

CALIFORNIA GAMBLING CONTROL COMMISSION

FINAL STATEMENT OF REASONS

**Minimum Internal Control Standards (MICS) for Gambling Establishments
General Terms, Conditions & Definitions; Policies & Procedures; Drop & Drop Collection; Count
& Count Room Functions; and Cage Functions.
CGCC-GCA-2008-03-R**

HEARING DATE: November 25, 2008

SUBJECT MATTER OF PROPOSED REGULATIONS: Minimum Internal Control Standards (MICS) for Gambling Establishments: General Terms, Conditions & Definitions; Policies & Procedures; Drop & Drop Collection; Count & Count Room Functions; and Cage Functions.

SECTIONS AFFECTED: California Code of Regulations, Title 4, Division 18, Chapter 7, Article 1, amend Section 12360, and in Article 3, adopt new Sections 12380, 12381, 12384, 12385 and 12386.

UPDATED INFORMATION:

The Initial Statement of Reasons, as published on September 26, 2008, is included in the file and is incorporated as if fully set forth in this section. The information contained therein is complete and, except as described below in the section entitled "Proposed Action," no changes have been made to the proposed regulations that would warrant any changes in that information.

Proposed Action:

This proposed action will make the following changes in Chapter 7 of Division 18 of Title 4 of the California Code of Regulations:

Article 1, Section 12360 would be amended by these proposed regulations to include definitions for "security department" and "surveillance unit." These definitions set out the general parameters of the responsibilities of the security department and surveillance unit within a gambling establishment (cardroom). By placing these definitions in Article 1, they would apply wherever used throughout Chapter 7. While ultimate responsibility for overall compliance with the Gambling Control Act rests with the cardroom's owner licensee, certain units or departments are generally seen to cover certain aspects of the day-to-day operations of a cardroom. For instance, security is usually in the best position to keep an eye on the property of the cardroom and its patrons and employees. Both security and surveillance share in the first-line of defense against underage gambling and other illegal activities.

Article 3 would be amended to incorporate minimum internal control standards (MICS) for gambling establishments as follows:

1. Adopt Section 12380 which will define “minimum internal control standards” (MICS) for the purpose of Chapter 7, will establish the basic application of MICS in the operation of cardrooms and will make failure to comply with this article a ground for disciplinary action. This section will also establish five specific licensee “tiers” based on a licensee’s number of approved gaming tables.
 - This section, through subsections (a) and (b), provides the basic foundation for, and sets forth the general purpose of the MICS requirements. In that regard, this section is intended to be informative and a guide in interpreting and applying the specific standards and requirements that follow.
 - Subsection (c) is also intended to be informative and clarifying. Licensees are put on specific notice that failing to comply with the requirements of this article or to cure any deficiency, constitutes an unsuitable method of operation and is a ground for disciplinary action. It is important and proper that licensees be made aware or reminded of the possible consequences of their actions or inaction.
 - The establishment of licensee tiers in subsection (d) is intended to be an uncomplicated, understandable and succinct means of distinguishing variations in the size of cardrooms. In the vast majority of instances, the number of approved gambling tables a cardroom is licensed to operate has a direct correlation to the size of the operation – both physical and fiscal. In order to be able to consider the “*the operational differences of large and small establishments*” in the construction and application of its regulations,¹ the Commission must have standards that are easy to interpret, and to apply as efficiently and fairly as possible. The number of tables has been determined to be a relatively consistent means of making these distinctions.
2. Adopt Section 12381, which requires cardrooms to establish policies and procedures that meet or exceed the MICS requirements of Article 3. This section will also require the communication of those policies and procedures to employees, adherence to the established policies and procedures, and the availability of those policies and procedures to the Commission and Bureau. This section also includes basic requirements for record keeping. Finally, licensees in Tiers II through V will be required to assign specified duties and responsibilities concerning policies and procedures to a designated member of management.
 - Subsection (a) requires that policies and procedures be in written form. This is intended to ensure that there is a physical document that can be relied upon to determine, first of all, compliance with the requirement policies and procedures; and secondly, the adequacy of those policies. Having written policies and procedures also provides a reliable means of ensuring that all employees are made aware of their requirements and facilitates compliance with subsection (b).
 - Requiring, in subsection (b), that the licensee’s policies and procedures be communicated to its employees is intended to ensure that the employees are made aware of those requirements and any subsequent modifications. Properly informed employees will provide greater

¹ See Business and Professions Code § 19840.

assurance that a higher level of compliance will be achieved and maintained. This will also assist licensees in complying with subsection (c).

- Subsection (c) simply requires adherence to the licensee's established policies and procedures. While requiring the establishment of policies and procedures might imply the adherence is mandated, it is not clear. Without this specific clarifying requirement, establishing policies and procedures could be meaningless.
 - Subsection (d) establishes the Commission's and Bureau's basic right of access to licensees' policies and procedures. This access is necessary to facilitate a review by the Bureau in order to assess the adequacy of the policies and procedures.
 - The establishment of minimum basic requirements for the maintenance of records is covered in subsection (e). Permanent records must be maintained to provide a basis for regulatory compliance review. As state agents and auditors will review the records, they shall be maintained in English, so that those individuals may read them. The minimum retention period of three years is adequate for several of the records addressed in this article, except those records for which a longer retention period may be required; for example, accounting and financial reporting records addressed in Article 4 of Chapter 7.
 - The requirements, in subsection (f), that licensees in Tiers II through V assign the responsibilities for establishing, reviewing, monitoring, and testing for compliance the MICS policies and procedures; that specified periodic testing be done; and that compliance test results be documented. Subsection (f) would implement the provisions of Business and Professions Code section 19841, subdivisions (h) and (i). These requirements are made applicable to only Tiers II through V, as Tier I licensees are generally so small, with management limited to an individual owner or a single employee, that assignment or delegation of these requirements would be impractical, if not impossible. Furthermore, the general accounting and reporting requirements applicable to all licensees,² including Tier I licensees, are adequate for this purpose as the risk potential is relatively minimal.
3. Adopt Section 12384, which requires cardrooms to establish policies and procedures to address the deposit of fees into a secure container and periodic collection of those containers. When patrons of a cardroom engage in controlled gambling, they pay a fee, either per hand or per hour, for playing. This fee – either in regular chips or nondenominational drop-chips – is “dropped” into a “drop box” attached to the gambling table, and the boxes are collected at certain times each day by the cardroom. This is the main source of cardroom revenue and must be both protected (if chips are used) and accurately reported. This section will provide specifications for the construction, use, identification, collection and basic security of drop boxes. In addition, this section will establish the extent and complexity of these requirements as they apply to the licensee tiers established in Section 12380.

In general, the basic requirements governing drop boxes and drop collections serve not only to safeguard licensees' assets, but also to assist the Bureau in its regulatory role. There have been numerous instances where a Bureau cardroom audit/review has found that more drop boxes were

² See Article 4, § 12400, et seq.

being collected than the total number of tables authorized for that licensee. The identification and tracking of drop boxes and the scheduling of drop box collections could be important factors in confirming that a licensee has illegally operated more gambling tables than authorized under its license. Further, these proposed drop box collection regulations not only protect against theft, but are also for the purposes of insuring that their contents are fully and accurately counted for gross revenue reporting purposes. In addition to federal IRS reporting requirements, the gross revenue of a cardroom is reported to the Commission for the purpose of calculating license fees.³ Even though the contents of any single drop box may appear to be small when compared to the overall amount of chips and cash that are circulating on the gaming floor, drops are undocumented revenue until counted in the count room. In most retail business transactions, receipts are immediately provided to patrons, which begins a document trail of the income. However, in cardrooms, no receipts are provided, and patron drops are not documented until the drop boxes reach the count room.

All Tiers

- Subsection (a), paragraph (1), requires the use of a secure container (drop box) for the collection of drop and other fees. The drop box must be secured to the gambling table and constructed and controlled so as to provide for the security of its contents. As most cardrooms place chips in the drop box, it is important that the box be secured so that unauthorized persons cannot take any chips out of the drop box.
- Subsection (a), paragraph (2) requires the use of a separate drop box or other method of segregation for jackpot collections. Jackpot collections have separate accounting requirements, thus the regular drop must be kept separate from these jackpot collections. The separation or segregation may be accomplished by the use of a second drop box or by some other means. For example, if drop chips are used exclusively for fees, but not for jackpots, segregation is still achieved even though a single drop box is utilized.
- Subsection (a), paragraph (3) establishes basic standards for the construction of drop boxes. In order to properly secure the drop box, separate locks close the box and attach it to the gambling table. The box needs to be clearly and visibly marked as to which table it should be attached to. This can be accomplished by using table numbers or letters, and shift identifiers – such as AM or PM, or symbols indicating time of day (e.g., sun, moon) – if more than one box per day is used. The box must also have an opening through which chips may be inserted.

Requiring separate locks to secure the contents of the box and to secure the box to the gambling table provide multiple levels of security. First, securing the box to the table protects against tampering, theft or unauthorized removal of the box itself. Second, a separately keyed lock securing the contents of the box provides a means of restricting access to the contents by unauthorized personnel (e.g., employees performing the drop box collection would have the keys to the locks securing boxes to tables but not to the locks securing the contents of boxes.)

³ Business and Profession Code, section 19951, subdivision (d).

The identification of drop boxes and the linking of the box to its corresponding table is an important element in a complete audit trail. Through this identification, when collected, the drop boxes can be followed from the table to and through the count. Visible identifiers can be tracked through surveillance video. As a supplement to visible identifiers, provision is also included for electronic identification using a bar code or similar system. In a bar code identification system, the box, the table, and the personnel collecting the boxes all have individual bar code identifiers. The system records those identifiers and all other relevant information for the drop collection. That information can then be accessed at a later time for comparison to the video recording of the collection.

While it may seem obvious that there must be an opening in a drop box to provide for the deposit of chips, this requirement is included for clarity and specifically requires that the chips collected for the drop and other fees actually be deposited into the box.

- Subsection (a), paragraph (4) permits the use of an emergency, interim or temporary drop box. Sometimes, cardrooms use a different box to collect the drop, either due to heavy usage necessitating that the box be changed out, or because the original box requires maintenance. In such instances, cardrooms use a box that they mark emergency, interim, or temporary, depending on the cardroom and/or reason for the switch. Extra boxes are kept on site for such times, but not as many extra boxes as tables are required. The use of such a temporary box does not require any permanent table marking, but a temporary table identifier must be used when the box is employed so that the video surveillance can accurately follow the box as it moves from the table to the count room.
- Subsection (a), paragraph (5) specifies that a drop box that has been removed from a gambling table must be stored in a secure area and afforded sufficient security to protect the drop box and its contents while awaiting the count. Again, as these boxes generally contain the majority of a cardroom's revenue, the boxes must be placed in a secure area to protect their contents from theft or tampering.
- Subsection (a), paragraph (6) allows unused drop boxes to be stored on gambling tables. Empty drop boxes are not at risk of content theft, but could be at risk for tampering with the locks, etc. Therefore, proposed MICS Phase II regulations will require surveillance video for all Tiers, and video of individual gambling tables for Tiers II-V. This broad standard allows lower tiers greater flexibility in satisfying the need for empty drop box security.
- Subsection (a), paragraph (7) requires that licensees establish a schedule for the collection of drop boxes and ensure video recording of the entire drop box collection process. A provision is also included for deviation from the established collection schedule when necessary.

The collection process must be recorded by video surveillance to ensure that the boxes are collected appropriately and are not tampered with before they reach the count room. This helps to ensure the security of the box contents and satisfy necessary accounting and reporting requirements. The video will also document that the number of drop boxes collected is appropriate for the number of tables permitted to be in operation.

Deviation from the licensee's collection schedule may be necessary or appropriate in many situations that may not be predictable. For example, when the volume of play at a particular table is so great that the drop box is filled to capacity well before its scheduled collection time, an early collection would be necessary and appropriate to safeguard further drop fees for that table. On the other hand, an additional table put into play very close to a scheduled collection time may not have generated sufficient drop fees to warrant collection at the next scheduled time, so excluding that table from that collection may be appropriate. For that matter, on a particularly slow gambling day, there may not be sufficient drop fees generated at any table and skipping a scheduled collection time altogether during that shift may be reasonable. Furthermore, the unexpected absence of one or more of the employees designated to perform the drop collection may delay its commencement in order to locate a substitute. In view of these possible situations, it would be unreasonable not to allow deviation from an established drop collection schedule for good cause.

- Subsection (a), paragraph (8) requires that, for all licensees, the drop collection shall be performed by at least one licensed or permitted individual. Using licensed or permitted individuals will help to ensure the integrity of the drop collection process and protect the licensee's assets. Licensed and permitted employees are subjected to background checks in order to obtain a license or permit. Possession of a license or permit provides at least a minimum degree of confidence in the honesty, integrity and good character of the individual. This becomes an increasingly important factor as the potential for financial loss, and the size of the potential loss, increases as the tiers progress.

In addition, this requirement is consistent with the definition of a "gambling enterprise employee" in the Act, which includes "collection personnel."⁴ Gambling enterprise employees are required to hold a license or work permit, depending on the extent of their duties and authority.⁵ It follows, then, that the person or persons performing the drop collection must be licensed or permitted.

The license/permit requirement for drop box collection applies to cardrooms in all tiers, but only one such individual is required for cardrooms in Tiers I and II. The size, both physical and fiscal, of these businesses, in general, does not necessarily warrant the use of more than one person to perform the drop collection and the owner licensees themselves generally perform these critical functions of cardroom operation in these tiers. The potential for loss is far less significant and requiring more than one person to perform the collection might necessitate hiring an additional, and otherwise unneeded, licensed or permitted employee in order to comply. On the other hand, Tier III and above licensees generally already have licensed and/or permitted employees that could be assigned this duty.

Tiers III-V

- Subsection (b), paragraph (1) requires that the collection of drop boxes, whether in use or not, be performed by at least one employee who holds a valid license or work permit and one member of the security department. Further, the employee cannot be a member of the

⁴ Business and Professions Code, section 19805, subdivision (m).

⁵ Business and Professions Code: section 19853, subdivision (a); section 19854, subdivision (a); and section 19912, subdivision (a).

security department. This requirement is intended to limit opportunities for collusion, safeguard the licensee's assets, and maintain the integrity of the drop collection process.

- Subsection (b), paragraph (2) allows Tier III cardrooms that use *contract* security guards to use two *employees* from different departments to conduct the drop collection, rather than one employee and one security guard. Paragraph (2) recognizes the difficulty in requiring that *contract* security guards participate in the drop box collection, since some will not be allowed to enter the cardroom because they do not have a license or work permit.
- Subsection (b), paragraph (3) provides that the names of the individuals performing the drop box collection be documented either electronically (by computer software) or in writing and, if documented in writing, that the individuals print and sign their names in the documentation. Accurate documentation of each aspect of the drop collection process is necessary to maintain the integrity of the process, minimize opportunities for collusion, and safeguard assets.
- Subsection (b), paragraph (4) allows unused drop boxes to be stored on gambling tables if the area is covered by recorded video surveillance. Again, empty drop boxes are not at risk of content theft, but could be at risk for tampering. Even when empty, the boxes must be stored safely and securely. Having boxes locked to a gambling table in a secured area and under recorded video surveillance satisfies this need for empty drop box security. This slightly higher standard for Tiers III and above addresses the higher level of potential risk associated with the larger and largest gambling operations.

Tiers IV & V

- Subsection (c) requires the video monitoring of the drop box collection process by an employee of the cardroom who holds a valid license or work permit and requires that the drop box collection process be continuously recorded by video surveillance. This requirement for Tiers IV and V cardrooms is intended to control and enhance the security of the drop collection process and addresses the higher level of potential risk for losses associated with the larger gambling operations.
4. Adopt Section 12385, which requires cardrooms to establish policy and procedures for the maintenance and operation of count rooms. This section includes general specifications for the construction and security of count rooms, the duties and activities of count room staff and the procedures that must be used when conducting the count. In addition, this section will establish the extent and complexity of these requirements as they apply to the licensee tiers established in Section 12380.

All Tiers

- Subsection (a), paragraph (1), requires licensees to ensure that the counting and recording of the contents of drop boxes is accomplished in a manner that provides for appropriate security and proper accounting. Some cardrooms pay local taxes based upon their revenue. Therefore, the correct reporting of revenue is essential in determining the appropriate tax liability. Similarly, some cardrooms have different state table fees based upon their gross

revenue, and so the proper income must be reported.⁶ This regulation is intended to assist in ensuring the accuracy of the count, to minimize the opportunity for theft and embezzlement, and to maintain the integrity of the count process.

- Subsection (a), paragraph (2) requires licensees to designate an individual or individuals, holding a valid license or work permit, to perform the drop count. Using licensed or permitted individuals will help to ensure the integrity of the count process and protect the licensee's assets. Licensed and permitted employees are subjected to background checks in order to obtain a license or permit. Possession of a license or permit provides at least a minimum degree of confidence in the honesty, integrity and good character of the individual.⁷ This becomes an increasingly important factor as the potential for financial loss, and the size of the potential loss, increases as the tiers progress.
- Subsection (a), paragraph (3) requires that the count be recorded on a daily count sheet; specifies the information that must be recorded in a count sheet; and specifies how corrections are to be made when errors are identified in the recorded information. The daily count sheet documents the revenue of each drop box and maintains the integrity of the revenue accounting. This decreases the risk of under/over reporting of revenue.
- Subsection (a), paragraph (4) mandates the continuous recording of the count process by video surveillance. This requirement is intended to enhance security, minimize the opportunity for theft and embezzlement, and maintain the integrity of the count process.
- Subsection (a), paragraph (5) prohibits the mixing or commingling of the contents of one drop box with the contents of any other drop boxes prior to the count and recording of its contents. This prohibition is intended to assist in the accurate tracking of revenue for each shift, individual box and individual table.
- Subsection (a), paragraph (6) requires a drop box to be identified and the identity recorded when emptied and that recorded video surveillance document that all contents are removed from the box for the count. This requirement is intended to assist in creating an audit trail that will allow tracking of drop boxes from collection to the count. This will help to ensure the security and integrity of the count process and satisfy accounting and reporting requirements.

Tiers II-V

- Subsection (b), paragraph (1), requires licensees to maintain and use a secure area known as the "count room" to perform the count; that the area be designed and constructed to provide appropriate security; that it not be used for the storage of anything not directly associated with the count process or cage functions; and, that it not house any removable containers, other than drop boxes, that could be used to conceal chips or cash. This requirement is intended to provide enhanced asset safety and count process integrity. When considered against the additional requirements of Subsection (d)(1) below, Subsection (b)(1) also allows lower tier cardrooms to utilize the cage for the count process.

⁶ Business and Professions Code, section 19951, subdivision (d).

⁷ Business and Professions Code, section 19857, subdivision (a).

- Subsection (b), paragraph (2) provides that if the count room is used to store items or materials that are directly associated with the count (e.g., chips, cash or drop boxes), the interior of the room and its contents must be under constant recorded video surveillance. This provision is intended to allow licensees to make appropriate use of the count room for purposes other than, but related to the count process, while safeguarding the licensee's assets and maintaining the safety and security of the room and its contents.

Tiers III-V

- Subsection (c), paragraph (1), provides that not less than two individuals be designated, pursuant to paragraph (2) of subsection (a), to perform the count, or one individual if an automated chip counting machine is used, as specified. This requirement is intended to limit opportunities for collusion, safeguard the licensee's assets, and maintain the integrity of the count process.

The requirement that not less than two individuals perform the count begins with Tier III because the size of Tiers I and II cardrooms, both physically and fiscally, do not warrant this added level of protection. The potential for loss is far less significant and the owner licensees generally perform all the critical functions of cardroom operation. Further, adding this requirement for the lower tiers could necessitate hiring an additional, otherwise unneeded, employee in order to comply. On the other hand, Tier III and above licensees generally already have multiple employees that could be assigned this duty.

The optional provision allowing one individual to perform the count if a count machine is used is intended to provide licensees with an alternative that may reduce labor costs without negatively impacting the safety of assets or the integrity of the count process. Count machines typically report and record the count without any control from the machine's operator.

- Subsection (c), paragraph (2) requires that the individuals performing the count wear clothing that reduces their ability to conceal chips on their person. This requirement is intended to minimize the opportunity for theft, safeguard the licensee's assets, and maintain the integrity of the count.
- Subsection (c), paragraph (3) requires a verification of the accuracy of the count and count sheets by a cage or vault cashier, or the equivalent. This requirement provides a means of identifying count errors in order to reduce the potential for under/over reporting of revenue, and it creates a documented audit trail.
- Subsection (c), paragraph (4) specifies that the count sheet must be immediately delivered to the accounting department following its verification and that the accounting department shall be responsible for storing, maintaining and controlling the count sheets. This provision is intended to maintain the integrity of the count sheet by minimizing the opportunity for unauthorized alterations.

Tiers IV-V

- Subsection (d), paragraph (1), provides that the count room shall be a fully enclosed room that is separate and apart from all other rooms. The count room must have an alarm system

connected to all its doors that signals the surveillance unit whenever any door is opened. This provision is intended to establish an enhanced level of protection for licensee's assets commensurate with the increased potential risk found in the higher tier cardrooms. Both the larger size of their establishments and the significantly higher amount of their revenue warrant a higher degree of protection.

- Subsection (d), paragraph (2) requires that count room staff notify the surveillance unit, or its equivalent, immediately prior to commencement of the count; that at least one employee of the gambling establishment who holds a valid license or work permit be designated to video monitor the count process; and that the entire count process be continuously recorded by video surveillance. This requirement is intended to provide a deterrent against theft and embezzlement through the video monitoring and recording of the entire count process.
- Subsection (d), paragraph (3) provides that access to the count room shall be secured prior to the opening of any drop box and that the exit and entrance of individuals be controlled until the count process, including recording and verification, is completed. In keeping with the increased potential risk found in the higher tier gambling establishments, this provision is intended to enhance the level of protection for the licensee's assets and to protect the integrity of the count.

Tier V

- Subsection (e) provides that not less than three individuals be designated, pursuant to paragraph (2) of subsection (a), to perform the count, or two individuals if an automated chip counting machine is used, as specified. This provision is intended to enhance the safety and security of the count process and addresses the higher level of potential risk of losses associated with the largest gambling operations.
5. Adopt Section 12386, which requires cardrooms to establish policies and procedures for the maintenance and operation of cardroom cages. This section includes specifications for the construction and security of cages, and the duties, procedures and activities of cage staff. In addition, this section will establish the extent and complexity of these requirements as they apply to the licensee tiers established in Section 12380.

All Tiers

- Subsection (a), paragraph (1), provides that licensees shall ensure the appropriate security and accountability of funds by the maintenance of an area within the gambling establishment, as specified, that is designated as the cage. The cage is the main area of a cardroom where cash is kept, as patrons exchange their cash for chips, cash checks, access their players' banks, or redeem chips for cash. In addition, patrons often fill out required IRS forms or credit request forms at the cage, which are kept in the cage until transmitted to the accounting department. Thus, cash, chips and sensitive information are kept in this area. Therefore, it is necessary to keep this area secure, including video surveillance and restrictions on access to non-authorized personnel, as well as internal controls such as segregation of duties involving reconciling cash drawers.
- Subsection (a), paragraph (2) requires that at least one employee be designated to process transactions through the cage and that all of the employees who work the cage be identified

as such on the cardroom's organizational chart. This regulation also lists the various duties and responsibilities of those employees who work the cage. This requirement is intended to ensure that each employee assigned to work in the cage is identified and that the designation is documented. This is a basic element in safeguarding the licensee's assets and protecting sensitive and confidential information that may be present in the cage.

- Subsection (a), paragraph (3) provides that access to the cage shall be limited, restricted and controlled. Cash, chips and sensitive/confidential information are kept in this area. Restricting access to authorized personnel and controlling access by other personnel assists in ensuring the security of the area. This provision is intended to reduce the risk of loss or inappropriate access to sensitive or confidential information and/or documents.
- Subsection (a), paragraph (4) requires that a log be maintained, as specified, to document entry into the cage area by anyone other than authorized, on-duty cage personnel, and that any automated access control system record similar information. This is another factor that assists in preserving the security of the cage area and safeguarding its contents. Should issues arise, the log will document who, in addition to authorized, on-duty cage personnel, was granted access to the cage at any time relating to the issue.
- Subsection (a), paragraph (5) requires that a reconciliation of the cage activity be performed at the end of each shift by both the incoming and outgoing designated cage employees; that if an imprest is used, the outgoing employees reconcile their drawers to the imprest amount; that all transactions be appropriately summarized and documented, as specified; and that the cage activity reconciliations be posted and reconciled to the general ledger monthly. Regular reconciliations and postings are a critical element in any financial accounting system and are a basic internal control standard in any fiscal operation. Regularly occurring reconciliations of transactions confirm the accuracy of the accounting system, timely identify irregularities and errors, and support the credibility of financial reporting. By requiring both the outgoing and the incoming cashiers to perform the shift-change reconciliation, shift-to-shift continuity is established and confirmed, and each cashier is assured of the accuracy and consistency of the amounts they are receiving and transferring. However, in the case of an imprest amount, each cashier is responsible for his or her own drawer or bankroll. Therefore, there is no need for incoming and outgoing cashiers to be involved in each other's reconciliations.
- Subsection (a), paragraph (6) specifies that a patron may only purchase or redeem chips from the cage or a designated employee on the gambling floor. It also prohibits third-party proposition player service providers (TPPS) from purchasing or redeeming chips from patrons, and prohibits TPPS from selling chips to patrons. Clarification is also included that provides that changing or breaking chips (e.g., exchanging a \$50 chip for 10 – \$5 chips) is not prohibited, whether at a cage, with a dealer or between players. This requirement is intended to assist in assuring compliance with Title 31 of the United States Code, and to minimize the potential for the introduction of counterfeit chips and/or currency into the gambling establishment.

Tiers III-V

- Subsection (b), paragraph (1), requires continuous recorded video surveillance of the cage and cage activities. This requirement is intended as an enhancement to provide added

protection of assets, greater assurance of the integrity of the cage and cage employees, a deterrent against theft, and as an investigative tool to solve matters involving theft.

- Subsection (b), paragraph (2) requires a summarization of the reconciliation of cage transactions (see (a)(5) above) on a cage accountability form and specifies the information that must be included in that form. This requirement is intended to enhance the accuracy and consistency of the end-of-shift cage reconciliation by specifying the basic information that is to be summarized and recorded.
- Subsection (b), paragraph (3) requires that the cage activity reconciliation that is posted to a general ledger be performed by someone other than a cage employee or supervisor. This provision is intended to assist in preserving the integrity of the reconciliation and minimize the opportunity for collusion through a clear separation of duties.

Tiers IV-V

- Subsection (c), paragraph (1) specifies that the cage must have a manually triggered silent alarm; that the cage access door(s) be secured; and, that the door(s) be under constant recorded video surveillance. The alarm requirement is intended to provide for notification of the surveillance unit, or an alarm monitoring agency, in the event of a robbery. The securing and recorded video surveillance of the doors is intended to provide greater access control and enhanced security for the cage. These provisions are intended to further safeguard assets by establishing enhanced requirements appropriate to the higher degree of risk associated with the larger gambling operations.
- Subsection (c), paragraph (2) requires a summarization of the reconciliation of cage transactions (see (a)(5)) on a cage accountability form (see (b)(2)) that includes additional information, as specified. This requirement is intended to further enhance the accuracy and consistency of the end-of-shift cage reconciliation by requiring additional detail that may only be necessary and appropriate for the higher tier gambling establishments.
- Subsection (c), paragraph (3) requires that licensees maintain a list of designated persons that have been authorized access to the cage. The list shall also indicate who possesses the combination or keys to the devices securing the cage and who can access and operate the cage alarm. This requirement is intended to ensure that each employee assigned to work in, or authorized access to the cage is identified and that the assignment and/or authorization be documented. This serves to enhance the accountability of individuals, to document segregation of duties, and to clearly identify and document who may control physical access to the cage. These provisions are intended to further safeguard the licensee's assets and protect sensitive and confidential information by establishing enhanced requirements appropriate to the higher degree of risk associated with the larger gambling operations.

Tier V

- Subsection (d) requires that the interior of the cage and all of its contents, as well as the exterior of all cage access doors, be under monitored and recorded video surveillance. This requirement is intended as a further enhancement to the basic video surveillance requirement in order to provide added protection of assets and greater assurance of the integrity of the

cage and cage employees, commensurate with the higher level of potential risk of losses associated with the largest gambling operations.

6. The proposed action will also require licensees to establish and implement the applicable standards specified in Sections 12384, 12385 and 12386 by a date certain (approximately six months after the effective date of the regulations). This will provide licensees with adequate notice and sufficient time to develop appropriate policies and procedures in compliance with the newly adopted standards and requirements.

REQUIRED DETERMINATIONS:

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Small Business Impact:

The Commission has determined that the proposed regulatory action may affect small businesses if any licensed gambling establishment qualifies as a small business and does not already have internal control standards in place which satisfy the minimum standards proposed by these regulations.

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.

COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following comments/objections/recommendations were made regarding the proposed action, either in writing or orally, during the public comment periods and/or at the public hearing:

A. 45-Day Comment Period Ending November 25, 2008

The following comments/objections/recommendations were made regarding the proposed action, either in writing during the 45-day comment period that ended on November 25, 2008, or orally at the public hearing that was held on November 25, 2008. At their meeting of September 10, 2008, the Commission also voted to approve staff's recommendation to consider written and oral comments received at that meeting, along with any comments received during the 45-day comment period. As a result, those September 10, 2008 comments are also summarized and responded to below:

1. Regarding these proposed regulations in general:

- a. Jade Jaeckle- Gaming Fund Group: Wish to acknowledge and thank the Commission for its efforts in working with the industry throughout the process of developing these regulations.
- b. Alan Titus- Artichoke Joe's: Strongly supports the development of minimum internal control standards and believes that state regulation and oversight will ensure that cardrooms are honest, law-abiding businesses.

Response (a & b above): These expressions of support were accepted and considered in the adoption of the proposed action.

- c. Jade Jaeckle- Gaming Fund Group: Third-Party Providers of Proposition Player Services (TPPPS) should be allowed to review the cardrooms surveillance videos in order to safeguard TPPPS assets, as they often have tens of thousands of dollars in chips on the table. Reviewing the videos would also allow the TPPPS to evaluate its operational efficiencies and monitor employee performance.

Response: This comment/recommendation was rejected. Allowing TPPPS access to surveillance videos may provide them with an unfair advantage over regular patron players. These videos would show the various cards in play. This could allow the TPPPS to learn the play strategy of regular patrons.

- d. David Fried- Golden State Gaming Association (GSGA): There should be a general section added for exceptions. For example, some Tier II & III clubs may need to use their cage for the count, due to space limitations.

Response: This comment/recommendation was rejected. There should be no formal exception process for the requirements of Article 3, as this could jeopardize the purpose of uniform and consistent Minimum Internal Control Standards (MICS). However, during the development of specific regulations, consideration will be given to the need for exceptions.

2. Sections 12380(d)(1-5) define the various tiers of cardroom licenses: Tier I is 1-5 tables; Tier II is 6-10; Tier III is 11-30; Tier IV is 31-60; and Tier V is 61 or more.

- a. Kevin Schayltz- Lucky Derby Casino: Smaller Tier III cardrooms, with only 11-14 tables, are lumped in with larger cardrooms with up to 30 tables, representing more than a 100% increase. Going from just 10 tables to 14, will add the expenses of extra employees for the count room and video surveillance, additional training and video storage. The definition for Tier II should be changed to include 6-14 tables.

Response: This comment/recommendation was rejected. By adding four more tables to Tier II, seven of the eleven Tier III cardrooms would go down to Tier II, leaving only four in Tier III. This would eliminate the gradual decrease in the number of cardrooms per Tier in the higher Tier levels, unfairly concentrating the impact of MICS.

3. Sections 12380(e)(1 & 2) define "security department" and "surveillance unit." The definition for "security department" includes the responsibilities of: physically safeguarding patrons and their property, detaining persons who may be involved in illegal acts, and preventing, or assisting in the

prevention of, underage gambling. The definition for “surveillance unit” includes the responsibilities of detecting and documenting illegal activities and detecting underage gambling.

a. Alan Titus- Artichoke Joe’s: Different definitions for these same terms appear in proposed MICS Phase II regulations (new section 12372), which apply to all of Chapter 7. The MICS II definition for the security department is more appropriate, as it focuses on duties rather than goals. An overzealous lawyer could seek to impose a strict liability on the cardroom if a patron were to be the victim of theft or violence.

b. David Fried and Joy Harn- GSGA: This definition invokes a *strict liability* standard to ensure the physical safety of patrons and their property, exposing the licensee to civil liability. The definition should be qualified with a statement that it is *for the sole purpose of these regulations and does not alter the licensee’s legal liability to third parties*.

Response (a & b above): These comments were accepted and the following amendments made in the first 15-day change: Delete the definitions for the “*security department*” and “*surveillance unit*” in subsection (e), and move the MICS II definitions for these terms to Article 1, Section 12360, Chapter Definitions. The movement of these definitions to Article 1 should become part of this proposed action. This will apply the definitions to all of Chapter 7, and will more appropriately prepare for further MICS regulations in various articles. The new (MICS II) definition of “security department” does not contain the words that could be interpreted as a strict liability standard.

c. Charles Bates- Bay 101: Cardrooms have no legal authority to detain persons. Doing so could make them liable for false arrest, assault or battery; or could result in injury to employees. Suggest limiting security’s responsibilities to detecting, recording and reporting alleged illegal activity.

d. David Fried and Joy Harn- GSGA: Small clubs may have only one security guard who cannot detain people safely, and shouldn’t be making such decisions without direction. Suggest striking the reference to detaining persons.

Response (c & d above): These comments/recommendations were accepted and the following amendment made in the first 15-day change: Delete that portion of the definition that requires the security department to *detain* persons suspected of violating the Act. Department of Consumer Affairs’ Bureau of Security and Investigative Services policies and procedures for security guards require them to only “*observe and report*.” Security companies that contract with cardrooms will operate by this standard.

e. Charles Bates- Bay 101: The responsibility of detecting underage gambling better lies with the gaming department, with the assistance of security, when needed. Suggest limiting security to *assisting* in the prevention of underage gambling by deleting the word *preventing*.

Response: This comment/recommendation was rejected. Security personnel patrol both outside the establishment and the floor of the gaming area. They are in a good position to deny entry or play to underage persons.

f. Charles Bates- Bay 101: Requires surveillance employees to draw conclusions that an act is illegal. These employees only observe and document suspicious and unusual activities. Suggest inserting the word “*alleged*” before *illegal*.

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Amend the definition of “surveillance unit” to include the word “*suspected*” before *illegal*.

g. Charles Bates- Bay 101: The detection of a person’s age by the surveillance unit is difficult and would distract from their mission to observe, record and report unusual or suspicious activity. Suggest replacing this language with: “...*reporting unusual or suspicious activities in the establishment to management, including alleged underage gambling ...*”

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Amend the definition of “surveillance unit” to read: “..., *detecting, documenting and reporting suspected illegal activities, including suspected gambling by persons ...*”

4. Section 12381(a) requires licensees to have written policy and procedures that address all major areas of operations and meet or exceed the MICS contained in this article.

a. David Fried- GSGA: What are “major areas?” Suggest defining the term as those covered by MICS regulations.

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Amend subsection (a) to read: “... policies and procedures that meet or exceed the MICS contained in this article.” This would delete “*shall address each major area of the gambling establishment operations,*” since this language may be unenforceable and challenged as being too broad.

5. Section 12381(e) requires the licensee to correct deficiencies in its policy and procedures, as determined by the Bureau.

a. David Fried and Joy Harn- GSGA: There should be an avenue to appeal or discuss the Bureau’s perceived deficiency. The Bureau is making this determination without an opportunity for the cardroom to explain. Further, the 30-day limit for compliance may be too short, and the 10-day advance request for an extension would not apply in those cases where the Bureau gave less than ten days to comply.

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Delete subsection (e), and renumber the subsequent subsections accordingly. Also delete the reference to 12380(e) in 12380(c). Subsections (a) and (c) of Section 12381 already require the establishment of MICS policy and procedures and the adherence thereto. In cases of noncompliance, the Bureau has the option to take disciplinary action pursuant to 4 CCR, Section 12554(d).

6. Section 12381(f)(3) requires that records (required by this chapter), be kept for 3 years, unless otherwise specified, in an on-site secured area, or other California facility approved by the Bureau. These records include “recordings.”

a. Rod Blonien- Attorney At Law: Storage may not be available on site for this many records.

Response: This comment/recommendation was rejected, as this regulation allows for off-site storage that is approved by the Bureau.

b. Rod Blonien- Attorney At Law: Should specify what “*video recordings*” must be kept for 3 years. This would be a great number of videotapes to store.

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Delete the word “*recordings*” from subsection (f). MICS II regulations will propose a retention schedule of *3 days* for surveillance recordings, unless notified otherwise by the Bureau.

7. Section 12381(f)(4) requires that specified business records be made available to the Bureau between 9:00 a.m. and 6:00 p.m. on weekdays.

a. Charles Bates- Bay 101: These hours may be outside the normal workday for a licensee’s department that is responsible for maintaining the records, placing an unreasonable burden upon the licensee. Suggest using the licensee’s normal workday hours (e.g., 8 a.m. - 5 p.m.).

b. David Fried- GSGA: The hours that these records are made available should be between 9 a.m. and 5 p.m.

Response (a & b above): These comments/recommendations were accepted and the following amendment made in the first 15-day change: Amend paragraph (4) to read: “... between the hours of 9:00 a.m. and 5:00 p.m. on weekdays ...”

8. Section 12381(g) requires the licensee to assign the duty of MICS compliance to a specific owner or member of management. Also requires the licensee to annually test for compliance.

a. David Fried- GSGA: Who is a *member of management*? Should this be a *key employee* or management?

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Amend subsection (g) to require that the “... owner *licensee or key employee* ...” establish, periodically review, monitor and test for compliance with MICS.

9. Section 12384(a) requires that cardroom policy and procedures set minimum standards for drops and drop box collection, including: drop fee deposit, drop box security, separate jackpot collection, drop box construction and identification, emergency drop boxes, drop box storage, collection schedules and collection personnel.

a. Alan Titus- Artichoke Joe's: Some of the controls over drop boxes are unnecessary. Drop box use in California cardrooms is different than in Nevada. Nevada drop boxes hold the money from chip sales and the house revenue. In California cardrooms, the boxes contain only the fee revenue for the games, which averages only \$500 at the time of collection.

b. David Fried- GSGA: When loaded with chips, drop boxes don't contain anything of value. Even in the case of cash, there's usually no more than \$250 in them. A drop box theft has never happened in 60 years of operation.

Response (a & b above): These comments/recommendations were rejected. This regulation requires that the licensee establish their own policies on drop boxes. Flexibility is allowed in most areas, such as box identifiers and collection schedules. Further, these proposed drop box collection regulations not only protect against theft, but are also for the purposes of insuring that their contents are fully and accurately counted for gross revenue reporting purposes. In addition to federal IRS reporting requirements, the gross revenue of a cardroom is reported to the Commission for the purpose of calculating license fees (See Business and Professions Code, section 19951). Even though the contents of any single drop box may appear to be small when compared to the overall amount of chips and cash that are circulating on the gaming floor, drops are undocumented revenue until counted in the count room. In most retail business transactions, receipts are immediately provided to patrons, which begins a document trail of the income. However, in cardrooms, no receipts are provided, and patron drops are not documented until they reach the count room.

c. Alan Titus- Artichoke Joe's: These drop box regulations make too much distinction between clubs. The amount of money in each box is likely to be about the same, regardless of the club's size. Only the *number* of tables and drop boxes changes when clubs get larger. Suggest that the regulations focus on multiple collections per day.

Response: This comment/recommendation was rejected. The proposed regulation already allows the licensee the flexibility to establish its own frequency (schedule) for drop box collection. See Section 12384(a)(7).

10. Section 12384(a)(3)(C) requires that drop boxes have individual identifiers that link them to a given table and shift (if applicable). The identifiers must also be capable of being read by video surveillance, either while attached to the table or when removed from the table.

a. David Fried- GSGA: When locked *under* a table, the drop box identifiers are not visible to surveillance cameras.

Response: This comment/recommendation was rejected. This regulation requires that the drop box be visible "... *either* while attached to the table *or* when removed from the table ..."

b. David Fried- GSGA: Some drop boxes may be *too heavy* for employees to *hold up to a camera* for identification purposes during collection. It should be sufficient for that box to be placed on a cart, as long as the identifier is visible. Further, color identification should be allowed.

c. Paul Chilleo- Hollywood Park: Should allow for color identifiers for drop boxes.

Response (b & c above): These comments/recommendations were rejected. The proposed regulation does not require that the drop box be held up to a camera. Placing the box onto a cart is sufficient, as long as the cameras can read its identifier. Further, the proposed regulation does not specify the type of identifier that must be used, and already has the flexibility to use color identification.

d. Alan Titus- Artichoke Joe's: Artichoke Joe's changes drop boxes 4 times a day, but only have 3 work shifts. Drop boxes should be marked with color codes that correspond to the collection schedule.

Response: This comment/recommendation was rejected. The regulation allows the licensee to ignore the *shift* identifier by using the term "*if applicable*."

11. Section 12384(a)(6) allows drop boxes, when not in use, to be stored on top of the table, provided that the entire area is secured or is covered by surveillance cameras.

a. David Fried- GSGA: What does "*entire area*" mean? The table, the entire club, etc.?

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Delete the language in paragraph (6) after the words "*gambling table*." MICS II regulations will require surveillance video for all Tiers, and video of *individual* gambling tables for Tiers II-V.

12. Section 12384(a)(7) requires that the licensee establish a drop box collection schedule, and that the collection be recorded on video surveillance. Allows for more or less frequent collection times when circumstances warrant reasonable deviation from the schedule.

a. David Fried- GSGA: We assume that "reasonable deviation" includes when the club does not want to be predictable with respect to collection times.

Response: This comment/recommendation was rejected. This comment conflicts with earlier comments that drop box security is not a problem and that the boxes have never been stolen. If the boxes contain nothing of value and have never been stolen, why would it be necessary for the schedule to be unpredictable? This regulation allows licensees to establish their own drop collection schedules. A regular collection schedule is necessary to aid the Bureau in a review of collection procedures. Also, see the response to comment number 9 (a & b) above.

13. Section 12384(b)(1) requires that the policy and procedures for Tiers III-V state that the drop boxes must be removed from the table by at least one key employee, accompanied by a member of security.

a. David Fried and Joy Harn- GSGA: Having a key employee on the drop box change crew is a serious waste of time. There's little risk of theft, as the boxes have mostly drop chips that have no value. Further, there's only one key employee on duty. The box collection would take him away from the more important duty of supervising the floor. Suggest replacing "*key Employee*" with "*licensed or work-permitted employee*."

b. Mark Kelegian- Crystal Casino: In Tiers III-IV, will require two key employees to be on duty when there was only one before. A single key employee's attention may be drawn to other matters on the floor during the drop box collection. Should require the key employee to only *observe* the drop box collection.

c. Alan Titus- Artichoke Joe's: Security of the drop box has never been a problem. Artichoke Joe's has two security officers collect the drop boxes. Having a key employee do this would distract them from other more important duties. Suggest that the key employee accompany the security team only when the drop box collection cart is in transit to the count room.

d. Charles Bates- Bay 101: Implies that the key employee must remove the box. Suggest replacing the word "by" with "... *under the supervision of* ..."

e. Andrew Schneiderman- Commerce Casino: Requiring the key employee to carry out the drop box collection adds no internal control value and could divert from other critical duties, such as game integrity, patron/employee safety and currency reporting.

Response (a-e above): These comments/recommendations were accepted and the following amendment made in the first 15-day change: Require that at least one employee who holds a license *or work permit* conduct drop collection.

f. Rod Blonien- Attorney At Law: Many medium-sized casinos have only one person pick-up drop boxes.

Response: This comment/recommendation was rejected, for the same reasons as noted in comment number 9 (a & b) above.

14. Section 12384(c) requires that the policy and procedures for Tiers IV & V include continuous live monitoring of the drop collection by a surveillance employee.

a. Alan Titus- Artichoke Joe's: Artichoke Joe's does not currently have a live employee-monitored surveillance system. New employees would need to be hired, at a considerable expense. The opportunity for the theft of drop boxes is almost nil. Live monitoring would unlikely catch a practiced thief.

b. David Fried and Joy Harn- GSGA: No need for the live monitoring of the drop collection. In Tier IV, gaming usually occurs in only one large room. May require an additional employee to be hired for every shift, costing as much as \$200k per year. Suggest requiring that a key employee be on the floor during the drop collection.

Response (a & b above): These comments/recommendations were accepted and the following amendment made in the first 15-day change: Delete Tier IV from subsection (c). During this 45-day public comment period, industry has repeatedly stated that no one can recall when, or if, a drop box had ever been stolen. Some industry comments also stated that additional employees would need to be hired to staff *automated* surveillance systems that were previously installed at great expense. As a result, the recommendation was made to require live monitoring of the drop collection only in Tier V, where the impact of the regulation would be less. This change is

consistent with proposed MICS II regulations that will require *full time* staffing of the surveillance room only in Tier V cardrooms.

An additional non-substantive change was made to subsection (c) to correct an improper reference to prior subsections. Should read: "... (a) *and* (b), ..."

15. Section 12385(a) requires that licensees develop specified policy and procedures for the drop box count.

a. Alan Titus- Artichoke Joe's: For security purposes, the count at Artichoke Joe's is performed by machines and recorded directly to a computer, to which access is limited to management. The manager can later print out a document and sign it, but it will have the total from all boxes counted, not separate box counts. The person conducting the count just operates the machine. They do not know the results of the count, nor is there a hard copy for the operator to sign. Having the machine operator review and sign a document will defeat our security measures.

Response: This comment/recommendation was rejected. Paragraphs (1), (2) & (3) allow the licensee to dictate the count room process and/or system. An automated chip counting machine can be used, as long as it is operated by designated employees who have a license or work permit. Management can be designated to review the drop count record; and a signed hard copy document is not required. Subsections (c)(1) and (e) of Section 12385 also acknowledge the use of automated chip counting machines.

16. Section 12385(a)(3) requires that licensees develop policy and procedures for drop box count records, including a record of the amount in each box and, if hard-copy records are used, a signed document from the individuals performing the count.

a. David Fried- GSGA: The regulations should allow for only the total of all jackpot boxes to be recorded. There is no need for these boxes to be counted individually, since it all goes into one jackpot pool.

Response: This comment/recommendation was rejected. If a patron(s) were to question the size of the jackpot, just from what they know was contributed by their table, an individual box count may determine if the count for that table came up short.

17. Section 12385(b)(1)(B) requires that the policy and procedures for Tiers II-V prohibit the count room from being used for the storage of items not related to the count process, including prohibiting removable containers that could be used to conceal chips or cash.

a. David Fried- GSGA: Due to space limitations, some smaller Tier II or III clubs conduct the count in the cage. There should be an exception for these clubs.

b. Rod Blonien- Attorney At Law: Some small-medium clubs perform the drop box count in the manager's office or the cage. These clubs don't have the luxury of a separate room for the count to occur, nor can they restrict the storage in these rooms to only those items that are related to the count. There is no other space to designate as a count room.

Response (a & b above): These comments/recommendations were accepted and the following amendment made in the first 15-day change: Amend (b)(1)(B) to allow storage of cage items, and (d)(1) to require an independent count room only for Tiers IV & V.

During this 45-day public comment period, industry stated that many smaller cardrooms use the cashier's cage to perform the drop count. This is primarily due to space limitations in their facilities. To comply with the proposed regulations, these cardrooms would be required to sacrifice gambling floor space to create a separate count room, reducing the number of gambling tables. In some cases, cardrooms report that their facilities are located in historical districts where local zoning ordinances restrict the remodeling of the structure. For these cardrooms, the regulations (as originally proposed) could have effectively put them out of business. As an example, the Oaks Card Club in Emeryville is located in a building that is classified by local ordinance as having historical significance. If a permit is pulled to modify this structure, the applicant must go before the Planning Commission and City Council for approval. By ordinance, the modifications must be denied if they do not preserve the architectural significance of the historic building and meet the standards of "Historic American Buildings." Further, section 12385(b) (as originally proposed) never specifically stated that the count room had to be separate from the cage. This fact, when weighed against industry concerns, resulted in the recommendation to specifically require a separate count room only in cardrooms that may be large enough to comply with the regulation (i.e., Tiers IV & V).

c. Paul Chilleo- Hollywood Park: This regulation is too broad. It should allow for the employees to bring in water bottles and candy snacks.

Response: This comment/recommendation was rejected. The regulation restricts *storage*; it does not prohibit personal items that pass in and out with the employee, as long as they cannot be used to conceal chips or cash.

d. Mark Kelegian- Crystal Casino: Drop boxes should not be considered as *removable containers*. Suggest adding "*other than drop boxes*" after "*removable containers*."

e. David Fried- GSGA: *Removable containers* should be clarified to not include drop boxes.

Response (d & e above): These comments/recommendations were accepted and the following amendment made in the first 15-day change: Amend subparagraph (B) to read: "... nor have any removable containers, *other than drop boxes*, that could be used ..."

18. Section 12385(c)(3) requires that the policy and procedures for Tiers III-V require that a cage or vault cashier, or equivalent, verify the accuracy of the drop box count.

a. Alan Titus- Artichoke Joe's: Suggest that this paragraph read: "... or *at least* the equivalent ..."

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Amend paragraph (3) to read: "... or *at least* the equivalent ..."

b. Paul Chilleo- Hollywood Park: Who is verifying the count *sheets*?

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Amend paragraph (3) to read: "... and verify the accuracy of the count and count sheets."

19. Section 12385(c)(4) requires the policy and procedures for Tiers III-V to have the count sheets remitted to the accounting department or deposited in a locked box, located in a secure area, accessible only to the accounting department.

a. Charles Bates- Bay 101: Suggest that this paragraph read: "... located in a secure area of the gambling establishment, *the contents of which are* accessible only by the accounting department ..." This will help to clearly place the box in a secure area and allow only accounting to access its contents.

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Amend paragraph (4) to read: "... located in a secure area of the gambling establishment, *the contents of which are* accessible only by the accounting department ..."

20. Section 12385(d)(2) requires that the policy and procedures for Tiers IV & V include the continuous surveillance monitoring and recording of the drop box count process.

a. Alan Titus- Artichoke Joe's: Artichoke Joe's employs a controlled system of drop box counting, including: limited access to the boxes and count room; video recording of the count room; chip counting by automated machine; and management monitoring of the level of patronage. Live monitoring of the count is ineffectual and unlikely to catch a practiced thief. Many new employees would need to be hired to deploy a live surveillance monitoring system, at a considerable expense.

b. David Fried- GSGA: Tier IV clubs may not have a surveillance person on duty at all times. Suggest that the count process be only *recorded* on video surveillance.

c. Andrew Schneiderman- Commerce Casino: Requiring surveillance to live monitor the count would distract from their primary duties of monitoring the gaming floor.

Response (a-c above): These comments/recommendations were rejected. Live surveillance monitoring of the count would be all the more important, given the change in section 12384(b) that allows any licensed *or work-permitted* employee to conduct the drop collection. Also, see the response to comment number 9 (a & b) above. Further, in Tier IV where a continuously staffed surveillance unit is not required, count room staff can simply call another designated employee who can monitor the count from a terminal in another location of the facility.

21. Section 12385(e) requires that the policy and procedures for Tier V require that at least 3 persons, or two persons using a chip counting machine, perform the count.

a. Joy Harn-The Bicycle Casino: We never have 3 persons in the count room. This would require employing more part-time staff that already have a high turnover. Two persons, plus the video surveillance, should be enough.

b. Paul Chilleo- Hollywood Park: Have trouble staffing the count room with three persons; two should be enough along with surveillance cameras.

Response (a & b above): These comments/recommendations were rejected. These regulations offer the alternative of using only 2 persons when a count machine is utilized. Given the size of Tier V, please refer to the response for comment number 9 (a & b) above.

22. Section 12386(a)(2) requires all Tiers to designate at least one cage employee, who must be listed on an organizational chart and be responsible for the duties as specified in subparagraphs (A) - (G). Also requires cage employees to be identified on an organizational chart by title or position.

a. Alan Titus- Artichoke Joe's: This language seems to require that only one person be designated to work the cage, and listed as such on the organizational chart. Shouldn't all persons that work the cage be so designated and listed. The Initial Statement of Reasons states that each employee that works the cage should be identified.

Response: This comment/recommendation was accepted and the following amendment made in the first 15-day change: Amend subsection (a)(2) to read: "...at least one employee to process monetary transactions through the cage. *All employees designated to process monetary transactions through the cage shall be listed ...*"

b. David Fried- GSGA: Is it necessary that we identify the full list of *employee responsibilities* on the org chart?

Response: This comment/recommendation was rejected. As written, only the title or position must be listed on the organizational chart. The *responsibility* language is separate from what must be listed on the chart.

c. Alan Titus- Artichoke Joe's: Does not adequately differentiate between head cashier functions that may involve the entire cage vs. those of an individual cashier that is responsible for a single drawer.

d. David Fried- GSGA: Not all cage employees have all of the responsibilities listed in subparagraphs (A) - (G).

Response (c & d above): These comments/recommendations were accepted and the following amendment made in the first 15-day change: Amend paragraph (2) to read: "... responsible for *any or all* of the following:"

23. Section 12386(a)(2)(D) describes the duty of "cashing checks and/or extensions of credit."

a. Charles Bates- Bay 101: This regulation allows a cage employee to extend credit. A cage employee should not have this power. Suggest adding the word "*implementing*" after "*Cashing checks and/or.*"

Response: This comment/recommendation was rejected. Subparagraph (D) already states "... as permitted by the licensee's policies and procedures," which could prohibit cashiers from *approving* credit.

24. Section 12386(a)(2)(F) describes the cage duty of preparing records necessary for documenting currency transactions in excess of \$10,000, as per IRS rules.

a. Alan Titus- Artichoke Joe's: The controller prepares and sends the IRS documents, not the cashier. The cashier only makes computer entries when a transaction triggers the reporting mark.

Response: This comment/recommendation was accepted (in part), and the following amendment made in the first 15-day change: Amend paragraph (2)(F) to read: "*Record patron information that is necessary for compliance with ...*"

25. Section 12386(a)(5) requires that the policy and procedures for all Tiers include a reconciliation of cage activity after each shift by incoming and outgoing employees, and a written summary of all transactions for each shift.

a. Alan Titus- Artichoke Joe's: Cashiers do not change shifts at the same time. We read this to require a separate summary for each cashier's shift, as long as the entire cage is also summarized. If this is not the case, the language should be clarified.

Response: This comment/recommendation was accepted, and the following amendment made in the first 15-day change: The current language allows for individual employee shifts. However, to add clarity, the following sentence was added to paragraph (5): "*For the purposes of this paragraph, the word "shift" means an individual employee's shift, or two or more employees that work the same schedule.*"

26. Section 12386(a)(6) states that the policy for all Tiers must require that patrons purchase chips only at the cage or from a designated employee on the floor. Requires that licensees prohibit TPPPS from purchasing or redeeming chips from patrons. Permits the exchange of chips of equal total value.

a. David Fried- GSGA: How does the club stop one patron from purchasing chips from another? This commonly happens when one patron goes broke and, to keep the game moving, another patron offers to sell them some chips. Suggest that the last sentence of paragraph (6) read; "... the purchase and redemption of chips shall not include ... *or selling/buying or exchanges of chips between patrons at a gaming table.*"

b. Charles Bates- Bay 101: In the interest of game efficiency, patrons often exchange chips, make change for neighbors or pass chips to a fellow player. Recommend adding the following words at the beginning of the first sentence in paragraph (6): "*Licensee transactions with patron's for ...*"

Response (a & b above): These comments/recommendations were rejected. The Bureau has indicated that prohibiting chip *purchases* between patrons is necessary to prevent the distribution of counterfeit chips. Paragraph (6) already allows patrons to *exchange* chips of *equal* total value. Patrons can always purchase chips from the cage or a designated house employee on the gambling floor.

c. David Fried- GSGA: The regulation prohibiting TPPPS from buying and selling chips to customers should be in *TPPPS* regulations, not here.

Response: This comment/recommendation was rejected. A TPPPS works under a cardroom contract, giving the cardroom some control and responsibility for the TPPPS' operation. Allowing a TPPPS to sell chips to patrons, or redeem chips from patrons, would duplicate the roll of the house with respect to these functions. This may result in the public perception that the TPPPS represents the house. Since the TPPPS participates in the game, it might appear to patrons that the house is participating in the game, which is prohibited by Business and Professions Code section 19984(a), which states in part:

"... in no event shall a gambling establishment or the house have any interest, whether direct or indirect, in funds wagered, lost, or won."

To help reinforce this provision, in accordance with Business and Professions Code section 19984(c), the Commission has established Title 4, California Code of Regulations, Section 12200.7(e), which states:

(e) A proposition player contract shall be consistent with the provisions of Business and Professions Code section 19984, subdivision (a), prohibiting a gambling establishment or the house from having any interest, whether direct or indirect, in funds wagered, lost, or won. No proposition player contract shall be approved that would permit the house to bank any game in the gambling establishment.

These statutes and regulations are clear attempts to avoid any inference to the public that the house (cardroom) may be banking games through a TPPPS, which is prohibited by Penal Code section 330 and Business and Professions Code section 19806.

However, this comment has pointed out that the language in paragraph (6) should also prohibit a TPPPS from *selling* chips to a patron. As a result, as part of the first 15-day change, the second sentence in paragraph (6) was amended accordingly.

d. Charles Bates- Bay 101: Licensees have no practical control over TPPPS when they are not at a gaming table. Recommend adding the words "*at the table during a game*" at the end of the second sentence.

Response: This comment/recommendation was rejected. To prohibit the TPPPS from buying or redeeming chips from patrons *only* while at the table would in essence permit this activity while *not at the table*. It is important that the TPPPS not appear to patrons as representing the house by selling or redeeming patron chips while on the floor of the cardroom (see response to comment number 26c above). Further, while not at the table, a patron could easily go to the cage or seek-out a designated house employee to purchase or redeem chips.

27. Section 12386(b)(1) requires that the policy and procedures for Tiers III-V include continuous video surveillance of the cage.

a. Rod Blonien- Attorney At Law: Some small clubs don't have the cage under video surveillance, but are making plans to.

Response: This comment/recommendation was rejected. Tier III includes cardrooms that have from 11 - 30 tables. These would not be considered as *small* cardrooms, and would certainly be expected to have a video surveillance system.

28. Section 12386(b)(2)(C)1. requires that the policy for Tiers III-V include a cage reconciliation form that includes the beginning shift balances for each window, unless an impress is used.

a. David Fried- GSGA: The beginning shift balance is the same as the ending balance for the previous shift. There should be no reason to perform a recount.

Response: This comment/recommendation was rejected. The ending balance for the previous shift should be available, and easily carried-over as the beginning balance for the next shift, without performing a recount. This does not appear to present a burden, and would help to clarify the starting inventory.

b. David Fried- GSGA: Request clarification of the word "*impress*." When an impress is used, the cashier begins and ends each shift with their own drawer, which is not passed on to the next shift.

Response: This comment/recommendation was accepted, and the following amendment made in the first 15-day change: Amend paragraph (2)(C)1. to read: "... unless an *imprest drawer* is used;" The correct word is "*imprest*." Also corrected in paragraph (2)(D) and subsections (a)(5) & (c)(2).

29. Section 12386(c)(1)(A) requires that the policy and procedures for Tiers IV & V include a manually triggered silent alarm system connected to the surveillance unit, or its equivalent, or an alarm monitoring agency.

a. Paul Chilleo- Hollywood Park: This alarm system should not go directly to law enforcement, due to frequent false alarms. Security should decide whether to call law enforcement.

Response: This comment/recommendation was rejected. This regulation does not require that a triggered alarm go directly to law enforcement, and allows the licensee to choose what department the alarm is connected to (*surveillance unit, or its equivalent*).

30. Section 12386(c)(3) requires that the policy and procedures for Tiers IV & V include the maintenance of a list of the names of all persons authorized to access the cage and those who possess the ability to operate the alarm system.

a. David Fried- GSGA: We suggest that the list be by "*department*." Large clubs have a high turnover of cage and count room staff. At any given time, payroll could verify who works in what departments.

Response: This comment/recommendation was rejected. As written, this regulation allows employees to be listed by department, provided that the cage has its own unique department. It is

also important for Bureau staff and law enforcement to know which cage employees have the ability to operate the cage alarm system, which may be separate from those who have just plain access to the cage.

B. First 15-Day Change Comment Period Ending March 5, 2009

The following comments/objections/recommendations were made regarding the proposed action, either in writing or orally, during the first 15-day change comment period that ended on March 5, 2009:

1. Section 12360 defines “Security Department” in subsection (b), and “surveillance unit” in subsection (c). As part of the responsibilities for the *security department*, subsection (b)(4) includes: “[d]etecting, reporting and deterring suspected illegal activity.” As part of the responsibilities of the *surveillance unit*, subsection (c) includes: “...detecting, documenting and reporting suspected illegal activities, including suspected gambling by persons under 21 years of age, ...”

a. Andrew Schneiderman- California Gaming Association (CGA): Licensees cannot deter suspected activity, but strive to deter actual illegal activity. We can report actual illegal activity, but cannot report suspected illegal activity. Suggest removing the word “suspected” from subsections (b)(4) and (c).

Response: This comment/recommendation was rejected. These subsections were amended during the first 15-day change as a result of comments received regarding “strict liability” concerns from various representatives of the gambling industry, including the GCA. Their concerns partially focused on the word “illegal” that, without qualifying language, would place a strict responsibility standard upon the gambling establishment to detect each and every occurrence. To help prevent this, and at the request of commenters, the qualifying word “suspected” was placed in front of the words “illegal activities.”

Further, this regulation does not mandate that security or surveillance initiate a formal action by reporting *suspected* illegal activity to law enforcement. The reporting of such activity could merely be to the management of the gambling establishment for their further evaluation and direction. As stated by another commenter during the 45-day comment period, this specific regulation is intended to only define the responsibilities (duties) of the security department or the surveillance unit, not dictate operational procedures or goals. Other proposed sections in Articles 2 and 3 will mandate specified policies and procedures.

Finally, the detection, reporting and deterrence of suspected illegal activity would help to keep this regulation in line with a suspect’s rights to due process, where judgment of reasonable cause is left to law enforcement and judgment of guilt is left to the courts.

2. Section 12380 defines “minimum internal control standards” (MICS) for the purpose of Chapter 7 .

a. CGCC Staff: A grammatical change should be made to the last sentence in subsection (a) so that it reads: “A licensee must meet or exceed these requirements in controlling *their* gambling operation.”

Response: This comment/recommendation was accepted, and “*its*” was changed to “*their*” as a non-substantive second 15-day change.

3. Section 12381 requires licensees to have written policies and procedures that meet or exceed the Minimum Internal Control Standards (MICS) in Article 3 of Chapter 7. Subsection (e)(4) requires cardrooms to make required records available to Bureau personnel upon request during the hours of 9:00 a.m. and 5:00 p.m. on weekdays.

a. Andrew Schneiderman- CGA: There should be a general provision added to Section 12381 which would allow for exceptions to the required policies and procedures. For example, some Tier II & III clubs may need to use their cage for the count, because there is no other available space.

Response: This comment/recommendation was rejected. This comment was also made during the 45-day comment period and was rejected for the following reason:

There should be no formal exception process for the requirements of Article 3, as this could jeopardize the purpose of uniform and consistent MICS. However, during the development of specific regulations, consideration will be given to the need for exceptions. For example, these proposed regulations were amended during the first 15-day change to allow the cage to be used for the drop count in smaller cardrooms. (See Sections 12385(b)(1)(B) & 12385(d)(1))

b. CGCC Staff: Subsection (e)(4) is inconsistent with the Gambling Control Act which assigns the Bureau with the investigatory powers to *demand access to, or summarily seize*, records.⁸ As a result, the time limitation applied by this proposed regulation would be superseded by the statute. The Commission does not have the authority to adopt a regulation that is inconsistent with a statute.

Response: This comment/recommendation was accepted, and a second 15-day change made that deletes paragraph (4) of subsection (e) of Section 12381.

4. Section 12384 requires that gambling establishment (cardroom) policy and procedures set specified minimum standards for drops and drop box collection.

a. Andrew Schneiderman- CGA: This regulation continues to place too much emphasis on drop boxes, as their contents pose extremely low risk. Over the years, we have experienced no significant problems with the collection of drop boxes, and there have been no reported instances of theft. We recommend revisions that will align the low risk to the cost of compliance.

Response: This comment/recommendation was rejected. This comment was also made during the 45-day comment period and was also rejected. These proposed drop box collection regulations not only protect against theft, but are also for the purposes of insuring that their contents are fully and accurately counted for gross revenue reporting purposes. In addition to federal IRS reporting requirements, the gross revenue of a cardroom is reported to the Commission for the purpose of calculating license fees (See Business and Professions Code, section 19951). Even though the contents of any single drop box may appear to be small when compared to the overall amount of

⁸ Business and Professions Code, section 19827, subdivision (a), paragraph (1), subparagraphs (D) and (E).

chips and cash that are circulating on the gaming floor, patron drop fees are undocumented revenue until counted in the count room. In most retail business transactions, receipts are immediately provided to patrons, which begins a document trail of the income. However, in cardrooms, no receipts are provided, and patron drops are not documented until they reach the count room.

b. Bureau of Gambling Control: An additional paragraph should be added that requires the drop box collection to be supervised by a key employee or an employee who holds a license or work permit.

Response: This comment/recommendation was rejected. Subsection (a)(8) already states that: “The drop box collection shall be performed by at least one licensed or permitted individual.”

5. Section 12384(a)(3)(C), policy and procedures for all Tiers must require that drop boxes have individual identifiers that link them to a given table and shift (if applicable). The identifiers must also be capable of being read in video surveillance, either while attached to the table or when removed from the table and immediately displayed to a surveillance camera.

a. Andrew Schneiderman- CGA: When locked under a table, the drop box identifiers are not visible to surveillance cameras. Some drop boxes may be too heavy for employees to hold up to a camera for identification purposes during collection. It should be sufficient for the box to be placed on a cart, as long as the identifier is visible. The regulation should state: “... *placed within view of a surveillance camera after being placed on a cart. Other systems, such as bar codes or tracking drop boxes may be used in lieu of video identification of drop box identifiers as long as the system has, in addition to the imprinted or impressed identifiers, the capability to identify each box ...*”

Response: This comment/recommendation was rejected, as it is not germane to the first 15-day changes to these regulations. This comment was also made during the 45-day comment period and was rejected for the following reason:

This proposed regulation requires that the box be visible “*either while attached to the table or when removed from the table ...*” The regulation does not require that the drop box be held up to a camera. Placing the box onto a cart is sufficient, as long as the cameras can read its identifier. Further, the proposed regulation does not specify the type of identifier that must be used, and already has the flexibility to use various forms of identification, as long as it corresponds to a specific table.

6. Section 12384(b)(1) requires that the policy and procedures for Tiers III-V state that the drop boxes must be removed from the table by at least one employee who holds a license or work permit, accompanied by a member of the security department, or its equivalent.

a. Andrew Schneiderman- CGA: Some smaller Tier III cardrooms do not have a security *department*, and may only have 1-2 contracted security guards on duty at one time.

Security must be free to view the cardroom as a whole, and should not be assigned to move drop boxes. The risk of drop box theft is minimal, as they contain mostly chips that have no value.

Further, we see no internal control benefit of having two departments conduct the drop box collection process. The regulation should just require that two employees with a license or work permit conduct the collection.

Response: The objection to a member of security accompanying the employee during the drop collection does not relate to this first 15-day change, and as a result, is not germane to these changes.

As a result of previous comments received, the first 15-day changes removed earlier requirements that a *key employee*, along with a member of security conduct the drop collection. That change now allows for *any employee* with a license or work permit, along with security, to conduct the drop collection.

Further, the proposed regulation states: “security department *or its equivalent*.” This would allow for the fact that some gambling establishments have contract security guards, rather than an actual security department.

The requirement that two persons (an employ and security), conduct the drop collection was also not part of this first 15-day change, and as a result, is not germane to these changes.

However, the difficulty in requiring that *contract* security guards participate in the drop box collection is understood, since some will not be allowed to enter the cardroom because they do not have a license or work permit. As a result, this comment/recommendation was accepted in part, and subsection (b) amended as part of the second 15-day change to allow Tier III cardrooms that contract their security to use two *employees* from different departments to conduct the drop collection. This change was added to subsection (b) as paragraph (2), and subsequent paragraphs renumbered for conformity purposes.

b. Andrew Schneiderman- Commerce Casino: Commerce Casino currently staffs its drop box collection procedures with a minimum of three security employees. The regulations should not mandate that *non-security* department employees participate in the drop box collection procedure.

Response: This comment/recommendation was rejected, as it is not germane to these first 15-day changes. The requirement that two persons (an employ and security) conduct the drop collection, has been included in this regulation since the original 45-day notice.

c. Andrew Schneiderman- CGA and Commerce Casino: The first 15-day change deleted a requirement that a *key* employee participate in the drop box collection. However, the *key* employee was not dropped from the last sentence of (b)(1).

d. Alan Titus- Artichoke Joes: The first 15-day change deleted a requirement that a *key* employee participate in the drop box collection. However, the *key* employee was not dropped from the last sentence of (b)(1).

Response: These comments/recommendations were accepted, and a conforming second 15-day change made to the last sentence of Section 12384(b)(1), where the word “key” was removed before the word employee, and “of the gambling establishment” added after the word employee.

7. Section 12384(c) requires that the policy and procedures for Tier V include continuous live monitoring of the drop collection process by a surveillance employee.

a. Bureau of Gambling Control: Recommend reinstating Tier IV into the live monitoring of the drop collection process as it is considered an industry standard. Tier IV cardrooms operate 31 to 60 tables that can generate large sums of revenue. Since Tier IV cardrooms will be required to have manned surveillance rooms in another MICS regulation package, live monitoring of the drop collection should not be a problem.

Response: This comment/recommendation was accepted in part. As a result of previous comments received, these first 15-day changes removed earlier requirements that Tier IV cardrooms live monitor the drop collection process. This change was the result of industry comments received during the 45-day public comment period that disagreed with the need to live monitor the drop box collection in Tier IV, arguing that drop boxes are rarely stolen and that additional staff may need to be hired.

During this same time period, proposed regulations relating to *surveillance* (MICS II) were being modified so that *only Tier V* cardrooms would be required to have *manned* surveillance units. In this respect, the Bureau's comments are incorrect, as the proposed MICS II regulations will no longer require that Tier IV cardrooms have a manned surveillance unit. Regardless, these first 15-day changes also helped to align these MICS I regulations with MICS II.

However, the Bureau's most recent arguments that the live monitoring of drop box collections could be considered as an industry standard, and that Tier IV cardrooms operate 31 to 60 tables that can generate large sums of revenue has resulted in the reconsideration of this first 15-day change. Further, the Bureau's arguments in favor of reinstating Tier IV into Section 12384(c) are consistent with others that emphasize the need for a secure drop box collection process that results in the accurate reporting of gross revenues (see response to comment 4a. on page 30).

Further evaluation also revealed that Tier IV could be included in the requirement to live monitor the drop collection, without the need for a manned surveillance unit. As a result, in the second 15-day change, subsection (c) was amended to reinstate Tier IV into this requirement. However, this change also allowed the video monitoring to be performed by any employee who holds either a license or work permit, and allowed the monitoring to be accomplished at any location within the cardroom where a computer monitor is available. This would allow any available employee to monitor the drop box collection process, without the need to hire additional staff.

Currently, there is a gambling establishment which has an automated, unmanned surveillance system that allows camera views to be brought up on the computer monitor at an employee's desk in their office. In this case, the drop box collection team could simply call one of these employees, advise them that they are about to start the drop box collection process, and request that the employee pull up the appropriate camera view at their desk. This second 15-day change is intended to accommodate this capability and recognize that not all Tier IV cardrooms have a manned surveillance unit. Further, this change continues to be consistent with other proposed regulations (MICS II) that require only Tier V to have a manned surveillance unit.

The State of Florida has regulations that require all cardrooms to staff their surveillance units during the counting of drop chips, but fall short of requiring that the surveillance unit be staffed during the movement of the drop boxes to the count room.⁹ However, Florida regulations do require that the cardroom's video monitoring and recording system maintain *complete* coverage of the drop boxes, from the table to the count room.¹⁰ When contacted, Florida officials have advised Commission staff that it is common for their field investigators to review video recordings to insure that they can *completely* follow the drop boxes from the tables to the count room. Like California, Florida is also concerned with the accuracy of cardroom revenue reporting, and may propose future regulations that require the live monitoring of drop box collections.

b. Andrew Schneiderman- CGA and Commerce Casino: For Tier V, there should be no requirement that the drop box collection process be *continuously live* monitored by the surveillance unit. Some clubs may have only one surveillance employee on duty, whose time is better spent monitoring screens that display gaming activity. Adding a second surveillance employee to monitor the drop collection could cost from \$60,000 to \$200,000 per year. As an alternative to live surveillance monitoring, suggest requiring that the key employee be on the floor during the drop collection.

Response: This comment/recommendation is not germane to the first 15-day changes to these regulations. These first 15-day changes deleted Tier IV from these requirements, but kept Tier V, as originally stated.

During the 45-day public comment period, an industry recommendation was made to require live monitoring of the drop box collection only in Tier V, where the impact of the regulation would be less. In an earlier version of this regulation, Tier IV was included in the requirement to live monitor the drop box collection process. Tier IV was excluded at the request of the gambling industry, including the CGA. This first 15-day change left only Tier V cardrooms with the requirement to live monitor the drop collection.

However, this comment was accepted in part, and subsection (c) amended as part of the second 15-day change to allow the drop collection to be monitored in conjunction with other surveillance unit functions, permitting employees to observe multiple video screens, only one of which may display the drop box collection process.

Further, these proposed regulations do not require that additional surveillance staff be hired. Other pending MICS regulations would require the surveillance unit in Tier V to utilize an automated camera system, with one pan/tilt/zoom (PTZ) camera for every 10 tables. This is in addition to requirements that each table have a dedicated surveillance camera. With all of these cameras in a Tier V cardroom, it should be a simple task for a single surveillance employee to follow the drop box collection, while simultaneously monitoring the gambling floor. Both of these processes are occurring in the same general area of the gambling establishment, utilizing the same cameras.

⁹ Florida Administrative Code, Division 61D, Chapter 61D-11, Rule 61D-11.025, subsection (6).

¹⁰ Florida Administrative Code, Division 61D, Chapter 61D-11, Rule 61D-11.025, subsection (2)(a)5. and subsection (5)(c)7.

Finally, the requirement that a key employee participate in the drop collection process was also removed from earlier versions of this regulation, again at the request of the gambling industry, including the CGA.

8. Section 12385(a)(5) requires that the policy and procedures for all tiers include provisions that prohibit the contents of one drop box from being mixed with the contents of any other drop box prior to the counting and recording of its contents.

a. Andrew Schneiderman- CGA: Recommend that an exception be made that would allow the contents of drop boxes that contain only *jackpot funds* to be commingled before counting.

Response: This comment/recommendation was rejected, as it is not germane to the first 15-day changes to these regulations. This comment was also made during the 45-day comment period and was rejected for the following reason:

If a patron(s) were to question the size of the jackpot, just from what they know was contributed by their table, an individual box count may determine if the count for that table came up short.

9. Section 12385(b)(1)(B), in Tiers II-V policy and procedures, prohibits the count room from being used for the storage of items not related to the count process or cage functions, including prohibiting removable containers, other than drop boxes, that could be used to conceal chips or cash.

a. Bureau of Gambling Control: Recommend adding language that would require the count room to be a fully enclosed room that is independent from all other rooms in the gambling establishment. The Bureau has received complaints against small Tier II or III cardrooms alleging the under-reporting of income. This alleged under-reporting (or skimming), is easy to do if there is no requirement to count chips in a separate and secured count room that is under surveillance.

Response: This comment/recommendation was rejected. During the 45-day public comment period, industry requested that, due to space limitations, smaller Tier II or III cardrooms be allowed to conduct the count in the cage. According to industry comments, these smaller cardrooms don't have the luxury of a separate room for the count to occur, nor can they restrict the storage in these rooms to only those items that are related to the count. Further, industry stated that there is no other space in these smaller cardrooms to designate as a count room. In some cases, cardrooms report that facilities are located in historical districts where local zoning ordinances restrict the remodeling of the structure. For these cardrooms, the regulations (as originally proposed) would have effectively put them out of business. As a result, Section 12385(b)(1)(B) was amended during the first 15-day change to allow the count process to take place in the cage at these smaller cardrooms. Section 12385(d)(1) was also amended during the first 15-day change to specifically require that separate and independent count rooms be required only in Tiers IV and V.

Allowing the count to occur in the cage at these smaller cardrooms is a reasonable alternative, since the cage and the count room are both required to be in a secured area that is under continuous

video surveillance (see Sections 12385(b)(1) & (b)(2) and 12386(a)(1) & (b)(1) in these proposed regulations, and Section 12396(a)(1) in proposed regulations relating to surveillance¹¹).

10. Section 12385(b)(2), in Tiers II through V policy and procedures, requires the count room to be under constant video surveillance if it is used to store chips, cash, drop boxes or other material associated with the count.

a. Andrew Schneiderman- CGA: Requires constant video surveillance of the count room even when the count is not being conducted. The surveillance system in the count room should be motion activated, to conserve tape or disk storage space.

Response: This comment/recommendation was rejected, as it is not germane to the first 15-day changes to these regulations.

Further, constant video surveillance in the count room is required only when the room is used to store valuables, such as chips, cash or drop boxes.

11. Section 12385(d)(1), in Tiers IV and V policy and procedures, requires that the count room be a fully enclosed room that is independent from all other rooms, and is equipped with an alarm system on all entrances that signals surveillance, or its equivalent, when doors are opened.

a. Alan Titus- Artichoke Joes: The term *independent* is vague and uncertain.

Response: This comment/recommendation was accepted, and a clarifying second 15-day change made to section 12385(d)(1) that replaces the word “*independent*” with the phrase “*separate and apart from.*” The original meaning of this regulation that requires the count room to be separate from other rooms has not been changed.

b. Andrew Schneiderman- CGA: Does not add significant protection and would require expensive retrofitting in certain cardrooms.

Response: This comment/recommendation was rejected, as it is not germane to the first 15-day changes to these regulations.

Further, these signaling devices are relatively inexpensive (\$50- \$100), and common on the back doors of retail businesses. For example, a small magnetic triggering mechanism can be installed in the door jam, with hidden wires leading to another location where an audible alarm is sounded on a control pad when the door is opened. Some newer systems are even wireless, saving on installation costs. This should not be a difficult or expensive task for Tier IV and V cardrooms.

12. Section 12385(d)(2), in Tiers IV and V policy and procedures, requires the continuous surveillance monitoring and recording of the drop box count process.

a. Andrew Schneiderman- CGA and Commerce Casino: Requires the *monitoring* and recording of the count. If *monitoring* means a live person in the surveillance unit, this could be a problem for

¹¹ See Commission rulemaking file CGCC-GCA-2009-06-R, and OAL notice file number Z-2009-0616-05.

Tier IV clubs, as they would again be required to have a staffed surveillance unit. The word “*monitored*” should be deleted.

At Commerce Casino, the count can take 15 hours per day. Live monitoring of the count could cost Commerce Casino \$130,000 per year in additional payroll expenses.

Response: These comments/recommendations are not germane to the first 15-day changes to these regulations. However, to conform this proposed regulation with another that relates to the video monitoring of the drop collection (re. 12384(c)), this comment was accepted and a second 15-day change made that allows the count to be monitored in conjunction with other surveillance unit functions, permitting employees to observe multiple video screens, only one of which may display the drop count process.

Further, since a continuously staffed surveillance unit is not required in Tier IV, an additional clarifying and conforming second 15-day change was made to this subsection that states: “... surveillance unit, *or its equivalent*, ...” This will align the language in paragraph (2) with paragraph (1), and will help clarify to Tier IV cardrooms that their count room staff can simply call a manager or other designated employee, rather than the *surveillance unit*. The manager/employee can monitor the count from a terminal in another location of the facility.

13. Section 12385(e), in Tier V policy and procedures, requires that at least 3 persons, or two persons using a chip counting machine, perform the count.

a. Andrew Schneiderman- CGA: Mandating that three employees conduct the count in Tier V is simply not necessary and imposes a substantial labor cost with no resulting benefit.

Response: This comment/recommendation was rejected, as it is not germane to the first 15-day changes to these regulations. This comment was also made during the 45-day comment period and was rejected for the following reason:

These regulations offer the alternative of using only 2 persons when a count machine is utilized. Also see responses to comment numbers 12 and 4a above.

14. Section 12386(a)(6) states that the policy and procedures for all Tiers must require patrons to purchase chips only at the cage or from an employee on the floor. Also requires that licensees prohibit proposition player service providers from purchasing, redeeming or selling chips to/from patrons. Permits patrons to exchange chips of equal total value.

a. Bureau of Gambling Control: Recommend adding an “s” to the end of the word “service” so that it speaks in the plural form: “proposition player services providers.”

Response: This comment/recommendation was accepted, and a non-substantive clarifying second 15-day change made to Section 12386(a)(6) so that it reads: “... proposition player *services* providers ...”

15. Section 12386(c)(3) requires that the policy and procedures for Tiers IV & V include the maintenance of a list of the names of all persons authorized to access the cage. The list must also specify those persons who possess the ability to operate the cage alarm system.

a. Andrew Schneiderman- CGA: We suggest that the list be by “*department.*” Large clubs have a high turnover of cage and count room staff. At any given time, payroll could verify who works in what departments.

Response: This comment/recommendation was rejected, as it is not germane to the first 15-day changes to these regulations. This comment was also made during the 45-day comment period and was rejected for the following reason:

As written, this regulation does not prohibit employees to be listed by department, provided that the cage has its own unique department. It is also important for Bureau staff and law enforcement to know which cage employees have the ability to operate the cage alarm system, which may be separate from those who have just plain access to the cage.

16. Section 12386(e) requires licensees to establish and implement the provisions of subsections (a) and (b) within six months following the effective date of the section.

a. Bureau of Gambling Control: Recommend adding subsections (c) and (d) to this six month implementation schedule.

Response: Although this comment is not germane to this first 15-day change, it was accepted and a non-substantive second 15-day change made to subsection (e) that would correct an error by including an implementation schedule for all of the subsections of Section 12386. It has been the original intent to apply a six month implementation schedule to all of these MICS regulations, as evidenced by proposed Sections 12381(g), 12384(d) and 12385(f). The implementation schedule in subsection (e) of Section 12386 was not updated after additional subsections were added beyond (a) and (b).

An additional non-substantive second 15-day change was made in subsection (d) of Section 12384 by having its implementation schedule apply to subsections (a) through and including “(c),” rather than (d). It goes without saying that the subsection which establishes the implementation schedule, in this case (d), should not be in the implementation language itself.

C. Second 15-Day Change Comment Period Ending May 26, 2009

The following comments/objections/recommendations were made regarding the proposed action, either in writing or orally, during the second 15-day change comment period that ended on May 26, 2009:

1. Section 12384(b)(1) requires that the policy and procedures for Tiers III-V state that drop boxes must be removed from the table by at least one employee who holds a license or work permit, accompanied by a member of the security department, or its equivalent. In those cases where Tier III cardrooms do not directly employ security personnel, Section 12384(b)(2) allows Tier III cardrooms

to merely use two employees from separate departments, neither of which must be from the security department.

a. Alan Titus- Artichoke Joes: The drop boxes should be collected by uniformed security personnel only. Plain-closed employees do not generate the same respect or have the same deterrent effect. Nevada does not have a requirement that a non-security employee participate in the drop box collection process. We understand the Bureau's belief that using employees from separate departments will help to prevent collusion-related thefts. However, if the drop boxes are handled only by uniformed guards, any handling by others would likely be noticed.

Response: This comment/recommendation was rejected. The requirement in Section 12384(b)(1) that two persons from separate departments conduct the drop collection has been included in this regulation since the original 45-day notice.

As a result of first 15-day comments from the gambling industry, the second 15-day changes recognized that some medium size (Tier III) cardrooms may not directly employ uniformed security guards, but rather contract their security functions to an outside vendor. Most often, these contract uniformed security guards patrol only the outside of the gambling establishment. These circumstances can prevent contract security guards from participating in the drop box collection, as they are not allowed to enter the cardroom because they do not have a license or work permit. As a result, the second 15-day changes to these regulations allowed Tier III cardrooms that do not directly employ security guards to use merely two *employees* from separate departments for the drop box collection.

Regardless, the regulation continues to require that the drop collection be performed by at least two employees from *separate* departments, as the Commission has received information from gambling industry regulators regarding cases where employees from the same department (security) have conspired to steal drop box funds. Having two dissimilar employees perform money collection functions such as these is a standard accounting practice that is intended to discourage collusion.

Throughout this rulemaking process, industry comments have stressed that the possibility for theft of drop boxes is very low. However, staff responses to those comments have also repeatedly emphasized that the purpose of these safeguards is to also insure the accurate reporting of cardroom revenue. These proposed drop box collection regulations not only protect against theft, but are also for the purposes of insuring that their contents are fully and accurately counted for gross revenue reporting purposes. In addition to federal IRS reporting requirements, the gross revenue of a cardroom is reported to the Commission for the purpose of calculating license fees.¹² Even though the contents of any single drop box may appear to be small when compared to the overall amount of chips and cash that are circulating on the gaming floor, patron drop fees are undocumented revenue until counted in the count room. In most retail business transactions, receipts are immediately provided to patrons, which begins a document trail of the income. However, in cardrooms, no receipts are provided, and patron drops are not documented until they reach the count room.

¹² Business and Professions Code, section 19951, subdivision (b), paragraph (2), subparagraph (B).

The State of Florida provides one of the better parallels to California style cardrooms. Florida has similar collusion-prevention regulations that require drop box collections to be performed by two employees, one of whom cannot be under the direct supervision of the shift supervisor or manager.¹³

Finally, should a cardroom have sufficient *total* number of staff to perform the drop box collection, (i.e. two security guards instead of one guard and another employee), this regulation would not prevent the cardroom from simply diverting staff allocations. That is, either *permanently* reassign some of the security staff to another department, or hire new staff in another department and lay-off some of the security staff. This approach would maintain the uniformed security presence during the drop collection without the expense of additional staff. Similarly, this regulation allows a cardroom to use two uniformed security guards for the drop collection, as long as an employee from another department is assigned to the process as well.

There were no further comments, objections or recommendations received within the public comment periods regarding the proposed action.

D. Comments Made Outside the Public Comment Periods

The following individuals submitted written comments after the close of the first 15-day change public comment period. These comments are included in the file without a response.

- 1. Alan Titus, Artichoke Joe's**
- 2. Susanne George, BGC**

The following individuals made verbal comments at a Commission meeting on April 22, 2009, which was after the close of the first 15-day change public comment period. These comments are included in the file without a response.

- 1. Andrew Schneiderman, Commerce Casino and CGA**
- 2. David Fried, California Grand Casino and Oaks Card Club**
- 3. Alan Titus, Artichoke Joe's**
- 4. Richard Teng, City of San Jose**
- 5. Marty Horan, BGC**
- 6. Aron Wong, BGC**

The following individuals submitted written comments after the close of the second 15-day change public comment period. These comments are included in the file without a response.

- 1. Alan Titus, Artichoke Joe's**
- 2. David Fried, Oaks Card Club**

¹³ Florida Administrative Code, Division 61D, Chapter 61D-11, Rule 61D-11.0175.

The above industry comments/objections/recommendations were reiterations of those made during the actual public comment periods. As a result, responses have already been provided in sections A, B or C above.