14 day retention period is excessive, we recommend seven days. The Bicycle Casino is currently on an old analog system that would need to be replaced with a new digital system to comply with a 14-day retention requirement. It would take us 18 to 24 months to acquire the funds to make this conversion.

Following further discussion at the hearing, the Bicycle Casino was agreeable to a two to three year phase-in of the 14 day retention period.

- c. Kermit Schayltz – Lucky Derby Casino: Speaking for the smaller clubs, we have already switched to a digital surveillance system that cost us over six figures. I'm not sure if it can hold 14 days of recordings, and definitely not 100 days.

Following further discussion at the hearing, the Lucky Derby Casino recommended a phase-in approach for the retention schedule, even in smaller cardrooms.

- d. Alan Titus – Artichoke Joe's: A 14 day retention requirement may be an issue in digital video due to computer storage limitations; we could live with seven days. Also, the other states mentioned by the Bureau have Nevada style games, and should not be compared to California.
- e. Mark Kelegian – Crystal Casino: A seven day retention period has proven sufficient to review an incident. During implementation, some distinction may be necessary between those cardrooms that already have digital and those still on analog tapes. An upgrade of our system has been estimated to cost one half of a million dollars or more.
- f. Bureau: The surveillance recording industry is switching to digital. The city of San Jose already requires a 15 day retention period. The Bureau has had countless investigations where evidence has be lost with a retention schedule less than 14 days. The Bureau is agreeable to a phased-in implementation schedule for larger Tier IV and V cardrooms.

Response (a. – f. above): These comments were accepted in part, and Section 12396(a)(7) amended as part of a first 15-day change to these regulations. These changes would require that surveillance recordings for all cardrooms be retained for seven days, until 36 months following the effective date of the regulation, at which time the retention period will increase to 14 days.

16. Section 12396(a)(8) allows the Bureau immediate access to the surveillance room and to take custody of original video recordings, or copies of digital recordings, pursuant to Business and Professions Code, subparagraph (D), paragraph (1), subdivision (a), of section 19827.

- a. David Fried – CGA/Mark Kelegian- Crystal Casino: The seizure of property requires a warrant or other statutory scheme, as per the Constitution and case law.⁸ Under both, the scope of the Bureau's authority must be defined, and the discretion of the Bureau's officers must be limited. Further, B&P section 19827(a) contains another paragraph (2) that requires the

⁸ *People v. Potter*, 128 Cal. App. 4th 611, 619 (2005).

Bureau to obtain an inspection warrant pursuant to Code of Civil Procedure, section 1822.60. As a result, the regulation should incorporate both paragraphs (1) and (2) of section 19827(a).

- b. Jason Pope – Commission Legal Staff: Paragraphs (1) and (2) of Business and Professions Code section 19827(a) are distinguishable: Paragraph (1) involves warrantless seizure and applies to the cardroom itself; while paragraph (2) applies to a larger swath that requires a warrant. As these provisions are part of the Act, this regulation may add qualifiers such as time, scope and place.
- c. Neil Houston – Office of the Attorney General (representing the Bureau): We agree with Mr. Popes comments.

Following further discussion at the hearing, Mr. Houston commented that it is well established that the public has no expectation of privacy at businesses that are open to the public. California case law states that what is observable by the public is observable by the government without warrant. These surveillance tapes are not random property of the cardroom. They are specifically required records that fall under the statutory authorization for warrantless seizure under Section 19827. The regulation could have a more focused scope and time of the seizures. Finally, Business and Professions Code section 19828 restricts the Bureau's disclosure of seized evidence.

- d. Alan Titus – Artichoke Joe's: This regulation would violate our patron's right to privacy under the California Constitution, their rights of association under the First Amendment to the United States Constitution, and the rights of the cardroom to be free of unreasonable search and seizure under both the federal and state constitutions. Business and Professions Code section 19827 cannot authorize violations of the Constitution, as is acknowledged in subsection (b). This commenter uses many case law citations.

Cardrooms may still be disfavored by society and, as a result, our customer's privacy should be respected. The Bureau's ability to seize surveillance tapes and identify customers is unconstitutional and an invasion of privacy.

Further, by allowing the Bureau immediate access to the surveillance room and recordings, it would require that cardroom management disseminate confidential information to other employees, which may compromise security. Specific hours of the day should be specified for the Bureau to have access to surveillance recordings.

Following further discussion at the hearing, Artichoke Joe's stated that the regulation does not yet contain the qualifiers stated by Jason Pope. Until they are added in, there continues to be a problem under current case law.

- e. Bureau: The Bureau should have access to surveillance tapes during the hours that a cardroom is open, not limiting the access to regular business hours. (i.e. - 9:00 to 5:00)

Response (a. – e. above): Following further research and analysis from the Commission's legal staff and the Office of the Attorney General, these comments were accepted in part and Section 12396(a)(8) amended as part of a first 15-day change to these regulations. These

changes would limit the Bureau's authority for warrantless access to the surveillance room and video recordings only when it is approved by the chief and only when it's for the purposes of enforcing the Act, or any regulations adopted pursuant thereto. These amendments would also limit the Bureau's warrantless access to these recordings to the normal operational business hours of the cardroom. Finally, these amendments would also require the Bureau to maintain the confidentiality of any seized video recordings unless disclosure is necessary to administer or enforce the Act or any regulations adopted pursuant thereto.

However, the scope of the items that can be seized has not been changed or further detailed by these amendments, as this regulation already limits that scope specifically to *surveillance recordings*.

17. Section 12396(b)(2) requires Tiers II - V cardrooms to have dedicated table cameras which record, with reasonable clarity: patrons, dealers, wagers, cards and the outcome of the game. This regulation also permits the use of overhead cameras.
- a. Joy Fernbach-Harn – Bicycle Casino/Andy Schneiderman- Commerce Casino: This requirement should not include *demonstration, instructional or tournament* tables when no cash is being wagered, won or lost. Tournament tables do not involve a cash prize until the last round of competition, where the winner of that specific game wins the prize. The Bicycle Casino currently has a sufficient number of fixed cameras to cover all *live tables* **and** the final rounds of a *tournament*. We do not have enough table cameras to cover the early elimination rounds of a tournament. This regulation should be limited to only those tables where cash is being wagered, won or lost as part of a specific game, excluding training or demonstration tables and non-final round tournament tables.
 - b. Mark Kelegian – Crystal Casino: Agree with the comments from the Bicycle Casino.
 - c. Bureau: All stages of tournament play involve money that is wagered, won or lost. If you lose in the early rounds, you lose you entrance fee, which is normally used to build the ultimate winning pot of money.

Response (a. – c. above): Bicycle Casino's comments were accepted in part, and the language of Section 12396(b)(2) amended as part of a first 15-day change to these regulations. These changes would *not* require cameras at *demonstration or instructional tables, when cash or prizes are not being wagered, won or lost*. Dedicated cameras would continue to be required at all tournament tables.

- d. Bureau: Suggest adding a subsection (b)(3) that would require Tiers II - V cardrooms to have a surveillance system that includes *audio* recordings of the cage, vault, count room, and any gambling equipment storage areas. Collusion has been revealed in recent investigations as a result of audio recordings in these non-public areas of the cardroom.

After further discussion with industry representatives, the Bureau revised its recommendation to require audio recordings, as a minimum, in the count room. It was concluded that the background noise in the cage may reduce the quality and usefulness of audio recordings.

- e. Joy Fernbach-Harn – Bicycle Casino: Should have audio capabilities in the count room only. Most other areas of the cardroom are too noisy for audio to function properly (i.e. the cage).
- f. Alan Titus – Artichoke Joe’s: The machine in our count room may drown-out audio microphones.
- g. Mark Kelegian – Crystal Casino/Oceans 11: We have large safes in the cage, not separate vaults.

Response (d. – g. above): The Bureau’s comment was accepted in part, and Section 12396(b)(3) added as part of a first 15-day change to these regulations. These changes would require Tiers II - V cardrooms to have a surveillance system that includes *audio* recordings of the vault and count room.

18. Section 12396(c) requires Tiers III – V cardrooms to provide surveillance cameras in all attached and adjacent parking areas owned, leased, rented, operated and/or otherwise controlled by the licensee for use by its patrons.

- a. Mark Kelegian – Crystal Casino: For the same reasons as noted for Sections 12395(a)(2) and 12395(b)(4), this regulation should be amended to require surveillance cameras only in those parking areas that are *owned, operated or otherwise controlled* by the licensee.

Response: This comment was accepted and Section 12396(c) amended as part of a first 15-day change to these regulations. These changes would require surveillance cameras only in those *adjoining* parking areas that are *owned, operated or otherwise controlled* by the licensee, deleting the “leased, rented” language. This change would also replace the words *attached and adjacent* with *adjoining*.

19. Section 12396(d) requires Tier V cardrooms to have an independent surveillance unit that meets specified criteria and is staffed during all hours of gambling activity.

- a. Bureau: Tier IV should be included in this requirement. This is consistent with drop collection and count room MICS that require Tier IV cardrooms to live monitor the drop collection and drop count. Some Tier IV cardrooms have revenue of 15 million dollars, which is more than some tribal casinos that already have live surveillance units.

Following further discussion at the hearing, the Bureau referenced the 2008 gross reported revenue from Tier IV cardrooms to reinforce their previous statement. It showed the revenue from Tier IV cardrooms to range from 14.7 to 175 million dollars. Also, in the larger cardrooms that already have a manned surveillance unit, they do catch illegal activity as it happens.

- b. Mark Kelegian – Crystal Casino: Tier IV should not be required to have a full time surveillance unit. Tier IV revenue is closer to 10 million, rather than 15. Live surveillance units typically don’t catch illegal activity in the act; they merely play back tape that reveals such activity later. A dedicated surveillance staff would cost over \$300, 000. However,

regulation language that requires an employee to be on duty who could access and play-back surveillance video would be acceptable.

- c. Alan Titus – Artichoke Joe’s: I concur with the comments from the Crystal Casino. Artichoke Joe’s has an automated unmanned surveillance unit. Tier IV cardrooms should not be required to hire the additional staff necessary to man a surveillance unit.

Response (a. – c. above): Crystal Casino’s comment was accepted in part, and a separate subsection (d) was added to Section 12396 as part of a first 15-day change to these regulations. These changes would require Tier IV cardrooms to have an owner or key employee on duty that could access and play-back surveillance video. Unlike Tier V, no full time surveillance unit would be required in Tier IV. The subsequent subsections in Section 12396 were also renumbered to conform to this change. Accordingly, former Subsection (d) would now be (e), and so on.

The Bureau’s comment to require a full time manned surveillance unit in Tier IV was rejected. Although MICS I regulations were amended to include Tier IV in the requirement to live monitor the drop collection, this was accomplished without the need for a manned surveillance unit. This change to the MICS I regulations was accomplished with the understanding that these MICS II regulations would not require a manned surveillance unit for Tier IV cardrooms.

20. Section 12396(d)(7) requires Tier V cardrooms to use Pan/Tilt/Zoom (PTZ) cameras to pan the faces of patrons and dealers once per hour. One PTZ camera is required for every ten tables.
- a. Joy Fernbach-Harn – Bicycle Casino/David Fried- CGA: It is not possible to successfully scan the faces of all patrons and dealers once every hour through the use of automatic PTZ cameras. The only way to be certain that all faces are captured is to have a surveillance person perform the scan manually. Further, the Bicycle Casino conducted a dry run of manually scanning faces, and was able to capture the faces of patrons and dealers at only 20 tables in one hour. Far less than the 190 tables licensed at the casino. Bicycle Casino would need to hire about 30 additional surveillance employees (9 per shift), at an annual expense of \$1.5 million. This would be in addition to a \$1 million investment in additional equipment. The casino entrance/exit cameras should be sufficient to capture the faces of patrons. As a result, the second sentence in Section 12396(d)(7) that requires PTZ cameras should be deleted.

Following further discussion at the hearing, the Bicycle Casino recommended a compromise that the PTZ cameras be used to scan the gaming floor *once per shift*.

- b. Andy Schneiderman – Commerce Casino: Commerce Casino has retained Consulting and Training Services (CTS) of Nevada, a firm with great expertise in the field of casino surveillance, to review the requirements of Section 12396 (d)(7). Their conclusions were as follows:
- (1) From a practical perspective, it is not viable for large card casinos (greater than 40 tables) to comply with a requirement of using surveillance cameras to identify each patron and dealer once per hour;

- (2) Any control benefit of this regulation is already achieved by other camera installations already present in Commerce Casino or required in other parts of the proposed MICS;
- (3) A good faith effort to comply with this regulation will require a minimum of three cameras per twenty tables;
- (4) The cost of compliance with this regulation will be:
 - (a) Installation between \$360,000 and \$678,000
 - (b) Annual cost of operation: Additional Surveillance Operators -\$285,187
 - (c) Annual cost of maintenance - between \$50,000 to \$100,000; and
- (5) No other jurisdiction has such a requirement, or similar requirement.

As a result of the above study, the Commerce Casino recommends deleting the requirement that PTZ cameras pan the faces of patrons and dealers once per hour, as entrance/exit cameras should be sufficient to capture the faces of patrons.

- c. Bureau: After further discussion with industry representatives, the Bureau recommended deleting the requirement that PTZ cameras pan the faces of patrons and dealers once per hour, as this could be considered excessive and may not be an industry standard practice.

Following further discussion at the hearing, the Bureau suggested amending the language to require Tier V surveillance units to make a *reasonable attempt* to pan the faces of patrons and dealers *once per work shift*.

Response (a. – c. above): These comments were accepted in part, and Section 12396(d)(7) amended as part of a first 15-day change to these regulations. These changes would require that Tier V cardrooms make a *reasonable attempt* to pan the faces of patrons and dealers at least *once per work shift*, rather than once per hour. The requirement that Tier V cardrooms have at least one PTZ camera for every ten tables would remain.

FIRST 15-DAY CHANGE COMMENT PERIOD ENDING DECEMBER 8, 2009

The following comments/objections/recommendations were made regarding the proposed action during the first 15-day change comment period that ended on December 8, 2009:

1. Regarding these proposed regulations in general:
 - a. Paul Chilleo- Hollywood Park Casino: We do not have any comments to these proposed regulations. It will be a bit difficult to evacuate the entire casino, but we understand the need to prepare and will comply with the regulation once it has gone into effect.

Response: Staff recommends that this expression of support be accepted and considered in the adoption of the proposed action. As a note, patrons of a cardroom are not required to be evacuated during drills. The State Fire Marshal's regulations only require specified employees to participate in drills.

- b. Alan Titus – Artichoke Joe’s: The Bureau proposed changes to these regulations during the 45-day public comment period that were considered at the public hearing. The industry was not provided with sufficient notice of these proposed changes and was denied the ability to comment on them. As a result, a new public hearing should be conducted.

Response: Staff recommends that this comment be rejected. Like industry, the Bureau submitted comments during the 45-day public comment period and also made comments at the public hearing on August 11, 2009. A new 45-day hearing is not required under the rulemaking provisions of the Administrative Procedures Act when changes are made to a proposed regulation if the changes are sufficiently related to the original text so that the public was adequately placed on notice that the change could result [Government Code section 11346.8(c)]. The text of a sufficiently related change need only be made available to the public for 15 days for additional written comment. The 45-day comments that were accepted by the Commissioners were made part of the first 15-day change, which was provided to interested parties on November 23, 2009, as required by Government Code section 11346.8(c). Public comments on those changes were due to the Commission before 5:00 p.m. on December 8, 2009, and this commenter submitted his comments on that same day. These comments, along with others, will now be considered by the Commission in determining whether to adopt the proposed regulations, as modified, or to make additional changes with a second 15-day change comment period.

2. On page 6, line 5, Section 12372(c)(1) requires security and surveillance plans to be consistent with, identify and comply with all state and local requirements, and requires licensees to provide the Commission with a copy of any identified and applicable local ordinances along with a copy of their security and surveillance plan.
- a. Mark Kelegian – Crystal Casino: This regulation pre-supposes that all local jurisdictions review and certify security and surveillance plans. We are unaware of any local jurisdictions that review and certify these plans. This requirement should be for only those cardrooms in local jurisdictions that have such requirements.

Response: Staff recommends that this comment be rejected. This proposed regulation accounts for the fact that some local jurisdictions may not have requirements relating to security and surveillance and may not provide the service of reviewing or certifying the plans. The words “...*identified, applicable local ordinances*...” account for the possibility that this requirement may not apply in some cases. Staff believes that the language of this provision actually contemplates the possibility that local jurisdictions may not certify security and surveillance plans as complying with local ordinances. If there is no local ordinance or certification, there would be nothing to provide.

- b. Commission Staff: The phrase “... *shall be consistent with, identify and comply with all state and local requirements*...” is unnecessarily wordy. The words *consistent* and *comply* are synonymous in this context, as they both refer to *state and local requirements*. If a cardroom’s security and surveillance plan *complies* with state and local requirements, then it would also be *consistent* with them.

Response: Staff recommends that this comment be accepted, and a non-substantive change be made to the text of Section 12372(c)(1) that would delete the words: *be consistent with*. This would change the phrase to read: *shall identify and comply with*.

3. On page 7, line 30, Section 12395(a)(1) requires that access to restricted areas of a cardroom, including cages, count rooms, vaults, security offices and surveillance rooms be limited to authorized personnel in the performance of their duties.
 - a. Joy Fernbach-Harn – CGA: This regulation should use the word “persons” rather than “personnel”. There may be persons outside the employ of the cardroom that are authorized and have legitimate business reasons to be in some of these restricted areas. This could occur during supervised tours or visits from outside consultants, accountants or attorneys.

Response: Staff recommends that this comment be rejected, as it is not germane to these 15-day changes. The notice for these changes clearly states that comments that are not related to the modified text will not be given consideration. Further, one of Webster’s definitions for the word *personnel* makes reference to the use of that word to refer to a *person*, in the plural form (i.e. – *persons*).

4. On page 8, line 22, Section 12395(a)(3)(B) requires a licensee to file an incident report with the Bureau within five business days of an owner or key employee obtaining knowledge of any reasonably suspected violation that is listed in subparagraph (A). Subparagraph (A) includes the provision of the Act, regulations adopted pursuant thereto, and specified criminal violations of the Penal Code.
 - a. Alan Titus – Artichoke Joe’s: We incorporate by reference our comments to this section in our letter of August 10, 2009, which stated: What does the term *reasonably suspected* mean? The regulation should require an incident report only when crimes are reported to police, a police report is taken, or when there’s an arrest. Further, the phrase “other serious criminal offenses” is vague and uncertain.

Response: Staff recommends that this comment be rejected. Use of the term “reasonably suspected” was discussed at the public hearing on August 11, 2009, and Commission members decided not to change it. As a result, this comment is not germane to these 15-day changes. The notice for these changes clearly states that comments that are not related to the modified text will not be given consideration. Further, the term “other serious criminal offenses” was already removed by these 15-day changes, and is no longer an issue.

For additional responses to these comments, please refer to the 45-day comment responses for item number 7.c.

5. On page 8, line 24, Section 12395(a)(4) requires that an incident report include the following identifying information about the perpetrator or suspect: name, address, date of birth and driver’s license number.
 - a. Alan Titus – Artichoke Joe’s: We incorporate by reference our comments to this section in our letter of August 10, 2009, which stated: The Bureau does not have the statutory responsibility

to collect information about cardroom patrons or investigate cases against them. The law assigns the Bureau the responsibility to enforce the Act against licensees, not patrons. Further, collection of the names of suspects and witnesses implicates the rights to privacy under the Constitution. Finally, collection of patron information is not necessary for the Bureau to accomplish its purpose of regulating cardrooms. As a result, collection of patron information would be a violation of the Information Practices Act.⁹

Response: Staff recommends that this comment be rejected, as it is not germane to these 15-day changes. The notice for these changes clearly states that comments that are not related to the modified text will not be given consideration. For further responses to this comment, please refer to the 45-day comment responses for item number 8.a.

6. On page 11, line 5, Section 12395(c)(1) requires Tier IV and V cardrooms to maintain a backup generator that is sufficient, during power outages, to provide for the operation of lighting systems, information systems, and surveillance and recording systems for a time necessary to protect the safety and security of patrons while they exit the premises. On page 11, line 12, Section 12395(c)(2) requires Tier IV and V cardrooms that elect to continue operating during a power failure to have a backup generator that can operate all lighting, information, surveillance and recording systems.
 - a. Joy Fernbach-Harn – CGA: This regulation should allow for battery power to be used as a backup for some systems, such as surveillance systems, rather than just a generator.

In the rewording of this section, we hope it is not intended that the backup generator provide sufficient power to operate *all* lighting systems, especially those not related to patron safety or evacuation. The back-up power requirements should relate only to those systems that are needed for the evacuation of patrons or continued gaming operations.

Response: Staff recommends that this comment be rejected. Battery backup systems are usually capable of maintaining power to a computer based system long enough for either a generator to kick-in or for the system to safely close running applications and shut itself down. Battery backup systems will not usually allow for continued surveillance operations and recording.

Paragraph (1) of Section 12395(c) requires that only those systems necessary for the safety and security of patrons be operated for the time it takes to evacuate the premises. In contrast, paragraph (2) of Section 12395(c) requires cardrooms that elect to continue gambling operations during a power failure to have a generator that can operate all lighting, information, surveillance and recording systems.

As a result of industry and Bureau discussions at the hearing on August 11, 2009, the Commissioners agreed to make these first 15-day changes to Section 12395(c). These changes allow both Tier IV and V cardrooms to choose the level of backup power. If they wish to cease gambling operations as a result of a power failure, their generators must only operate critical systems for a time necessary to evacuate the premises. If a cardroom wants to continue

⁹ Civil Code section 1798.14.

operations during a power failure, then the backup generator must be able to continually run all systems.

This proposed regulation is intended to provide for minimum standards that protect public health, safety and their assets.

7. On page 11, line 16, Section 12395(d) requires Tier IV cardrooms to have at least two uniformed security guards on duty during all hours of operation, one of which must periodically patrol the outside of the cardroom.

- a. Mark Kelegian – Crystal Casino: This regulation should require two security guards only between sunset and sunrise, with only one guard during the daytime. During daytime hours, Tier IV cardrooms may have only a handful of patrons in them.

Response: Staff recommends that this comment be rejected. At the hearing on August 11, 2009, the Commissioners accepted in part, Bureau recommendations that Tier IV cardrooms be required to have two security guards. As a result, the first 15-day changes to this regulation required two security guards in Tier IV, but unlike Tier V, required that one of the security guards only *periodically* patrol the outside the cardroom. In Tier V, the outside of the cardroom must be *continuously* patrolled by one of the security guards. These escalating requirements take into consideration the operational differences of the various sizes of cardrooms.¹⁰

This proposed regulation is intended to provide for minimum standards that protect public health, safety and their assets through the establishment of security controls over the gambling premises.¹¹

8. On page 12, line 30, Section 12396(a)(3) requires that surveillance recording and monitoring equipment be located in a secure room or area of the cardroom so that access is controlled.

- a. Alan Titus – Artichoke Joe's: Although our digital recording equipment is in a secure room, computer monitors throughout our building can access the system through the use of a password. In fact, our recording room does not have a monitor in it.

Response: Staff recommends that this comment be rejected, as it is not germane to these 15-day changes. The notice for these changes clearly states that comments that are not related to the modified text will not be given consideration. Further, this regulation does not require that computer monitors that can access the surveillance system be in a secured room. They only need to be in an area of the cardroom so that access is controlled. A computer monitor or terminal that is protected by a password and is located in an office or area of the cardroom that is not open to the public would be consistent with this regulation, since access would be controlled.

¹⁰ Business and Professions Code, section 19840.

¹¹ Business and Professions Code, subdivision (i) of section 19801 and sections 19920 and 19924.

9. On page 13, line 21, Section 12396(a)(7)(A) requires that surveillance recordings be retained for a minimum of seven days of operation. Three years from the effective date of this regulation, Section 12396(a)(7)(B) extends this retention period to 14 days.

- a. Joy Fernbach-Harn – CGA: The retention period of surveillance video recordings should stay at seven days, as 14 days would present a cost burden to clubs of any size. At a cost of \$473,761, the California Grand Casino recently installed a new digital surveillance system that is capable of only seven days of video storage. There should be a cost analysis of these new requirements.

Clubs usually know within a day or two whether a video recording needs to be saved. Another proposed regulation requires cardrooms to report suspected criminal activity within five days. It should not be necessary to retain video recordings for an additional nine days.

- b. Alan Titus – Artichoke Joe's: Digital recording requires lots of computer memory. Artichoke Joe's does not currently have enough memory on its hard drives to retain as much video as it did before converting to digital. Although we plan to purchase more memory, this will require the purchase of a new server, which increases cost. Retaining video recordings for seven days is wasteful, as computer memory could be better spent on adding more cameras. Game disputes usually arise immediately, and never after three days. Cardrooms should be allowed to erase video in three days unless a dispute arises or the Bureau requests that it be retained.

Response (a & b above): Staff recommends that these comments be rejected. As a result of industry and Bureau discussions at the hearing on August 11, 2009, the Commissioners agreed to go forward with an initial retention period of seven days, with an increase to 14 days three years later. This would allow the industry time to adjust to the higher retention period. This delayed increase to 14 days was agreeable to the Bureau and some industry representatives present at the hearing.

Further, an increase in the retention period for video recordings does not in itself require that video surveillance systems be replaced. In an older video cassette style recording system, it would only be necessary that more video cassettes be purchased and stored. In most digital recording systems, it would mean that additional electronic storage capacity be purchased. Hard drive storage space for digital video recording systems is usually ancillary to the base system and can be purchased separately. Staff research of high-end video surveillance system vendors has determined that a cardroom running a 32 camera system 24/7, which is currently capable of storing seven days of video recordings, would need an additional 5.4 terabytes (TBs) of hard drive storage capacity to comply with the 14 day retention requirement. A mini tower storage system with about 6 TBs of capacity can currently be obtained for about \$1200. The cost for cardrooms with fewer or greater numbers of digital cameras would be proportionally less or more. Cardrooms would have three years in which to make this investment. Information technology experts agree that the cost of digital storage will continue to drop in the coming years.

The 14 day retention requirement is intended to do more than just settle game disputes between patrons. Rather, it will also aid the Bureau in its investigation of alleged violations of the Act, as well as those crimes specified in proposed Section 12395(a)(3). Since cardrooms are given

five days to file an incident report, a 14 day video retention period is necessary to insure that recordings are not erased before the Bureau has time to act upon the incident report. The Bureau has conducted investigations where evidence has in fact been lost with a retention period of less than 14 days. Finally, the city of San Jose already requires a 15-day video retention period for cardrooms in that city.

10. On page 14, line 1, Section 12396(a)(8), with the approval of the Bureau chief and for the purposes of enforcing the Act, requires cardrooms to grant Bureau staff immediate access to surveillance rooms during the normal hours of operation. This section also permits the Bureau to take custody of video recordings and applies disclosure limitations to Bureau staff. Finally, this section requires the Bureau to leave copies of seized recordings, with specified limitations.
- a. Joy Fernbach-Harn – CGA: It remains our view that the Bureau must obtain an administrative inspection warrant before seizing video recordings.¹² Further, the regulation fails to state the purpose for which the seizures would be made; that is, recordings that are relevant to an investigation.
 - b. Alan Titus – Artichoke Joe’s: We incorporate by reference our comments to this section in our letter of August 10, 2009.

The two changes to this section offer weak protections against abuse, but do not lessen the privacy concerns for our customers, nor increase the interest of the state to justify warrantless seizures of private videos. These changes do not provide any standards from which the Bureau chief would use to approve the warrantless searches. Also, the Bureau chief is not a disinterested third party and thus cannot make an independent decision on authorizing the searches. Likewise, the change that limits the ability of the Bureau to disclose seized video to third parties does nothing to lessen the privacy interests of customers. For example, the regulation does not control which employees at the Bureau can access the video recordings, nor does it specify to whom disclosure can be made. In an attempt to protect against abuse, these two changes only serve to acknowledge that this regulation raises legitimate privacy concerns.

Further, if Section 12396(a)(7) were to be adopted that calls for a 14 day video retention period, the need for the immediate seizure of video is lessened.

Response (a & b above): Staff recommends that these comments be rejected. After a lengthy discussion between industry and Bureau staff at the hearing on August 11, 2009, the Commissioners directed its legal staff and the Office of the Attorney General to draft 15-day change language that would limit the Bureau’s authority for warrantless access to the surveillance room and video recordings. These limitations would include access only when it is approved by the chief and only when it is for the purposes of enforcing the Act. These 15-day amendments also limit the Bureau’s warrantless access to these recordings to the normal operational business hours of the cardroom. Finally, these amendments also require the Bureau to maintain the confidentiality of any seized video recordings unless disclosure is necessary to administer or enforce the Act. The scope of the items that can be seized was not changed by these amendments, as this regulation already limits that scope specifically to *surveillance*

¹² Code of Civil Procedure, section 1822.60

recordings. Commission legal staff and the Office of the Attorney General maintain that the warrantless search and seizure of these surveillance video recordings is authorized by Business and Professions Code section 19827(a)(1)(D), and that certain legal exceptions to constitutional protections apply, as gambling is a closely regulated business or industry.¹³

This proposed regulation strives to accommodate industry concerns, while simultaneously allowing the Bureau to achieve their oversight and investigative responsibilities under the Act, which include investigation of those crimes specified in proposed Section 12395(a)(3). Further, this proposed regulation clearly states the purpose of the Bureau's access to surveillance video (i.e. - *for enforcing the Act*). Likewise, the proposed regulation clearly limits the Bureau's ability to disclose the contents of the video recordings (i.e. - *when necessary to enforce the Act or comply with a court order*). This immediate seizure of evidence in alleged illegal gambling activities is essential in the performance of the Bureau's responsibilities.

Finally, pursuant to the Act, a cardroom is considered as a public place.¹⁴ As a result, patrons do not have a reasonable expectation of privacy, as it is common place for cardrooms to photograph the faces of their patrons; and the patrons know this. Patrons expect this type of video photography when visiting public businesses. Cardrooms already post signs that advise patrons that they will be videotaped while on the premises, and other proposed regulations confirm this.¹⁵ Indeed, a patron could not prohibit a Bureau representative from entering a cardroom and observing operations, and therefore they could not limit the Bureau's access to view video tapes.

11. On page 15, line 3, Section 12396(b)(2) requires surveillance cameras that are dedicated to each gambling table, but exempts demonstration or instructional tables from this requirement, when cash or prizes are not being wagered, won or lost.
 - a. Mark Kelegian – Crystal Casino: Tournament tables should be excluded from this requirement, as no cash or prizes are being wagered, won or lost in any particular hand of play. The format of tournament play dictates that floor persons settle disputes in real time. A subsequent review of surveillance recordings could disrupt the entire tournament if chips were to be adjusted between players.
 - b. Joy Fernbach-Harn – CGA: Tournament tables should be removed from this requirement. In tournament play, the decision of the floor person is final and cannot be changed. A video review would require that all tables cease play until the review is completed. Tournament chips have no cash value and would not be subject to theft. We believe that the regulation should require cameras only at *live* gambling tables where the outcome of a *hand* will determine the winner of a cash award or prize.

¹³ Business and Professions Code, subdivision (g) of section 19801, subdivisions (c) and (d) of section 19826, paragraph (1), subdivision (a) of section 19827, and section 19971.

¹⁴ Business and Professions Code, subdivision (j) of section 19801.

¹⁵ See proposed regulations: Title 11, CCR, Sections 12395(a)(1), 12396(a)(1), 12396(a)(9) and 12396(b)(1).

Response (a & b above): Staff recommends that this comment be rejected. At the hearing on August 11, 2009, the Commissioners accepted recommendations to exempt *demonstration* or *instructional* tables from this *camera* requirement because no cash or prizes were being wagered, won or lost. As a result, the first 15-day changes to this regulation included this exemption. However, at the hearing, the Commissioners elected to require cameras at *tournament* tables because the play of each hand ultimately determines the winners of *cash* or *prizes*. Tournament chips may not have any immediate value in elimination play, but when the tournament is over, the player with all the chips still gets the cash or prize. In this sense, tournaments are just as real to a player as regular games, and can likewise result in real disputes.

This proposed regulation is intended to protect the integrity of gambling operations by providing a deterrent against illegal activity. Surveillance video recordings are an excellent tool when investigating alleged illegal activities.

12. On page 15, line 8, Section 12396(b)(3) requires the surveillance systems in Tier II through V cardrooms to include audio recordings in the vault and countroom.

- a. Alan Titus – Artichoke Joe’s: Requiring audio in the vault will intrude upon the privacy of employees working there, should they need to make or accept a personal phone call. The regulation may lessen vault security by encouraging employees to leave the vault to handle these personal phone calls.

Most of the time, we have just one clerk that works in the vault, whose primary job is to count cash. We have a number of controls to safeguard the cash and chips in the vault, which are already in known quantities, unlike the countroom. Audio recordings in the vault would not increase security, as the counting machines in the vault make a substantial amount of noise that would interfere with the audio reception.

Response: Staff recommends that this comment be rejected. During the 45-day public comment period, the Bureau proposed this 15-day change. At the public hearing on August 11, 2009, the Commissioners accepted the change. During the 45-day comment period, the Bureau stated that collusion has been revealed in recent investigations as a result of audio recordings in these non-public areas of the cardroom. Further, this comment supports the possibility for this collusion by acknowledging that counting functions occur in the vault. If a countroom employee was to conspire with a vault employee, both counts could be manipulated to be short of the actual amounts, and the money later smuggled out of the vault.

13. On page 15, line 15, Section 12396(d) requires Tier IV cardrooms to have on duty, during all hours of operation, an owner or key employee who can access live surveillance video and video recordings.

- a. Alan Titus – Artichoke Joe’s: This regulation applies only to Tier IV and not Tier V. It is not clear whether the key employee must have access to some or all of the live video and recordings. Our shift coordinators, the highest level on duty during non-business hours, have the ability to access overhead table cameras and video of the gambling floor, but access to other covert video is limited as a control measure. Further, allowing shift coordinators access

to countroom video could reveal our proprietary revenue information to unauthorized employees. There is no reason for a key employee to be on the premises at all times that can access all surveillance video.

Response: Staff recommends that this comment be rejected. During the 45-day public comment period, the Bureau proposed that Tier IV cardrooms be included in the Tier V requirement to have an independent surveillance unit that meets specified criteria and is staffed during all hours of gambling activity. The Bureau justified their recommended change by citing large revenues in Tier IV cardrooms ranging from 14.7 to 175 million dollars. The Bureau stated that a staffed surveillance unit does catch illegal activity as it happens. After a discussion at the public hearing on August 11, 2009, the Commissioners agreed to a compromise introduced by industry representatives that would require Tier IV cardrooms to only have staff on duty that could access an unmanned surveillance room. This would allow Tier IV cardrooms to operate an automated *unstaffed* surveillance room. The reason that this regulation applies only to Tier IV is that Tier V cardrooms are required to have a staffed surveillance unit.

Further, California Code of Regulations, Title 11, Section 2050(a) requires that a key employee be on duty during all hours that the cardroom is open to the public. Business and Professions Code section 19805(a) defines a *key employee* as an employee with supervisory capacity or empowered to make discretionary decisions that regulate gambling operations, including, without limitation, pit bosses, shift bosses, credit executives, cashier operations supervisors, gambling operation managers and assistant managers, managers or supervisors of security employees. As a result, it would be expected that the only key employee on duty during a cardroom's regular hours of operation should be able to gain access to an unstaffed surveillance room.

14. On page 17, line 14, Section 12396(e)(7) requires one Pan/Tilt/Zoom (PTZ) camera for every ten or fewer tables and requires that a reasonable attempt be made to pan the faces of patrons and dealers once per work shift.
- a. Joy Fernbach-Harn – CGA: This regulation continues to require a reasonable attempt to pan the faces of patrons and dealers for identification purposes. As drafted, there is a likelihood that we could be out of compliance if our tapes do not provide sufficient clarity of patron/dealer's faces to make identification possible. This regulation also takes valuable time away from more immediate needs that directly address patron and employee safety or gaming integrity. We recommend that the regulation state: "A reasonable attempt must be made to pan seated patrons and dealers at least once per work shift of surveillance unit employees."
 - b. Alan Titus – Artichoke Joe's: Although this regulation would apply to only Tier V cardrooms, it raises additional privacy concerns. The Bureau would have the ability to identify cardroom players, whether law-abiding or not. Club etiquette dictates that we maintain the privacy of our patrons. Although patrons know there are cameras, they don't know that they will be singled out and photographed.

Response (a & b above): Staff recommends that these comments be rejected. After a lengthy discussion between industry and Bureau staff at the hearing on August 11, 2009, the

Commissioners decided to accept compromise language proposed by the Bureau. The prior 45-day requirements stated that patron and dealer faces *must* be panned *once per hour*. This 15-day change now requires that only a *reasonable attempt* be made to scan the faces *once per work shift*.

Further, during the 45-day comment period, industry representatives stated that cardroom entrance and exit cameras sufficiently capture the faces of patrons. This being the case, then each person patronizing the cardroom has already been photographed sufficiently enough to be identified. Patrons expect this type of video photography when visiting public businesses, whether at a convenience store or a cardroom. The requirement that faces be panned at a gambling table is for the purposes of identifying those playing a game at a particular time, at that particular table. Further, this regulation should not be limited to *seated* patrons, as they may not be the only persons that are betting on the hands dealt at a table. Many cardrooms allow *backline betting*, where other patrons stand behind seated patrons and bet on their hands.

This proposed regulation is intended to protect the integrity of gambling operations by providing a deterrent against illegal gambling activity.¹⁶ Surveillance video recordings are also an excellent tool when investigating alleged illegal activities.

Comments Made Outside the Public Comment Periods

The following individuals submitted written comments after the close of the 45-day public comment period. These comments will be included in the file without a summary or response.

1. David Fried – Oaks Card Club and California Grand Casino (Received September 8, 2009)
2. Kermit Schayltz – CGA (Received August 21, 2009)

¹⁶ Business and Professions Code, subdivisions (g), (h) and (m) of section 19801, subdivisions (c) and (d) of section 19826, section 19921, section 19941 and subdivision (b) of section 19984.