

CALIFORNIA GAMBLING CONTROL COMMISSION

INITIAL STATEMENT OF REASONS

CGCC-GCA-2009-06-R

HEARING DATE:

August 11, 2009

**SUBJECT MATTER OF
PROPOSED REGULATIONS:**

Minimum Internal Control Standards (MICS) for Gambling Establishments: Fire Safety, Security and Surveillance.

SECTIONS AFFECTED:

California Code of Regulations, Title 4, Division 18, Chapter 7:
In Article 2, Amend Section 12370 and Adopt Section 12372.
In Article 3, Adopt Sections 12395, and 12396.

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

Introduction:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the California Gambling Control Act (Act).¹ The Commission is authorized to adopt regulations governing the operation of gambling establishments (cardrooms) in California.² Specifically, the Commission is mandated to adopt regulations on the subjects enumerated in Business and Professions Code,³ section 19841. Regulations concerning the establishment of minimum policies and procedures by owner licensees to exercise effective control over their gambling affairs have been prepared in compliance with section 19840⁴ and subdivisions (h) and (o) of section 19841.⁵

In general, the proposed action has been drafted in an attempt to establish uniform procedures and standards to assist the Commission and the Bureau of Gambling Control within the Department of Justice (Bureau) in meeting their oversight responsibilities under the Act, while

¹ Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

² Business and Professions Code section 19840.

³ All statutory references are to the Business and Professions Code, unless otherwise specified.

⁴ Section 19840 provides, in pertinent part, that “[t]o the extent appropriate, regulations of the Commission ... shall take into consideration the operational differences of large and small establishments.”

⁵ Subdivision (h) of section 19841 mandates that the Commission’s regulations shall “[p]rescribe minimum procedures for adoption by owner licensees to exercise effective control over their internal fiscal and gambling affairs, ...” as specified. Subdivision (o) of section 19841 mandates that the Commission’s regulations shall “[r]estrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling, consistent with the purposes of this chapter.

taking into account the variations in size of gaming operations. More importantly, the proposed action is intended to provide for minimum standards that protect public health and safety and maintain security controls over the gambling premises.⁶ These regulations establish a baseline for cardroom operation, by requiring that licensees establish and implement written policies and procedures that meet or exceed the prescribed Minimum Internal Control Standards (MICS), as they relate to the established size category of the individual licensee. Establishing a baseline standard helps to ensure consistency and uniformity.

Background:

The Commission's involvement in the development of MICS for gambling establishments began in June 2004. A joint Commission-Bureau-Industry workshop was conducted to review preliminary draft proposals for regulations in September 2004. After consideration of the information and comments received through that workshop, the proposed MICS requirements were given to the Bureau's auditors who were to assess the feasibility of some of the requirements in relation to the auditors' actual experiences in the field. Instead of one large rulemaking with many MICS included, the decision to have smaller rulemaking packages with topic-related MICS was made. The regulations on Gaming Activity and Additional Tables requests finished the rulemaking process in 2006, with the latter being adopted and approved. Subsequently, other issues arose which required the Commission to re-evaluate their regulation development priorities and work on the MICS regulations was suspended temporarily.

In September 2007, a joint Commission/Bureau MICS Regulations Workgroup was formed to continue the development of regulations to establish MICS for cardrooms. The workgroup has discussed general MICS requirements and researched MICS requirements from other states. Due to the number of subjects and complexity of the MICS requirements, the workgroup segregated the requirements into separate subject areas in order to pursue regulations in phases according to priority. Those subjects and phases, in order of priority, are:

Phase

- I. General Terms, Conditions & Definitions; Policies & Procedures; Drop & Drop Collection; Count & Count Room Functions; and Cage Functions
- II. Fire Safety, Security & Surveillance
- III. Gambling Floor Operations & Play of Table Games
- IV. Chips, Cards & Other Gambling Equipment
- V. Personnel & Tips
- VI. Information Technology Systems
- VII. Adequate Financing; Player-Dealer Banks, & Jackpots

Multiple phases are being considered simultaneously and are currently in various stages of development. It is intended that each phase will be taken up, formally, in the order listed above.

In December, 2007, the workgroup completed an initial draft proposal for these Phase II MICS (Fire Safety, Security and Surveillance) and scheduled an informal public comment session to solicit comments from the industry on April 10, 2008. All comments were recorded and

⁶ Business and Professions Code, sections 19920 and 19924.

categorized, and were considered in the further development and refinement of this Phase II proposal. A modified draft proposal was completed and again distributed to interested parties on October 3, 2008. Additional written comments were again solicited, with this second informal comment period ending on October 17, 2008. Further revisions were made to accommodate many of the comments and suggestions received. At a meeting before the Commission on April 22, 2009, it was agreed that additional public comments and recommendations would be considered. As a result, final revisions were made, and this proposed action was then formed.

At a meeting on May 20, 2009, the Commission authorized staff to initiate the formal rulemaking process for these proposed regulations.

A great deal of effort has been made to include affected parties in the development of this proposed action and careful consideration has been given to their views and suggestions, as well as the physical and economic differences between the various cardrooms throughout the state.

Proposed Action:

This proposed action will make the following changes within Article 2 of Chapter 7 of Division 18 of Title 4 of the California Code of Regulations:

1. Section 12370 currently provides specific emergency preparedness and evacuation plan requirements for cardrooms. However, these requirements are outdated and may not be consistent with those of the State Fire Marshal. Since the State Fire Marshal has primary jurisdiction over the issues of fire safety and building evacuation, this proposed regulatory action would amend Section 12370 by simply requiring cardrooms to comply with the emergency planning regulations of the State Fire Marshal (Title 24 CCR, Part 9, Ch. 4 and Title 19, Section 3.09). These amendments would also require cardrooms to submit copies of their *fire safety and evacuation plan* to the Commission upon initial application for a license, biennially upon license renewal, and when specified changes are made to their plan. Consistent with the existing language of Section 12370, submitted fire safety and evacuation plans must show evidence of approval from a local authority or the State Fire Marshal. Also consistent with existing language, these amendments would constitute an unsuitable method of operation if a cardroom does not implement their plan and conduct emergency evacuation drills and employee training pursuant to their plan.

The State Fire Marshal already has a *complete* set of fire safety, emergency planning and evacuation regulations in Title 24 and Title 19. Further, the State Fire Marshal periodically revises and amends these regulations. This change would insure that the Commission's regulations for cardrooms do not conflict with those of the State Fire Marshal.

2. This proposed action would establish new Section 12372, which would require all cardrooms to adopt a *security and surveillance plan*. The required elements of the plan are increased with the relative size of the cardroom by assigning tiers that are based on the cardroom's number of authorized tables. Five specific licensee tiers have been established in a prior rulemaking package⁷. Smaller cardrooms (Tiers I & II) would be required to establish monitoring and control systems that restrict access to sensitive areas, establish security and

⁷ See MICS I rulemaking package, subsection (d) of Section 12380.

video surveillance procedures, provide for lighting in and around the cardroom, and establish procedures for protecting patrons and property. In *addition* to these requirements, medium to large size cardrooms (Tiers III – V) would be required to designate security staff, have uniformed security guards, and provide regular training for security and surveillance personnel.

All tiers would be required to submit copies of their security and surveillance plan to the Commission upon initial license application, biennially upon license renewal, and whenever specified revisions are made to their plan. If local authorities provide reviews of these plans, the cardroom is required to provide the results of the review. The Bureau is also required to review the cardroom's plan and identify any deficiencies.

Cardrooms are also required to annually review the elements of the plan with those employees who have duties under the plan.

Finally, Section 12372 would constitute an unsuitable method of operation if a cardroom does not implement the elements of their plan and assess a civil penalty for violations of the section.

While ultimate responsibility for overall compliance with the Act rests with the 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; while both security and surveillance share in the first-line of defense against underage gambling. Having written policies and procedures for security and surveillance provides a reliable means of ensuring that all employees are made aware of the expectations and requirements in those areas.

This proposed action will make the following changes within Article 3 of Chapter 7 of Division 18 of Title 4 of the California Code of Regulations:

1. This proposed action would establish new Section 12395, which would require cardrooms to adopt specified security *procedures* that are again increased with the relative size of the cardroom. All cardrooms would be required to restrict access to sensitive areas, provide adequate lighting of all public areas, file incident reports with the Bureau under specified circumstances, and control keys to restricted areas. In *addition*, medium to large size cardrooms (Tiers III – V) would be required to maintain a key control box and have uniformed security outside the cardroom at night. In *addition*, the larger size cardrooms (Tiers IV & V) would be required to have backup generator systems and uniformed security during all hours of operation.

This proposed regulation is intended to provide for minimum standards that protect public health, safety and their assets through the establishment of security controls over the gambling premises.⁸ Further, the incident reporting requirements of this regulation help to implement the Bureau's responsibilities of insuring that controlled gambling is free from criminal or corruptive elements, and that licenses are not held by persons whose operations

⁸ Business and Professions Code, subdivision (i) of section 19801 and sections 19920 and 19924.

are conducted in a manner that is inimical to the public health, safety or welfare.⁹ This regulation also helps the Commission comply with Business and Professions Code section 19857, by helping to determine the moral character, integrity and/or prior criminal activities of license applicants.

Tiered security controls also minimize the opportunity for theft and provide a level of protection for the licensee's assets that is commensurate with the increased potential risk found in the higher tier gambling establishments. The larger cardrooms and the significantly higher amount of their revenue warrant a higher degree of protection.

2. This proposed action would also establish new Section 12396, which would require cardrooms to adopt specified surveillance *procedures* that also increase with the relative size of the cardroom. All cardrooms would be required to video record specified critical gambling operation activities, have video equipment that meets specified parameters, maintain video recordings for a specified time, allow the Bureau access to the video recordings, and display signs that alert patrons to the video monitoring. In *addition*, Tiers II through V cardrooms would be required to video record cardroom entrances and exits and dedicate cameras to gambling tables. In *addition*, Tiers III through V cardrooms would be required to video record parking areas. In *addition*, the largest cardrooms (Tier V) would be required to establish a dedicated surveillance room, dedicated surveillance staff, and adhere to specified video equipment and operating parameters.

This proposed regulation is intended to protect the integrity of gambling operations by providing a deterrent against illegal activity, including underage gambling.¹⁰ Surveillance video recordings are also an excellent tool when investigating alleged illegal activities.

3. The proposed action will also require licensees to establish and implement the applicable standards specified in Sections 12395 and 12396 by a date certain (approximately six months after the effective date of those 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.

In general, this proposed action has been drafted to establish uniform procedures and standards. These proposed regulations strive to accommodate industry concerns, while simultaneously allowing the Commission and the Bureau to achieve their oversight responsibilities under the Act. Perhaps more importantly, the proposed action is intended to assist cardrooms in safeguarding their assets, protecting patrons and their property, and maintaining the integrity of games and gaming. These regulations establish realistic baselines for cardroom operation, by requiring that licensees establish and implement written policies and procedures that meet or exceed the prescribed MICS, as they relate to the established size category of the individual licensee. Establishing baseline standards helps to ensure consistency and uniformity.

⁹ Business and Professions Code, subdivisions (g) and (n) of section 19801, subdivision (b) of section 19826, subdivision (c) of section 19856.

¹⁰ Business and Professions Code, subdivisions (g), (h) and (m) of section 19801, subdivisions (c) and (d) of section 19826, section 19921, section 19941 and subdivision (b) of section 19984.

UNDERLYING DATA:

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

BUSINESS IMPACT:

The Commission has made an initial determination that the proposed regulatory action may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, if those affected businesses do not already have internal control standards in place which satisfy the minimum standards proposed by these regulations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

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

CONSIDERATION OF ALTERNATIVES:

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

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

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