

**COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS**  
INFORMAL COMMENT PERIOD ENDING OCTOBER 17, 2008  
**MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING ESTABLISHMENTS**  
**FIRE SAFETY, SECURITY AND SURVEILLANCE**  
CGCC-GCA-2009-1-R

**INFORMAL COMMENT PERIOD ENDING OCTOBER 17, 2008**

The following comments/objections/recommendations were made regarding the proposed action, either in writing or orally, during the informal public comment period that ended on October 17, 2008:

1. Regarding these proposed regulations in general:

a. CGCC Staff: The numbering of new Sections 12408 and 12410 are in conflict with the planned numbering scheme for Articles 3 and 4 of Chapter 7.

**Response:** Renumber Section 12408 to 12395 and Section 12410 to 12396. The “Modified Text of Proposed Regulations” (Rev. 03/29/09) will use the numbers **12395** for “Security” and **12396** for “Surveillance”.

b. David Fried- Oaks Card Club/California Grand Casino: There should be a section added for exceptions. Due to space or other limitations, some clubs may not be able to do what other clubs in the same Tier can do in terms of procedures or use of space. Should add a regulation as follows: “The Commission recognizes that some exceptions to the regulations in this Article may be required for individual gambling establishments due to space limitations or other constraints. Any gambling establishment seeking an exception to any requirement in this Article shall send a written request to the Bureau, which shall grant or deny the exception within 30 days of receiving the request.”

**Response:** This comment/recommendation was rejected There should be no blanket exception process for the entire Chapter and/or Article, 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.

2. Existing section 12370 requires gambling establishments (cardrooms) to establish specified elements of an emergency preparedness and evacuation plan. Proposed amendments to this section would define the word “plan” as an emergency preparedness and evacuation plan, and would require: fire, life, and safety procedures; assigned staff member duties; floor plans which identify the location of portable fire extinguishers, fire alarm pull stations, exits, primary and secondary evacuation routes for each room and exterior assembly areas; evacuation drills; critical incident procedures; flammable or hazardous material spill procedures; and the forwarding of plans to the Commission.

a. Charles Bates- Bay 101: “Terrorist acts” needs to be defined. Could include a multitude of actions, incidents, activities and thoughts. As per GC § 11349 (c), this regulation may lack the

clarity necessary to provide regulations that are easily understood by those persons directly affected by them. Recommend that this terminology be defined or dropped.

The required evacuation drills present an unreasonable burden on the business to stop activity, break games, secure monetary representations (chips, cash, checks,), escort employees and patrons out of the building, secure the cage, the kitchen, and the office areas. Recommend that evacuation plans minimally interfere with the gaming operation yet insures knowledge and proficiency by the employees in protecting assets, assisting patrons, controlling crowds and accounting for employees and patrons.

b. Andrew Schneiderman- Commerce Casino/California Gaming Association (CGA): We assume that the Commission means each gaming room or room where the public is invited to congregate. A broader definition of "each room" would include offices, restrooms, etc., where no secondary evacuation route is possible or necessary. Including the word "gaming" before the word "room" provides a simple, practical solution.

We need to be clear that licensees are not required to evacuate the gaming floor as part of a drill. Such a requirement would cause panic and literally force patrons out the doors. Employees should be trained on how and where to evacuate and how and where to direct patrons to evacuate without actually requiring the patrons to evacuate.

c. David Fried- Oaks Card Club/California Grand Casino: Why evacuate patrons. What good is it to make the patrons practice? The patrons are not there every day, and may only come in a few times a year. It is dangerous and disruptive to stop all games and have the patrons run out into the street holding stacks of chips. We suggest instead that the clubs practice drills with their employees using tables not in use and simulated games.

d. Alan Titus- Artichoke Joe's: A drill would be very disruptive to the operation. It would disturb the customers and likely alarm them. Every drill would also likely lead to claims by customers that chips were missing. The Commission is beyond its area of expertise and should restrict itself to gaming issues. Few customers present during a drill would likely be present in any actual incident. We suggest that the regulation require employees to talk through the procedure at least once a year.

e. Mark Kelegian- Crystal Casino: "Criminal Incidents" should be limited to those that involve serious threat or actual injury to any person.

**Response (a-e above):** These comments/recommendations were accepted. Section 12370 was amended from its *original wording* to simply require compliance with the emergency planning regulations of the State Fire Marshal (Title 24 CCR, Part 9, Ch. 4). The State Fire Marshal has jurisdiction over these issues and has a *complete* set of fire safety, emergency planning and evacuation regulations in Title 24. Further, the State Fire Marshal periodically revises and amends their Title 24 regulations. This change would insure that the Commission's regulations for cardrooms do not conflict with those of the State Fire Marshal.

3. Sections 12370(b) & (c), 12372(c) & (d) and 12408(a)(2) contain an introductory sentence that includes the phrase: "For the purposes of ensuring the physical safety of patrons, employees and any

other person while in the gambling establishment, ...” This phrase is used as a stated purpose for requiring that each cardroom have an emergency preparedness plan and security plan.

a. Andrew Schneiderman- Commerce Casino/CGA: By stating that licensees are to "ensure" the physical safety of patrons, the regulations expand the duties of a property or business owner to protect against bodily injury and property damage. Can be interpreted as elevating the standard to "strict liability", as opposed to the "negligence" standard that is the current status of the law. The introductory language could be changed to state, "To provide reasonable guidelines for the physical safety of patrons.. ."

b. Mark Kelegian- Crystal Casino: Use of the term “ensuring the physical safety” can expand the scope of duty of a property owner under the law to “implement reasonable security measures”. Replace “For the purpose of ensuring” with “For the purpose of implementing reasonable security measures for...”

**Response (a & b above):** These comments/recommendations were accepted. The introductory phrases in Sections 12370(b) & (c), (12370(a) in modified text), 12372(c) & (d), (12372(a) & (b) in modified text), and 12408(a)(2), (12395(a)(2) in modified text), were deleted. The controlling language for each section that requires cardrooms to implement a specific plan was left intact. The deleted *stated purpose* for each plan had little effect on the actual requirement that each cardroom implement a plan.

4. Sections 12370(d)(4)(A) and (B) require the licensee to send to the Commission, documentation as to *whether or not* local authorities or the State Fire Marshal approved their plan.

a. Mark Kelegian- Crystal Casino: Unclear whether the intent is for the licensee to affirmatively seek and obtain State Fire Marshall approval, or whether it is only required to document the response.

**Response:** This comment/recommendation was accepted, and Sections 12370(d)(4)(A) and (B), (12370(e)(1) and (2) in modified text), was amended to require that the plan sent to the Commission be *approved* by the local authorities or the State Fire Marshal.

5. Sections 12370(f) and 12372(g) require that a licensee/key employee review their plan with every new employee and annually with all existing employees.

a. Charles Bates- Bay 101: A more efficient alternate method of insuring adequate training and orientation to the plan would be to implement an orientation program that employs specific knowledgeable trainers. Also recommend inserting “ensure and sign off on orientation training of new employees that reviews...”

b. Andrew Schneiderman- Commerce Casino/CGA: Why can't any designated employee or consultant review the plan with new employees and all employees annually?

c. David Fried- Oaks Card Club/California Grand Casino: Why does a licensee or key employee need to do the emergency plan review with every new employee (including cocktail waitresses and janitors). Why not allow this to be done by any designated employee, such as a human resources

person. Key employees have other duties, such as supervising the gaming floor or other daily operations.

d. Alan Titus- Artichoke Joe's: It is not clear what parts of the security plan would need annual review. The security plan would cover actions to be taken by only security personnel; this is very different from an evacuation plan, where all employees need to know how to deal with an incident.

**Response (a-d above):** These comments/recommendations were accepted in part. Section 12370 was amended to simply require compliance with the regulations of the State Fire Marshal, which already include employee training requirements (see Title 24 CCR, Part 9, Ch. 4). Further, Section 12372(g), (12372(e) in modified text), was amended to be silent as to what specific person must conduct the review, and require that the employee sign a document stating that they participated in the review.

The comment that “it is not clear what parts of the security plan would need annual review ...” was rejected, as the proposed regulation already uses the phrase “...each employee has a general understanding of the provisions of the security plan *applicable to his or her position...*”

6. Section 12372 requires cardrooms to establish a security plan.

a. Andrew Schneiderman- Commerce Casino/CGA: Since the requirements for adopting a formal written plan include both security and surveillance functions, we suggest changing the heading of section 12372 to "Security and Surveillance Plans".

**Response:** This comment/recommendation was accepted, and the title of Section 12372 was amended to read: “Security *and Surveillance* Plan”.

b. Alan Titus- Artichoke Joe's: Cardrooms will be required to adopt specific security procedures under the MICS as well as this additional requirement for a security plan. This seems duplicative and unnecessary. The evacuation plan focuses on a single event that can be addressed in a plan, whereas security focuses on the ongoing operation, which is better addressed in policies and procedures.

**Response:** This comment/recommendation was rejected. Section 12372 requires a plan (written document), whereas Sections 12408 & 12410, (12395 & 12396 in modified text), require that specific operational procedures be followed for security and surveillance.

7. Section 12372(a) defines “security department” and its responsibilities, including “detaining persons suspected of violating any provision of the Gambling Control Act (Act) or this division.”

a. David Fried- Oaks Card Club/California Grand Casino: The definition should not suggest that the security department must detain every person suspected of violating the Act. In some cases this would risk an escalation in a situation that should be reported to the police. We request that (a)(5) be deleted.

**Response:** This comment/recommendation was accepted. The definition for “security department” was moved to another regulation package (MICS I). In the process, this provision was deleted.

8. Section 12372(b) defines “surveillance unit” as a system or entity that, among other things, detects and documents underage gambling.

a. Charles Bates- Bay 101: “Detecting” an under-aged person is beyond the capabilities of the surveillance department. Recommend deleting the word “detecting and documenting gambling by persons under 21 years of age” and inserting “reporting unusual or suspicious activities in the establishment to management including alleged under aged gambling participants”.

b. David Fried- Oaks Card Club/California Grand Casino: Video surveillance is not responsible for catching underage gaming, the floor personnel are. We suggest revising to just “documenting gambling by persons under 21”.

**Response (a & b above):** These comments/recommendations were accepted. The definition for “surveillance unit” was moved to another regulation package (MICS I). In the process, the words “... detecting and documenting illegal activities, *detecting and documenting* gambling by persons under 21 years of age, ...” was replaced with “...detecting, documenting and reporting illegal activities, including *suspected* gambling by persons under 21 years of age, ...”

9. Section 12372(c)(1) requires that the security plan include a provision for "close monitoring and control of all gambling activity."

a. Andrew Schneiderman- Commerce Casino/CGA: Monitoring of gambling activity is a surveillance function. Control of gambling activity is the responsibility of casino personnel, and is neither a security nor a surveillance function. Recommend that the words "and control" be deleted.

**Response:** This comment/recommendation was rejected. Subsection (c) does not make the establishment of a security plan the sole responsibility of either the security department or the surveillance unit, but rather the responsibility of the gambling establishment.

10. Section 12372(d)(1) requires that the security plan list the job titles for personnel who are responsible for making decisions and protecting patrons, employees, their property and assets and records.

a. Alan Titus- Artichoke Joe's: Every employee has to make decisions, and every security employee is responsible for patrolling the cardroom. We would like the language to better describe what the Commission is looking for.

**Response:** This comment/recommendation was accepted. Amend Section 12372(d)(1), (12372(b)(1) in modified text), to read: “A listing of the names and job titles of the employees who are responsible for making decisions that involve the security ...”

11. Section 12372(d)(6) requires security plans to include provisions for training and practice schedules.

a. David Fried- Oaks Card Club/California Grand Casino: What do the training and practice schedules cover or relate to?

**Response:** This comment/recommendation was accepted. Section 12372(d)(6), (12372(b)(6) in modified text), was amended to read: “Specific employee training schedules that relate to the gambling establishment’s security and surveillance plan.”

12. Section 12372(e)(1) requires security plans to implement the provisions of Article 3 of this chapter.

a. Charles Bates- Bay 101: Article referenced at this time is unpublished and “reserved” in the California Code of Regulations. This citation is confusing, unclear and ambiguous. Suggest referencing the subject matter of the article.

**Response:** This comment/recommendation was rejected. Article 3 is being populated by this proposed action, and by pending MICS I regulations.

13. Section 12408(a)(3)(A)&(B) requires licensees to file an incident report with the Bureau within five business days following possible violations of the Act or this division.

a. Charles Bates- Bay 101: Filing a report on each contact about the “possibility” of a violation of law or regulations would overburden the licensee with fees, expenses and administrative tasks. Recommend striking the word “possible” and inserting “alleged”; thereafter add “requiring local law enforcement response” after “division”. Additionally recommend defining the “law enforcement agencies” contemplated by this requirement.

b. Mark Kelegian- Crystal Casino: Refer to reports of violations of the Act or of this division by licensees, yet subsection (4) addresses criminal incidents by patrons or other third persons. Intent seems to be to address criminal incidents by patrons or other third persons. Section (3)(A) and (B) should be replaced with: “(3) Licensees shall file an incident report with the Bureau within five business days of any criminal incident involving a serious threat or actual injury whenever any owner or key employee contacts a local law enforcement agency regarding said incident”.

c. Andrew Schneiderman- Commerce Casino/CGA: Requiring an incident report regarding any possible violation of the Act is too broad. Will force licensees to file reports for minor issues. Recommend deleting the words “any possible” so that this regulation creates a realistic standard for reporting information that is valuable to the Bureau. Bureau Regulation 2052(c) already requires a written report within 5 days of any “possible” violation of the Act or regulations. Does this new provision supersede 2052(c)?

d. David Fried- Oaks Card Club/California Grand Casino: There should be some standard other than “possible”, which is too broad. We should substitute “knowledge or notice of any possible violation of the Act if after a reasonable investigation there are grounds to believe that a violation likely occurred”.

e. Alan Titus- Artichoke Joe's: The Commission should require a report of actual violations before it requires the report of possible violations. At what point is the possibility of a violation enough to require a report. The term "possible violation" is vague and an enforcement trap. The possible violation could be that the operator in the count room did not wear the required smock, which would have nothing to do with security since security personnel do not even patrol the count room.

**Response (a-e above):** These comments/recommendations were rejected. Existing language in Title 11 CCR, Division 3, Section 2052(c) already requires that a written report be filed with the Bureau for *possible* violations. This proposed regulation (12395(a)(3) & (4)), merely brings that same language into Title 4, and provides further details as to the information that is required on an incident report.

14. Section 12408(a)(4) requires disclosure of specified information about "each perpetrator or suspect" in an incident report. The required information includes: full name, address, date of birth, driver license or identification card number, Social Security number, telephone numbers (home, work, mobile), photograph, physical description and vehicle license number or description.

a. Alan Titus- Artichoke Joe's: To the extent that the Act requires disclosure of private information on persons who are not licensees, the regulation would violate the federal and state constitutional and statutory rights to privacy of those persons. The state does not regulate patrons, and would have no interest at all in "perpetrators or suspects" who are not subject to the Act or the regulations. Even where the state does have some interest, the state has no right to compel disclosure of information obtained by a cardroom about a patron, without giving the patron an opportunity to object to the request for information. Could also infringe on constitutional rights of association. Bureau should not be able to go around normal safeguards and force disclosure of this information from cardrooms. The collection of personal information also violates statutory rights to privacy of patrons. The collection of information on patrons by cardrooms is neither necessary to regulate cardrooms nor authorized by the Act. A patron provides such information to the cardroom for a specific use and Artichoke Joe's might have legal obligations to the patron not to disclose the information. (Detailed comments include statute and court decision references)

**Response:** This comment/recommendation was accepted in part. Section 12408(a)(4), (12395(a)(4) in modified text), was amended to include only minimal identifying information about the perpetrator (name, address, date of birth and driver's license number). This will better align this proposed regulation with Title 11 CCR, Division 3, Section 2052(c), which already requires a written report to be filed with the Bureau, that *identifies* those persons suspected of violating the Act or its regulations. This includes patrons, to the extent that a patron can violate the Act or its regulations. Section 2052(c) has the operation of law. This action merely brings that same language into Title 4. Also, Business and Professions Code section 19826(c) allows the Bureau to investigate violations of all laws related to gambling, which would include patrons.

15. Section 12408(a)(5) requires licensees to maintain a written list of employees that are assigned keys for the various restricted areas of the gambling establishment.

a. David Fried- Oaks Card Club/California Grand Casino: Why would key control for "fixtures, appurtenances and equipment" be required?

**Response:** This comment/recommendation was rejected. The proposed regulation addresses only keys to equipment “*used in the gambling operation*”.

b. Alan Titus- Artichoke Joe’s: Requires that the list of keys include the "location where the keys and all copies of the keys are stored". Keys are not stored, but are kept in employees' personal possession, and the regulation does not jibe with that common practice.

**Response:** This comment/recommendation was accepted, and Section 12408(a)(5), (12395(a)(5) in modified text), amended to read: “...and the location where *un-issued* keys are stored.”

c. Mark Kelegian- Crystal Casino: Since the regulations require physical copies of key lists to be maintained for one year, the same standard should apply to electronic copies.

d. Alan Titus- Artichoke Joe’s: We have computerized key control. The computer is programmed to allow certain key cards into certain areas, and the list is never printed. Printing of the list adds nothing to maintenance of security. The Commission should wait before imposing such a requirement until there is a demonstrable need and adequate funding to monitor such minutiae. We do not electronically archive the list. We simply maintain the current list. If it were to be archived, suggest that one or two years is long enough.

**Response (c & d above):** These comments/recommendations were accepted, and the language in Section 12408(a)(5), (12395(a)(5) in modified text), requiring that *electronic* lists be retained for 7 years was deleted. Since an *electronic* list is not required, the 7-year retention requirement would be unenforceable. Further, Section 12408(a)(5) was amended to provide for the option of computerized electronic card keys, and the printing of a list from those electronic records.

16. Section 12408(b)(1) requires, for Tiers II-V, the installation and maintenance of a key control box for each department, unit or operation.

a. Mark Kelegian- Crystal Casino: There is no mention of the ability of owners or key employees being permitted to keep such keys on their person. Following sentence should be added at the end of the subsection: “In addition to the foregoing, an owner or key employee may keep any such key on their person.”

b. David Fried- Oaks Card Club/California Grand Casino: Requiring a key stored in a key box for every department or “Restricted Area” is too broad. Why shouldn’t the CFO or any other management employee be allowed to carry the keys to their offices in their pockets? Why can’t the owner and general manager, and key employee on duty, have a master key that gives them access to each restricted area?

c. Andrew Schneiderman- Commerce Casino/CGA: There is no overriding internal control reason in prohibiting owners, shift managers, department heads, and security officers from having keys to enter restricted areas. In the event of a fire, this could be dangerous and conflicts with reasonable emergency preparedness and evacuation plans. For Tiers III-V, requires a log recording each time someone gets, uses, and returns a key to a secure area, requiring employees to sign keys in and out, just to use the bathroom. The areas of the casino that are covered by this regulation must be narrowed, so that employees who work restricted areas, such as the cage, do not have to sign in

and out each time they need to use a restroom or take a break. Some small clubs may have only one secure area for key boxes. We suggest that the regulation be revised to delete the requirement that a separate key control box be maintained for each department.

**Response (a-c above):** These comments/recommendations were accepted, and Section 12408(b)(1), (12395(b)(1) in modified text), was amended to read: "...key control box for... all *un-issued* gambling-related keys..."

d. David Fried- Oaks Card Club/California Grand Casino: Some small clubs may not have any secure area for key boxes except the cage. There are already entrance video recordings for the cage and other areas.

e. Andrew Schneiderman- Commerce Casino/CGA: Some small clubs may have only one secure area for key boxes. We suggest that the regulation be revised to delete the requirement that a separate key control box be maintained for each department.

**Response (d & e above):** These comments/recommendations were accepted, and Section 12408(b), (12395(b) in modified text), was amended to apply to Tiers III through V, rather than II through V.

f. David Fried- Oaks Card Club/California Grand Casino: Why do we need separate key boxes or even keys for equipment storage (tables not in use) and fixtures (the water heater, air conditioner, generator, etc...)?

g. Andrew Schneiderman- Commerce Casino/CGA: Why do keys for equipment storage (tables not in use) and fixtures (e.g., water heaters, air conditioners, generators, etc.) need to be maintained in a key control box? Suggest that the analysis of the proper scope of this regulation should start with a list of the areas of a casino that require this level of security.

**Response (f & g above):** These comments/recommendations were rejected. "Fixtures, appurtenances and equipment" include only those *used in the gambling operation*.

h. Alan Titus- Artichoke Joe's: Requires cardrooms to maintain key control boxes for each department. This does not comport with current practices at Artichoke Joe's and is unnecessary, inefficient and less secure than current practice of computer-controlled card keys.

**Response:** This comment/recommendation was rejected. In a card key system, un-issued or returned cards are electronically cancelled. As a result, a key control box for a 100% card key system would not be required, since there would be no *un-issued* card keys that would open any locks. However, if any mechanical keys are used, (e.g.- drop boxes), then a key control box would be required for those keys.

17. Section 12408(c)(1) requires, for Tiers III-V, the installation and maintenance of a key control box log for each key control box required by Section 12408(b)(1), (12395(b)(1) in modified text). This log must document the issuance and return of all gambling related keys.

a. Alan Titus- Artichoke Joe's: Requires Tier III-V cardrooms to maintain a key control log for each key control box and to document the issuance and return of all gambling-related keys. We use a card key control system that keeps track of the various areas that are accessed. This provides as much, if not more, security than the proposed regulation.

**Response:** This comment/recommendation was rejected. In a card key system, keys are still issued, returned and/or electronically cancelled. As a result, a log should be maintained. This log can simply be an electronic record in the computer controlled card key system, or a printout from that system.

18. Section 12408(c)(2) requires Tier III-V cardrooms to have, from sunset to sunrise, at least one security officer on duty during business hours. Also requires the security officer to periodically patrol the exterior of the gambling establishment.

a. Mark Kelegian- Crystal Casino: "Outside the licensee's gambling establishment" is troublesome. At Crystal Casino & Hotel, the gaming area is separate and distinct from the hotel operations. All security officers who are precluded from providing security services in the gaming area should not have to be issued work permits. The words "gambling establishment" in the last sentence should be replaced with "designated gaming area".

**Response:** This comment/recommendation was rejected. A *separate and distinct hotel* is not included in the definition of a *gambling establishment*. A work permit is not required for hotel-only security. See Business and Professions Code, section 19805(m) & (n).

b. Andrew Schneiderman- Commerce Casino/CGA: Tier III clubs often use an outside security service to patrol the parking lot and to come into the club only when needed for a situation. Tier III licensees should not be subject to subsection (c)(2).

c. David Fried- Oaks Card Club/California Grand Casino: Tier III clubs often use an outside security service to patrol the parking lot and to come into the club only when needed. This regulation requires that if the security person enters the club on occasion to provide assistance, they need a work permit. Tier III clubs should not be subject to (c)(2), thus allowing a security officer who works outside to come in when called by management.

**Response (b & c above):** These comments/recommendations were rejected. A security officer who, even on occasion, enters the gambling establishment without a work permit may be in violation of Business and Professions Code, section 19912(a).

19. Section 12408(c)(3) requires Tier III-V cardrooms to have backup generators sufficient to provide for a minimal level of lighting, information systems, and surveillance during power outages that is necessary to provide for the safety and security of patrons, patrons' property, employees and the licensee's assets and property.

a. Andrew Schneiderman- Commerce Casino/CGA: Many small middle-sized casinos do not have backup generators that can provide sufficient electricity to power lighting, information, surveillance, and recording systems. We suggest that this minimum standard be deleted.

Alternatively, the regulation should grandfather current systems and require that when a licensee replaces their current generator, they comply with this provision.

b. David Fried- Oaks Card Club/California Grand Casino: Many Tier III clubs do not have backup generators that power the cameras, lighting, computers and surveillance. The regulations should grandfather current systems and require that when a Tier III club replaces their current generator, they comply with this.

**Response (a & b above):** These comments/recommendations were accepted, and Section 12408(c), (12395(c) in modified text), was amended to apply to Tiers IV and V, rather than III through V. Section 12408(c)(3), (12395(c)(1) in modified text), was also modified to read: "... operation of *those systems*, during power outages, *that are* necessary to provide for the safety and security..." The earlier language allowed the licensee to determine what is necessary for the "safety and security of patrons, property, employees and licensee assets; so why name the systems?"

For conformity purposes, Sections 12408(c)(1), key control box log and (c)(2), nighttime security were both moved to section 12408(b), (12395(b) in modified text), so that they will continue to be applied to Tiers III through V, as originally intended.

20. Section 12408(d) requires, for Tier IV, one security officer on duty outside, and periodically patrolling outside areas during all hours of operation.

a. Charles Bates- Bay 101: May burden the licensee with personnel and economic problems. Outside areas are already under surveillance and well lit. Recommend striking "outside the gambling establishment".

b. Mark Kelegian- Crystal Casino: Unreasonable to require a Tier IV licensee to post a security officer 24 hours a day outside the gambling establishment. A consistent presence of patrolling officers, in addition to constant surveillance monitoring, is sufficient.

c. Alan Titus- Artichoke Joe's: There is always a uniformed security officer on duty, and there is always periodic patrol outside. We suggest the regulation only require periodic patrol of the outside areas.

**Response (a-c above):** These comments/recommendations were accepted. Section 12408(d), (12395(d) in modified text), was amended to require a security officer to be on duty during all hours of operation, but not necessarily outside the cardroom. The amended regulation would continue to require periodic outside patrols. Further, Tier IV cardrooms would continue to have more restrictive requirements than lower tiers, as a security officer will be required during *all* hours of operation, day and night.

Sections 12408(c)(2), (d) and (e)(1), (12395(b)(4), (d) & (e)(1) in modified text), were also amended for clarity and conformity purposes, insuring that higher subsections progressively build upon the lower subsections, requiring increased security as the cardrooms (tiers) get larger.

21. Section 12410(a)(1) requires cardrooms to record critical activities related to gambling operations, including "the drop collection".

a. Alan Titus- Artichoke Joe's: This phrase could refer to the drop of player fees into collection boxes while the table is in play, or it could refer to the collection of the drop boxes. This should be clarified. Additionally, the emphasis on drop boxes in California is misplaced. California cardroom drop boxes do not contain a significant amount of funds and are different than those used in Nevada style gaming that contain much more money.

**Response:** This comment/recommendation was accepted, and Section 12410(a)(1), (12396(a)(1) in modified text), amended to read: "... shall *record with reasonable coverage and clarity*, at a minimum, the gambling activity, *the payment of player drop fees, the collection of drop boxes, the drop count process ...*"

22. Section 12410(a)(6) requires that surveillance videotapes be marked or coded to denote the activity recorded.

a. Andrew Schneiderman- Commerce Casino/CGA: Most licensees code surveillance tapes for identification. Surveillance reports simply identify the relevant surveillance tapes by reference to their codes. It would be unmanageable and add no value to require that licensees inscribe a description of the activity recorded on each surveillance tape.

**Response:** This comment/recommendation was rejected. Section 12410(a)(6) already allows the tapes to be "*coded*". This gives the licensee the flexibility to use these codes, (e.g.- letters, numbers or colors), to cross reference to the times, days or areas recorded.

23. Section 12410(a)(7) requires that surveillance recordings determined by the Bureau or law enforcement to be of evidentiary value must be retained for the period specified by that agency, and that recordings of criminal offenses be retained indefinitely.

a. Andrew Schneiderman- Commerce Casino/CGA: It is critical that there is a bright line test to determine which recordings must be retained for more than the standard minimum. If the Bureau or a law enforcement agency directs a licensee to retain a surveillance tape for more than three days, this direction must be in writing.

**Response:** This comment/recommendation was accepted, and Section 12410(a)(7), (12396(a)(7) in modified text), amended to read: "... for a period specified *in writing* by the determining agency."

b. David Fried- Oaks Card Club/California Grand Casino: Can recordings of criminal offenses be maintained by burning them on DVD? The club should be allowed to discard the recording if no charges are brought within a fixed period of time (say 2 years) or with the permission of the district attorney.

c. Alan Titus- Artichoke Joe's: We suggest that a cardroom should be able to dispose of a recording of a criminal offence after three years, unless someone has requested that it be saved.

**Response (b & c above):** These comments/recommendations were rejected. Section 12410(a)(5), (12396(a)(5) in modified text), already authorizes the use of DVRs and DVDs. Further, Section 12410(a)(7) already allows the licensee to obtain authorization from the Bureau to dispose of recordings of criminal offenses. To assign a fixed disposal period could compromise an ongoing criminal case.

24. Section 12410(a)(8) allows the Bureau immediate access to video recordings, and to take custody of original video recordings, or a copy of digital recordings.

a. Alan Titus- Artichoke Joe's: Law enforcement has not been allowed to take the original or a copy of a recording without a judicial warrant. Allowing government authorities to seize recordings showing patrons of the cardroom without a judicial warrant would be a serious violation of privacy rights under the California Constitution and statutes. To grant the state unfettered access to the tapes for 15 days invades the privacy that is expected and constitutionally protected. (Detailed comments include court decision references)

Further, the requirement for immediate access of video recordings is problematic. As an internal control, some camera recordings can be accessed only by certain managers and not by shift coordinators.

**Response:** This comment/recommendation was rejected. Business and Professions Code, section 19827(a)(1) authorizes the Bureau to “summarily seize” any records from any licensed premises, authorizing immediate access. Further, Business and Professions Code, section 19861(c) permits private cardrooms, but only if video recordings are *made available* to the Bureau upon request. If video of a *private* place were available to the Bureau, then certainly video of a *public* cardroom would be also.

b. David Fried- Oaks Card Club/California Grand Casino: Why does the Bureau have to take the “original” recording from a DVR. This means taking the hard drive from the recording device. How is the club supposed to keep recording. The Bureau can take a copy or make a copy of the hard drive.

c. Andrew Schneiderman- Commerce Casino/CGA: If the recording were on a hard drive inside the DVR recorder, Bureau removal would leave the club without a surveillance system. The regulations should permit the Bureau to take a copy of a surveillance recording but not remove the original if such removal would disable the surveillance system.

**Response (b & c above):** These comments/recommendations were rejected. Section 12410(a)(8) already states that “a *copy* of any *digital* recording” may be taken by the Bureau. Removal of the hard drive is not required by this proposed action.

d. Charles Bates- Bay 101: Business and Professions Code, section 19827 (a)(1)(D) clearly mandates that a copy of all documents and records seized “shall” be left. “May” in the regulation versus the mandatory “shall” would make this portion of the regulation void. The regulation also attempts to expand the statute to grant authority to the Bureau to provide a copy at the licensee’s expense. Recommend deleting this sentence.

**Response:** This comment/recommendation was accepted, and the third sentence in Section 12410(a)(8), (12396(a)(8) in modified text), was amended to read: ...a copy of the recordings *shall* be made...”

25. Section 12410(a)(9) requires licensees to display a sign advising patrons that public areas, entrances and exits are subject to surveillance and video recording.

a. Andrew Schneiderman- Commerce Casino/CGA: Because of the tremendous number of postings that are already required at card casinos, we do not believe that requiring an additional posting of something that is common knowledge will be of any benefit. We recommend that this section be deleted.

**Response:** This comment/recommendation was rejected. Although patrons generally don't have expectations of privacy at cardrooms, they should clearly understand that it is public place and may be under video surveillance. The sign may also have deterrent effects against cheating.

26. Section 12410(b)(2) requires that, for Tiers II-V, a surveillance system record patrons and dealers "with reasonable coverage and clarity.”

a. Andrew Schneiderman- Commerce Casino/CGA: Cameras are positioned overhead to view the playing surface of gaming tables; only the top of heads are viewable. Although we are comfortable with this regulation, we wanted the record clear that reasonable coverage and clarity does not always provide the ability to identify patrons and dealers at any given table.

b. Alan Titus- Artichoke Joe's: Many cardrooms record table play from the ceiling, and cameras around the room might provide supplementary views.

**Response (a & b above):** These comments/recommendations were accepted, and the following sentence added to Section 12410(b)(2), (12396(b)(2) in modified text): “*For the purposes of this paragraph, an overhead view of patrons and dealers is acceptable.*”

27. Section 12410(d) requires Tiers IV and V cardrooms to establish separate security and surveillance departments and rooms, and that the surveillance unit entrance and exit doors not be visible or accessible from the gambling area. Requires licensees to maintain a surveillance activity log, by shift, of all surveillance activity in the surveillance room, in which entries are to be made "by on-duty surveillance personnel". Also requires that the head of the surveillance unit be independent of the security department.

a. Andrew Schneiderman- Commerce Casino/CGA: This section will be disproportionately more expensive and burdensome for card casinos with 31 tables, than for those with a far greater number. Cost benefit consideration is necessary before imposing this large infrastructure, administrative and labor costs on all casinos with 31 or more tables. The minimum requirement of maintaining a separate department for surveillance personnel creates tremendous new overhead expenses for middle-sized casinos. One such casino estimates that this standard will add over \$500,000 in payroll and administration. The cost for adding an additional surveillance room (and count room as per 12385) will be very burdensome on many licensees. Recommend that Tier IV and V establish and maintain a surveillance unit in an area that has controlled access, is under

constant and recorded video surveillance and is not observable or accessible from the gambling area.

b. David Fried- Oaks Card Club/California Grand Casino: These regulations impose expensive and onerous requirements on Tier IV card rooms to have separate surveillance rooms, departments and employees. This would cost several hundred thousand dollars and is unwarranted and unrealistic. Should distinguish between 35 table clubs in Tier IV, and large clubs in Tier V. Tier IV clubs should not be required to create a new room just for surveillance.

c. Charles Bates- Bay 101: May interfere with local fire codes and emergency exits currently built into existing surveillance rooms. Recommend adding: "This is not intended to preclude fire or emergency exits" as a final sentence.

d. Mark Kelegian- Crystal Casino: A key employee should be allowed to supervise both the surveillance and security departments at the upper management level. The following should be added: "Except in the case of an owner or key employee, the head..."

e. Alan Titus- Artichoke Joe's: What if during a shift there are no on-duty surveillance personnel? Nothing in the regulation has required that there be surveillance personnel for every shift in Tier IV.

**Response (a-e above):** These comments/recommendations were accepted, and Tier IV deleted from the requirements of Section 12410(d), (12396(d) in modified text). The weight of industry response shows that Tier IV cardrooms would be adversely, and possibly disproportionately, affected by the current requirements of Section 12410(d). Further, this change is consistent with other regulations, (MICS I) that require only Tier V cardrooms to conduct continuous life surveillance monitoring of the drop box collection.

For conformity purposes, the requirements of Section 12410(e) were also moved to Section 12410(d), (12396(d) in modified text), since both subsections (d) and (e) would apply only to Tier V.

28. Section 12410(d)(6) requires, for Tiers IV and V, that once an hour, surveillance cameras pan the face of each patron and dealer during gambling operations.

a. David Fried- Oaks Card Club/California Grand Casino: People are recorded when they enter or leave, and while they walk to the tables, there is no need to rescan them while they are playing.

b. Mark Kelegian- Crystal Casino: Unreasonable to expect that the camera operator will be able to capture the images of all persons each hour. Patrons and employees are constantly moving and it is virtually impossible to meet this obligation. Camera operator should only be required to pan for the purpose of capturing the faces of patrons and dealers for identification. At the end of the section, add the following: "Licensees who make a good faith effort to capture these images are deemed to be in compliance with this requirement".

c. Andrew Schneiderman- Commerce Casino/CGA: We agree that having a dedicated camera for each gaming table and a 10 to one ratio of PTZ to table ratio are appropriate minimum

surveillance standards. Requiring that surveillance operators scan the face of every dealer and patron once per hour will distract them from their primary function of protecting game integrity. If the objective of this regulation is to have a video record of patrons and employees, we believe that the dedicated camera on all entrances and exits mandated by section 12410(a)(1) already satisfies this regulatory goal. We therefore suggest that the requirement of using a PTZ to pan the faces of patrons and dealers be deleted.

**Response (a-c above):** These comments/recommendations were rejected. Section 12410(d), (12396(d) in modified text), was already amended to exclude Tier IV cardrooms. As a result, the requirement for a full time surveillance unit in Tier V is reasonable, given their size (61+ tables). Further, this section does not require the camera pan to be manually operated. An automated system can be utilized. Only one PTZ camera is required for every 10 tables. If one pan covers 10 tables, 10 automated PTZ cameras could simultaneously pan 100 tables.

29. Sections 12410(e)(2)(A), (B) and (C) require that the surveillance log (for Tier V), contain a notation of the time and incident number of any medical emergency or law enforcement event (A), the times of the drop box collection (B), and the times of the drop count (C).

a. Andrew Schneiderman- Commerce Casino/CGA: Records of medical and law enforcement issues are not generally maintained by the surveillance department, but rather the security department or casino management. Either the security or surveillance departments could make these notations. Further, we do not see the benefit of the surveillance department recording the times of the drop collections and counts. We suggest that these subsections be deleted.

**Response:** This comment/recommendation was rejected. Since an employee must be present in the surveillance room at all times in Tier V, (see 12410(e)(1) or 12396(d)(4) in modified text), a medical emergency, law enforcement event, drop box collection and drop count would be easily recognized by surveillance room staff, and simply noted in the log. *Note: Sections 12410(e)(2)(A), (B) & (C) were moved to Sections 12396(d)(6)(H), (I) & (J).*

30. Section 12410(e)(2)(D) requires that the surveillance log (for Tier V), contain a notation of the time of patron disputes.

a. Charles Bates- Bay 101: The term “patron disputes” is vague, broad, ambiguous and burdensome. Patron disputes range from arguments about “you took my seat”, all the way to assaults. Mere misunderstandings or discourteous treatment do not rise to the level of permanent recording in the logs of surveillance. Recommend adding “that require surveillance review or security intervention” at the end of the sentence.

**Response:** This comment/recommendation was accepted, and Section 12410(e)(2)(D), (12396(d)(6)(K) in modified text), to read: “...patron disputes... *that require the intervention of the security department, if any.*”

### INFORMAL COMMENTS FOLLOWING COMMISSION MEETING OF APRIL 22, 2008

The following comments/objections/recommendations were made regarding the proposed action, either in writing or orally, following the Commission meeting on April 22, 2009:

1. Section 12370(a) requires gambling establishments (cardrooms) to comply with the emergency planning regulations of the State Fire Marshal (Title 24 CCR, Part 9, Ch. 4).

a. State Fire Marshal: The language of Section 12370(a) should include the need for compliance with Title 19, Section 3.09. This section includes specific evacuation procedure requirements that are not addressed in Title 24.

**Response:** This comment/recommendation was accepted, and Section 12370(a) amended to include the requirement that cardrooms comply with Title 19, Section 3.09.

2. Section 12372(b)(4) requires Tiers III- V cardrooms to have a backup generator.

a. David Fried- Oaks Card Club/CGA: It is not realistic to require Tier III clubs to have a backup generator. This could cost up to \$110,000 per cardroom. Moreover, some Tier III cardrooms are tenants, where lease restrictions may prevent the installation of a backup generator.

**Response:** This comment/recommendation was accepted, and paragraph (4) of Section 12372(b) was deleted. Other proposed regulations (Re. §12395(c) & (e)) require specified types of backup generators, but only in Tiers IV and V. This change would conform Section 12372(b) to those other sections. Subsequent paragraphs in Section 12372(b) were also renumbered for conformity purposes.

3. Section 12372(e)(1) requires cardrooms to provide annual employee training on the provisions of the security and surveillance plan that is applicable to the employee's position.

a. David Fried- Oaks Card Club/CGA: This annual training should only be required for employees that have security or surveillance duties.

**Response:** Even though the regulation seems already to apply only to those employees with security or surveillance duties, this comment/recommendation was accepted and changes made to the regulation that further clarifies this fact.

4. Section 12395(a)(3)(A)&(B) requires licensees to file an incident report with the Bureau within five business days following possible violations of the Act or this division.

a. David Fried- Oaks Card Club/CGA: This regulation requires reports of *possible* violations. We recognize that the Bureau's regulations are the same. However, we need clarification on what constitutes a *possible* violation.

**Response:** This comment/recommendation was also made in the prior comment period ending October 17, 2008 (see comment # 13). However, with further analysis, this comment/recommendation was accepted, and subparagraphs (A) and (B) amended to use the term *reasonably suspected* violation in place of *possible* violation.

5. Section 12395(b)(1) requires Tiers III- V cardrooms to have a separate key control box for each department, unit or operation to store unissued keys.

a. David Fried- Oaks Card Club/CGA: Why can't there be just one key control box for the entire cardroom. This allows for one centralized security system for all unissued keys.

**Response:** This comment/recommendation was accepted, and paragraph (1) amended to require a minimum of one key control box for the entire cardroom.

6. Section 12395(b)(2)(D) requires Tiers III- V cardrooms to limit access to the key control box to cardroom owners and/or department supervisors or managers.

a. David Fried- Oaks Card Club/CGA: Shit managers need access to the key control boxes, while department heads are not at work.

**Response:** This comment/recommendation was accepted, and subparagraph (D) amended to allow key employees and other designated employees access to the key control box.

7. Section 12395(b)(4) requires work permits for security officers (employees or contract guards) in Tiers III- V, if they enter the gambling establishment as part of their duties.

a. David Fried- Oaks Card Club/CGA: Tier III clubs usually use contract security officers, who predominately stay outside the club. They enter the club only on occasion to use the restroom or respond to exceptional circumstances related to security. They should not be required to obtain work permits.

**Response:** This comment/recommendation was rejected, as the Act requires a work permit for any employee, independent agent or person whose employment duties require or authorize access to restricted gambling establishment areas.<sup>1</sup>

8. Section 12396(a)(2) requires that surveillance recordings be made in real time mode, or at a speed sufficient to capture and record with reasonable completeness the actions of all individuals being observed.

a. David Fried- Oaks Card Club/CGA: We would like to use motion activated cameras wherever possible, such as in the count room, where no one is present much of the time. This saves recording space and makes it faster to play back.

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<sup>1</sup> Business and Professions Code, subdivision (a) of section 19912, and subdivision (m) of section 19805.

**Response:** This comment/recommendation was rejected, as the regulation currently permits the use of motion activated cameras by only requiring that the cameras capture and record the *actions of individuals*. If there is no *action* or *individual*, no recording is necessary.

9. Section 12396(e) requires that cardrooms comply with the provisions of subsections (a) and (b) of Section 12396 no later than six months from the effective date of the regulation.

a. David Fried- Oaks Card Club/CGA: Many clubs may need 18 months to switch to a digital surveillance system.

**Response:** This comment/recommendation was accepted in part. Although it is understood that some cardrooms may be required to upgrade their current surveillance systems, these regulations do not require that the systems be in a *digital* format. However, it is also understood that one may find it difficult to upgrade an *analog* system in today's marketplace that offers only *digital*, necessitating that the entire *analog* system be replaced.

As a result, subsection (e) was amended to require compliance no later than *18 months* from the effective date of the regulation. Further, subsection (e) was amended to conform to the additional subsections that have been added to Section 12396, requiring cardrooms to comply with the provisions of subsections (a) *through and including* (d).