

CALIFORNIA GAMBLING CONTROL COMMISSION
FINAL STATEMENT OF REASONS
CGCC-GCA-2022-04-R

HEARING DATE: *(None Scheduled or Requested)*

SUBJECT MATTER OF PROPOSED REGULATIONS:

Incident Reporting

SECTIONS AFFECTED:

California Code of Regulations, Title 4, Division 18: Section 12282, 12395, and 12396

UPDATED INFORMATION:

The Initial Statement of Reasons (ISOR), as published on September 16, 2022, is included in the file and is hereby incorporated by reference as if fully set forth herein. The information contained therein is updated as follows:

PROPOSED ACTION:

CHAPTER 3. CONDITIONS OF OPERATION FOR TPPPS BUSINESSES

ARTICLE 4. SECURITY AND USE OF PLAYER’S BANKS

Adopt Section 12282. Incident Reports.

Section 12282 provides incident reporting requirements for third-party providers of proposition player services (TPPPS) business licensees. The reporting of incident reports by TPPPS business licensees utilizes the same form as cardroom business licensees, the Incident Report Form. This section contains references to paragraph (3) of subsection (a) of Section 12395. Consistent with modifications to subsection (a) of Section 12395, these references are modified to reference paragraph (4) of subsection (a) of Section 12395. This is a non-substantive change.

Non-substantive changes were made to renumber this section. The unreferenced section is modified to be subsection (a), and subsections (a) through (c) are renumbered to paragraphs (1) through (3), respectively.

Subsection (b), renumbered to paragraph (2), provides that a TPPPS business licensee must submit an incident report when any of its employees or owners have a local city, county, or city and county license, permit, or authorization to work in a gambling establishment approved with conditions, denied, suspended, or revoked. The original proposed text provided references to Business and Professions Code sections 19857, subdivision (a) or (b), or 19912. The proposed action has been modified to remove the reference to Business and Professions Code section 19912 and replace it with a reference to any subdivision of Business and Professions Code section 19859. Because the portion of Section 19912 that is relevant to the required incident reporting provisions (subdivision (b) of Section 19912) is itself a reference to Business and

Professions Code section 19859, it was necessary to modify the provision in order to provide the most clear statutory references.

CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS

ARTICLE 3. MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR CARDROOM BUSINESS LICENSEES

Amend Section 12395. Security.

Subsection (a) provides the minimum security standards that must be included in the gambling enterprise's policies and procedures. In addition to the modifications described below, grammatical, non-substantive modifications were made to this section.

- Paragraph (1) provides that access to restricted areas of the gambling establishment, including cages, count rooms, and security offices is limited to authorized personnel. The proposed action included language clarifying that the requirements of paragraph (1) apply unless otherwise allowed by statute or regulation. The proposed action is modified to remove this provision. The provisions within paragraph (1) do not conflict with provisions in statute or regulation and so the clarifying provision was unnecessary.
- Subparagraph (A), renumbered to paragraph (1), provides access limitations for non-public areas of the gambling establishment. Access to these areas is generally limited to authorized cardroom employees (cardroom category licensees and holders of a local work permit) or employees of a registered manufacturer or distributor only in the performance of their duties. As proposed, the areas covered are those with access to currency or unsecured gambling equipment, other than gaming tables. This provision is modified to expand the exclusion of gaming tables from gambling equipment to instead include any gambling equipment that is not subject to tampering or related to game outcomes. While the necessity to limit access to certain gambling equipment remains, this modification acknowledges that this necessity does not expand to all gambling equipment and includes more than gaming tables. Additionally, this paragraph is modified to incorporate the language in originally proposed subparagraph (C). This language is necessary for the reasons stated in the ISOR and its inclusion in this paragraph does not represent any substantial change from the originally proposed action. Finally, this paragraph is amended to replace the term "under camera" with "under continuous recorded video surveillance." This is a non-substantive change without regulatory effect; however, the use of this language is consistent with the Commission's other regulatory language, such as the requirements in Section 12387, and therefore improves the clarity of this provision.
- Subparagraph (B), renumbered to paragraph (2), provides access limitations for the media storage for the surveillance system. This paragraph is modified to incorporate the language in originally proposed subparagraph (C). This language is necessary for the reasons stated in the ISOR and its inclusion in this paragraph does not represent any substantial change from the originally proposed action. Additionally, as additional explanation, the use of the term "or reviewed is included in the proposal so that the requirement to either observe or review via the gambling establishment's video surveillance system consistent with Section 12396, which does not require Tier I through

III cardrooms to have a security employee present at all times monitoring the gambling establishment's video surveillance system.

- Subparagraph (C) provided clarity that subparagraphs (A) and (B) of paragraph (1) do not interfere with the third-party proposition contract regulations. As part of the modifications to this proposed action this provision is repealed; however, the specific language of this subparagraph has been added to new paragraphs (1) and (2), renumbered from subparagraphs (A) and (B).
- Existing paragraph (2) is renumbered to paragraph (3) but is not otherwise modified. This is a non-substantive change.
- New paragraph (4) provides that cardroom business licensees must file an incident report with the Criminal Intelligence Unit of the Bureau of Gambling Control (Bureau) within five business days of specific events occurring. This paragraph represents a reorganization of former paragraph (3) to remove multiple references to the requirements for submitting an Incident Report Form and other duplicative language such as repetition of the terms “incident” and “violation.” The description and necessity of these provisions are as provided in the ISOR except for the following changes:
 - This provision includes the form “Incident Report Form” originally provided for in paragraph (3) of this proposed action. The description and necessity of this form is as provided in the ISOR except for the following changes:
 1. The instructions for the Incident Report Form have been modified to reflect the changes in references discussed as part of the overview of this paragraph (4), below, and for the renumbering of Section 12282, discussed above.
 2. The instructions for the Incident Report Form have been modified to remove the reference to paragraph (5), as that paragraph has been removed. See discussion of paragraph (5), below, for more information.
 3. The header to the instructions regarding which sections need to be completed has been modified to more directly provide the required instructions. This is a non-substantive change.
 4. An additional change has been made to add “the” between “complete” and “first” on the second bullet of the form’s instructions. This is a non-substantive change that corrects a typographical error that could have caused confusion on what information is required to be submitted.
 5. The specific requirement in the third bullet referring to Section 12395(a)(4)(C)1. has been removed. The bullet was unnecessary because it provided no additional information compared to the header. This is a non-substantive change.
 6. An additional change was made to add “lines of” between “two” and “section 5” on the fourth (now third) bullet of the form’s instructions. This is a non-substantive change that corrects a typographical error that could have caused confusion on what information is required to be submitted.

7. The reference to “Business Number” in Section 2 has been amended to “Business Telephone Number.” This is a non-substantive change for clarity. Additionally, the requirement to provide a “Licensing Number” is modified to “License Number.” This is a non-substantive change for clarity.
8. The reference to “Business Number” in Section 3 has been amended to “Business Telephone Number.” This is a non-substantive change for clarity. Additionally, the requirement to provide “Date Competing Form” has been removed. This is a non-substantive change to correct an inadvertent copy error, as there is no expectation that the alternative preferred contact will complete the Incident Report Form.. Finally, the requirement to provide a “Licensing Number” is modified to “License Number.” This is a non-substantive change for clarity.
9. The reference to “Type of Incident” in Section 4 has been amended to include “Theft” as an example. This is a non-substantive change to clarify the type of information to be provided in this section.
10. In Section 5, the additional instructions have been removed. These instructions were inconstant and duplicative with other instructions for completing this form, and were removed to improve clarity. This is a non-substantive change. Additionally, the reference to “Business Number” has been amended to “Business Telephone Number,” and, the reference to “License Plate” has been amended to “License Plate Number.” These are non-substantive changes for clarity.
11. In Section 6, the question requiring an employee’s work permit or license number has been amended to include the reference to “number” after work permit, cardroom employee license, and finding of suitability. This is a non-substantive change. Additionally, the “if applicable” notation following the issuing agency has been removed, as all approvals are issued from an agency, either the Commission or a local agency. This is a non-substantive change. Finally, a non-substantive grammatical change has been made.
12. A new Section 8 is added to the form to allow the cardroom business licensee to voluntarily indicate the submittal of any additional documentation that may exist in connection with the reasonably suspected violation or incident. This section is necessary to allow a cardroom business licensee a clear method of indicating to the Bureau that additional documentation has been included with the Incident Report Form.
13. Existing Section 8 is renumbered to Section 9. This is a non-substantive change.
14. As further explanation, the Incident Report Form requires the person completing the application to sign, under penalty of perjury, a declaration that the information contained in the form is true, accurate, and complete. The controlled gambling industry is one that requires the highest level of accountability and suitability of its applicants and licensees. For this reason, the Commission requires comprehensive measures [as provided in Business and Professions Code section 19801, subdivision (g)] to ensure

that persons providing information to the Bureau or Commission are providing it honestly.

- Subparagraph (A) provides the reasonably suspected violations for which an Incident Report Form is required. The inclusion of “or any successor provision” has been removed from clauses within this subparagraph, where relevant. This is a non-substantive change.
 1. Clause 1 provides the requirement formerly found in subparagraph (A) of former paragraph (3) and is moved here with no substantial modifications. This provision has additionally been modified with non-substantive, grammatical changes.
 2. Clause 2 provides the requirement formerly found in subparagraph (B) of former paragraph (3) and is moved here with no substantial modifications.
 3. Clause 3 provides the requirement formerly found in subparagraph (C) of former paragraph (3). This provision has been modified to more directly reference the requirements of Section 11012 of the Health and Safety Code and match the formatting of the Penal Code violations referenced in Clause 4. This is necessary to more clearly reference the Health and Safety Code section and avoid any confusion through inconsistent language. Additionally, this provision has additionally been modified with non-substantive, grammatical changes.
 4. Clause 4 provides the requirement formerly found in subparagraph (L) of former paragraph (3) and is moved here with no substantial modifications. This provision has additionally been modified with non-substantive changes for grammatical and organizational purposes.
- Subparagraph (B) provides the incidents for which an Incident Report Form is required. The inclusion of “or any successor provision” has been removed from clauses within this subparagraph, where relevant. This is a non-substantive change.
 1. Clause 1 provides the requirement formerly found in subparagraph (D) of former paragraph (3). This provision has been modified to more directly match the language of Penal Code section 487 by using the term “theft.” This is necessary to more clearly reference the Penal Code section and avoid any confusion through inconsistent language. Additionally, this clause has been modified to specify that an Incident Report Form is required for a theft valued at any dollar amount if the theft is reasonably suspected to have been committed by a cardroom category licensee, local work permittee, or TPPPS category licensee. This is a non-substantive change, as former clause 7 previously contained this exception to clause 1.
 2. Clause 2 provides the requirement formerly found in subparagraph (E) of former paragraph (3) and is moved here with no substantial modifications.
 3. Clause 3 provides the requirement formerly found in subparagraph (F) of former paragraph (3) and is moved here with no substantial modifications.

4. Clause 4 provides the requirement formerly found in subparagraph (G) of former paragraph (3) and is moved here with no substantial modifications. Additionally, this clause has been modified to specify that an Incident Report Form is required for a theft of chips valued at any dollar amount if the theft is reasonably suspected to have been committed by a cardroom category licensee, local work permittee, or TPPPS category licensee. This is a non-substantive change, as former clause 7 previously contained this exception to clause 4.
 5. Clause 5 provides the requirement formerly found in subparagraph (H) of former paragraph (3) and is moved here with no substantial modifications. Additionally, this clause has been modified to specify that an Incident Report Form is required for discovery of counterfeit currency and/or chips valued at any dollar amount if the theft is reasonably suspected to have been committed by a cardroom category licensee, local work permittee, or TPPPS category licensee. This is a non-substantive change, as former clause 7 previously contained this exception to clause 5.
 6. Clause 6 provides the requirement formerly found in subparagraph (I) of former paragraph (3) and is moved here with no substantial modifications.
 7. Clause 7 is removed. This clause would have required that for incidents of theft or counterfeiting that are reasonable suspected to have been committed by a cardroom category licensee, local work permittee, or TPPPS category licensee, the minimum dollar amounts for incidents identified in clauses 1, 4, and 5 do not apply. As described above, clauses 1, 4, and 5 are amended to directly include this requirement. These are non-substantive changes.
 8. Clause 8 is renumbered to clause 7 to conform to deletion of the former clause 7, described above. This is a non-substantive change. This provision provides the requirement formerly found in subparagraph (K) of former paragraph (3) and is moved here with no substantial modifications.
- Subparagraph (C) provides additional incidents for which an Incident Report Form is required.
1. Clause 1 provides the requirement formerly found in former paragraph (6) and is moved here with no substantial modifications. This provision has additionally been modified with non-substantive, grammatical changes.
 2. Clause 2 provides the requirement formerly found in former paragraph (7) and is moved here with no substantial modifications.
 3. Clause 3 provides the requirement formerly found in former paragraph (8). Consistent with the modification previously discussed for subsection (b) of Section 12282, this provision has been modified to remove the reference to Business and Professions Code section 19912 and replace it with a reference to any subdivision of Business and Professions Code section 19859. Because the portion of Section 19912 that is relevant to the required incident reporting provisions [subdivision (b) of Section 19912] is itself a reference to Business and Professions Code section 19859, it

was necessary to modify the provision in order to provide the most clear statutory references. This provision has additionally been modified with non-substantive, grammatical changes.

- Subparagraph (D) provides that for the requirements in subparagraphs (A) and (B), the requirement to provide an Incident Report Form is limited to suspected violations or incidents that occurred within specified locations. This provision has been moved from within former paragraph (3) and is moved here with no substantial modifications.
- As described in the overview of new paragraph (4), the provisions of paragraph (3) have been moved and renumbered. As such, existing paragraph (3) is repealed.
- Existing paragraph (5), formerly renumbered to paragraph (4), is renumbered to paragraph (5) but is not otherwise modified. This is a non-substantive change.
- Paragraph (5) formerly provided that when a gambling enterprise submits a Title 31 Suspicious Activity Report with the Financial Crimes Enforcement Network (FinCEN), the licensee must submit an Incident Report Form to the Bureau and provide a copy of the report along with any transactions or documents upon which the report was based. As part of the rulemaking process, the Bureau indicated that this information is no longer necessary to be provided by the cardroom business licensee. Therefore, as this provision is no longer necessary, it is repealed.
- As described in the overview of new paragraph (4), the provisions of paragraphs (6), (7), and (8) have been moved and renumbered. As such, existing paragraphs (6), (7), and (8) are repealed.

Amend Section 12396. Surveillance.

Section 12396 provides the minimum requirements for the policies and procedures cardroom business licensees must follow in their standards for surveillance. Subparagraph (A) of paragraph (7) of subsection (a) contains a reference to paragraph (3) of subsection (a) of Section 12395. Consistent with modifications to subsection (a) of Section 12395, this reference is modified to instead reference paragraph (4) of subsection (a) of Section 12395. This is a non-substantive, conforming change.

UNDERLYING DATA:

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

REQUIRED DETERMINATIONS:

As explained above, the modification of this proposed rulemaking action included substantial modifications to the proposed action. As such, the determinations have been updated for the following reasons:

- The original methodology included a 3 percent adjustment due to an assumption that additional gambling enterprises would open following the end of COVID pandemic restrictions. Since the publication of the ISOR, there has been a reduction, not an increase, in the number of operating gambling enterprises. As such, the 3 percent adjustment has been removed.
- When the ISOR was originally published, there were 62 active cardrooms. At the time the final statement of reasons was created, this number had decreased to 58.
- The original methodology assumed the number of incident reports reduced due to the amendment of the counterfeit currency requirement was 100 percent. This has been revised to an 85 percent reduction.
- The requirement to submit incident reports to provide copies Title 31 Suspicious Activity Reports, required in paragraph (5) of subsection (a) of Section 12395, was removed as part of the modifications.

LOCAL MANDATE:

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

BUSINESS IMPACT:

The Commission has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the following facts or evidence/documents/testimony:

It is estimated that there will be an industry wide savings for cardrooms and an industry wide cost for TPPPS. Specifically, it is anticipated that there will be an annual savings of \$471,306 for cardrooms and a cost of \$86,279 for TPPPS for a net total industry-wide savings of \$385,027 per year. These costs and savings will not inhibit a California business from competing with business in other states as the gambling industry does not cross state lines and the amounts involved are not significant enough to effect industry competitiveness.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

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

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the definition of a small business as defined by the federal Small Business Administration was utilized.

The basis for this determination is that this proposed action amends an existing reporting requirement for cardroom business licenses, which is currently conducted by employees and managers who have other work tasks that are of a higher priority. The Commission is estimating an annual savings of \$8,126 for an average cardroom. Additionally, the new reporting

requirement of TPPPS business licensees will likely not be sufficient to require the hiring of additional staff. The Commission estimates an annual cost of \$4,541 for an average TPPPS.

HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by aiding and preserving the integrity of controlled gambling.

WORKER SAFETY:

It has been determined that the proposed action will not affect worker safety because it does not pertain to working conditions or worker safety issues.

STATE'S ENVIRONMENT:

It has been determined that the proposed action will not affect the state's environment because it does not pertain to environmental issues.

BENEFITS OF PROPOSED REGULATION:

These proposed regulations have the benefit of providing specific procedures that must be followed when filing an incident report. These revised procedures will provide employees of a cardroom business licensee with an understanding of what types of violations must be reported without requiring them to make legal judgements that are best left to law enforcement officials. By ensuring the Bureau is able to receive the required information, the Bureau's role in monitoring compliance and protecting the public welfare can be more effective.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulations would be more effective in carrying out the purpose for which the action is proposed. No reasonable alternative would be as effective as and less burdensome to affected private persons than the proposed action, nor would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected: No reasonable alternative has been developed or otherwise identified and brought to the attention of the Commission.

COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following public comments/objections/recommendations were made regarding the proposed action during the public comment periods:

I. 45-DAY WRITTEN COMMENT PERIOD

The California Gambling Control Commission (Commission) received the following written comments/objections/recommendations regarding the text of the proposed action during the 45-day written comment period that commenced September 16, 2022 and ended October 31, 2022:

A. ADOPT SECTION 12282. INCIDENT REPORTS.

This section provides incident reporting requirements for TPPPS business licensees. The reporting of incident reports by TPPPS business licensees utilizes the same form as cardroom business licensees, the Incident Report Form. When required, the filing of the Incident Report Form must be completed within five business days of the qualifying event. This timeline is consistent with the timeline requirement for cardroom business licensees.

1. Subsection (a) [pg. 1, line 16] provides that a TPPPS business licensee must submit an incident report after obtaining evidence that a reasonably suspected incident, as specified, occurred within any space owned, managed, controlled, or rented by the TPPPS business licensee and involved a TPPPS category licensee, non-licensed employee, or a subcontractor or independent contractor hired by the TPPPS business licensee.

a. **Alan Titus, representing Artichoke Joe's**: Mr. Titus expressed concern that the requirements for TPPPS business licensee reporting on a may be hampered by two limitations on reporting provided in regulation.

- The incident occurred within a space under control by the TPPPS business licensee; and,
- The incident involved a TPPPS licensee, employee, etc.

Mr. Titus provided two example situations in which these limitations are inconsistent with the stated goals of the regulation:

- TPPPS game chips are stolen out of a TPPPS storage area by someone other than a TPPPS employee; and,
- A TPPPS employee pockets chips at a table, which is not a space under control of the TPPPS business licensee.

Response: This comment was rejected. The requirement to submit an incident report is divided between the cardroom business licensee and a TPPPS business licensee, with limitations put in place to limit duplicative submittals by both parties on the same incident. The current areas of influence for which a cardroom business licensee is required to submit an incident report are largely maintained in the proposed regulations, with TPPPS business licensee requirements being added in some areas. As such, in the example situations provided in the comment, it would be the responsibility of the cardroom business licensee to submit an incident report as both examples detail incidents that occurred within the areas controlled by the cardroom business licensee. That being said, the regulation does not prohibit a TPPPS business licensee from submitting an incident report.

2. Subsection (c) [pg. 1, line 31] provides that a TPPPS business licensee must submit an incident report if any of its associated TPPPS endorsee licensees or TPPPS employee type licensees are arrested.

- a. **Yolanda Morrow, representing the Bureau:** Ms. Morrow expressed concern that, as currently drafted, this provision does not address any circumstances surrounding an arrest of a TPPPS endorsee licensee or employee type licensee. Ms. Morrow recommends amending the provision to clarify whether an incident report should be filed within five days of receiving an arrest report from law enforcement or obtaining information that an arrest occurred.

Response: This comment was rejected. The requirement to submit an Incident Report when a TPPPS business licensee determines that a TPPPS endorsee licensee or TPPPS employee licensee type was arrested is intentionally broad. The specific way a TPPPS business licensee becomes aware of an arrest is not important, just that such information has been acquired. The determination could be made, as the comment suggests, by receiving an arrest report from law enforcement or by obtaining other information that informs the TPPPS business licensee an arrest occurred.

B. AMEND SECTION 12395. SECURITY.

Subsection (a) of this section provides the minimum security standards that must be included in a gambling enterprise's policies and procedures.

1. Paragraph (1) of subsection (a) [pg. 2, line 11] specifies that its subparagraphs apply only if they are not otherwise allowed by statute or regulation.

- a. **Alan Titus, representing Artichoke Joe's:** Mr. Titus questioned the necessity of adding the proposed language, "unless otherwise allowed by statute or regulation."

Response: This comment was accepted, in part. The Commission proposes that paragraph (1) be repealed and conforming changes are made accordingly. Specifically, subparagraphs (A) and (B) are renumbered to paragraphs (1) and (2), with subsequent paragraphs throughout the section renumbered accordingly. Additionally, paragraph (C) is repealed, with the same text now provided in new paragraphs (1) and (2).

2. Subparagraph (A) of paragraph (1) of subsection (a) [pg. 2, line 12] provides rules related to access to non-public areas of the gambling establishment, specifically areas with access to currency or unsecured gambling equipment other than gaming tables.

- a. **David M. Fried, representing the California Grand Casino and Oaks Card Club, and Alan Titus, representing Artichoke Joe's:** Mr. Fried and Mr. Titus expressed a concern that making the subparagraph's requirements applicable to non-public areas of the gambling establishment with access to "unsecured gambling equipment other than gaming tables" is overbroad because it implies that gambling equipment that is not subject to tampering or related to game outcomes, such as table felts, plastic chip trays, and various printed buttons used on the table (lammers) should be secured. Mr. Fried suggested the following amendment:

(A) Access to non-public areas of the gambling establishment which have access to the gambling establishment's currency or unsecured gambling equipment other than gaming tables, [table felts, chip trays, and lammers](#), including but not limited to cages, count rooms, vaults, and security offices, must be limited to authorized cardroom category licensees, holders of a local work permit, or employees of a registered manufacturer or distributor only in the performance of their duties, or other person(s) if escorted and observed at all times by an authorized cardroom category licensee or holder of a local work permit in person or observed through a continuous live surveillance system. For the purposes of this paragraph, unsecured gambling equipment means any gambling equipment in a non-public area that is not stored in a locked receptacle, drawer, or compartment which is under camera.

Response: These comments were accepted, in part. The Commission proposes the following amendment:

(A) Access to non-public areas of the gambling establishment which have access to the gambling establishment's currency or unsecured gambling equipment ~~other than gaming tables~~, including but not limited to cages, count rooms, vaults, and security offices, must be limited to authorized cardroom category licensees, holders of a local work permit, or employees of a registered manufacturer or distributor only in the performance of their duties, or other person(s) if escorted and observed at all times by an authorized cardroom category licensee or holder of a local work permit in person or observed through a continuous live surveillance system. For the purposes of this paragraph, unsecured gambling equipment means any gambling equipment in a non-public area that is not stored in a locked receptacle, drawer, or compartment which is under camera, [and does not include any gambling equipment that is not subject to tampering or related to game outcomes, such as gaming tables, table felts, chip trays, and lammers](#).

3. Subparagraph (B) of paragraph (1) of subsection (a) [pg. 2, line 23] provides rules related to access to media storage spaces for surveillance systems.

a. **David M. Fried, representing the California Grand Casino and Oaks Card Club:** Mr. Fried suggested smaller cardrooms have fewer assets on site, and therefore there is less risk of an attack on the surveillance system. Mr. Fried also suggested smaller cardrooms may not actually have a server room and may instead locate their services in another storage room or office. Mr. Fried also expressed concern that if a person is hired to maintain the surveillance system, the cardroom business licensee would not know if they are doing something wrong if they are just in the server room. Mr. Fried recommended the following amendments:

(B) [For Tier III-V cardrooms, a](#)Access to any room used for the media storage for the surveillance system, pursuant to Section 12396, must be limited to authorized cardroom category licensees and holders of a local work permit only in the performance of their duties, [persons responsible for the maintenance of the surveillance system if they do not have access to any other non public areas where](#)

an escort would otherwise be required under subsection (A), or other person(s) either if escorted and observed at all times by an authorized cardroom category licensee or holder of a local work permit in person, or observed or reviewed by a cardroom category licensee or holder of a local work permit using a continuous surveillance system.

Response: This comment was rejected. The proposed provision does not require that a room used for media storage be dedicated for that purpose, as such, should the media be stored in a space used for another reason, such as a storage room or office, employees of the cardroom business licensee will still be allowed access when performing their duties. Additionally, while access to the room where the media is stored is restricted, the provision allows for the security system to be reviewed in lieu of being actively observed. Therefore, the provision should not be any more burdensome on smaller cardrooms due to space issues or onsite security presence.

- b. **Alan Titus, representing Artichoke Joe’s**: Mr. Titus expressed concern that some digital surveillance systems are extremely technical and that someone observing the programmer would not know if the person is programming malicious software into the system. Mr. Titus suggests that if the designated room only contains the digital system, the regulation should only require outside workers to be escorted or watched when they are coming or going from the room.

Response: This comment was rejected. The provision already allows for other person(s) to either be escorted and observed at all times, or observed or reviewed by a continuous surveillance system. While a slightly higher bar than “escorted or watched when they are coming or going from the room,” this provision provides the protection of observing generally the actions of an unauthorized, non-licensed individual as they perform tasks within non-public areas.

4. Paragraph (3) of subsection (a) [pg. 3, line 1] provides that cardroom business licensees must file an incident report within five business days of specific events occurring, using the Incident Report Form, CGCC-CH7-08.

- a. **Alan Titus, representing Artichoke Joe’s**: Mr. Titus expressed concern on the new standard for when reporting is required. Mr. Titus noted that the current regulation requires submittal of an incident report either when the police are contacted in connection with a reasonably suspected violation of specific laws and regulations, or when the police are not called but the owner or key employee obtains knowledge of “any reasonably suspected violation.” Mr. Titus expressed the following concerns:

- The new provision requiring filing upon “obtaining evidence that a reasonably suspected incident occurred” introduces new, unclear, elements.
- The standard of “obtaining evidence” implies an investigation, but the regulation does not explicitly require an investigation.
- The term “incident” is very broad and not limited to the identified incidents.

- The phrase “reasonably suspected” is incorrectly used to modify “incident” when it should modify “violation.”
- The regulation does not make it clear whose knowledge of the incident triggers the reporting.
- The provided list of issues requiring reporting are actually a mix of incidents and violations, and the regulations should be modified to reflect that.

Mr. Titus suggested an alternative paragraph:

(3) Cardroom business licensees must submit a completed “Incident Report Form” CGCC-CH7-08 (New 8/22), which is attached in Appendix A to this Chapter within five days of the following incidents:

(A) When any owner category licensee or key employee obtains information that leads them to reasonably suspect that a violation of any of the following has occurred:

(1) The Act, this division, Division 3 of Title 11 of the CCR, any statute set forth in sections 330 through 337z of the Penal Code.

(2) Section 1916-3(b) of the Civil Code (loan-sharking), or any successor provision.

(3) Penal Code sections: [to be filled in]

(4) Health and Safety Code section 11012 (distributing a controlled substance)

(B) Any incident involving a property loss valued at an amount consistent with the dollar amount provided in subdivision (a) of Penal Code section 487, or any successor provision;

(C) Any incident involving the death of a person;

(D) Any incident involving the on-site presence of law enforcement in response to a physical injury of a person;

(E) Any theft of \$500 or more in chips;

(F) Any discovery of \$500 or more in counterfeit currency and/or chips in a 24 hour period;

(G) Any discovery of \$500 or more in counterfeit currency and/or chips cumulatively linked to a specific individual or group of individuals over a two week period;

(H) Any incident identified in subparagraphs (B), (E) or (F), regardless of the dollar amount, if reasonably suspected of a cardroom category licensee, local work permittee, or TPPPS category licensee;

(I) Any incident at the gambling establishment which results in the immediate evacuation of the gambling establishment, such as receipt of a bomb threat.

Response: This comment was accepted, in part. While the comment suggested that the standard of “obtains evidence” should be replaced with “obtains information,” this recommendation has not been incorporated. Specifically, the standard of obtaining evidence is a higher standard than obtaining information. The comment includes an example of a report being filed as a result of a customer alleging an incident. Obtaining information regarding a possible incident would not necessitate an incident

report; however, if after following up on such information evidence were to be found, then an incident report would be required. This higher standard ensures that only corroborated incidents are reported to the Bureau and that the cardroom business licensee is not required to report every unsubstantiated accusation that might be levied.

The Commission proposes the following, which would replace paragraphs (3), (6), (7), and (8).

(4) Cardroom business licensees must submit an “Incident Report Form,” CGCC-CH7-08 (New 08/22), which is attached in Appendix A to this Chapter, within five business days of the following incidents:

(A) When the cardroom business licensee obtains evidence that a reasonably suspected violation of any of the following occurred:

1. The Act, this division, Division 3 of Title 11 of the California Code of Regulations, any statute set forth in sections 330 through 337z of the Penal Code, or any misdemeanor involving a violation of an ordinance of the applicable city, county, or city and county that pertains to gambling;
2. Section 1916-3(b) of the Civil Code (loan-sharking), or any successor provision;
3. Section 11012 of the Health and Safety Code (distributing a controlled substance), as defined in Section 11007 of the Health and Safety Code, or any successor provision;
4. Penal Code sections 148.10 (resisting a peace officer resulting in death or serious bodily injury to peace officer), 186.10 (money laundering), 211 (robbery), 220 (assault with intent to commit mayhem, rape, sodomy, oral copulation or other specified offense), 236.1 (human trafficking), 243.4 (sexual battery), 245 (assault with deadly weapon or force likely to produce great bodily injury), 261 (rape), 266h (pimping and pimping a minor), 266i (pandering and pandering a minor), 286 (criminal sodomy), 287 (criminal oral copulation), 288 (lewd and lascivious acts on a child), 289 (forcible acts of sexual penetration), 347 (poisoning food or drink), 422 (criminal threats), 470 (forgery, signatures or seals), 470b (display or possession of forged driver’s license or identification card), 476 (forgery, fictitious or altered bills, notes or checks), 518 (extortion), 641.3 (commercial bribery), 653.23 (supervising or otherwise aiding a prostitute), 647(b) (prostitution), or any successor provisions.

(B) Any incident involving:

1. A property loss valued at an amount consistent with the dollar amount provided in subdivision (a) of Penal Code section 487, or any successor provision;
2. The death of a person;
3. The on-site presence of law enforcement in response to a physical injury of a person;

4. The theft of \$500 or more in chips;
 5. The discovery of \$500 or more in counterfeit currency and/or chips in a 24-hour period;
 6. The discovery of \$500 or more in counterfeit currency and/or chips cumulatively linked to a specific individual or group of individuals over a two-week period;
 7. Clauses 1, 4, or 5, regardless of the dollar amounts, if reasonably suspected of a cardroom category licensee, local work permittee, or TPPPS category licensee; or,
 8. The immediate evacuation of the gambling establishment, such as Penal Code Section 148.1 (false bomb threat), or any successor provision.
- (C) Any incident involving:
1. The forfeiture of any unredeemed jackpots or prizes won pursuant to subparagraph (C) of paragraph (4) of subsection (a) of Section 12463 or paragraph (5) of subsection (a) of Section 12464;
 2. The arrest of any associated cardroom endorsee licensee, cardroom employee type licensee, or holder of a local work permit; or,
 3. The approval with conditions, denial, suspension, or revocation of a license, permit, or authorization to work in a gambling establishment by any city, county, or city and county regarding any associated cardroom endorsee licensee, cardroom employee type licensee, or holder of a local work permit. An incident report does not need to be filed for a denial unless that denial is for a reason that is substantially similar to either subdivision (a) or (b) of Business and Professions Code section 19857 or any subdivision of Business and Professions Code section 19859.
- (D) For subparagraphs (A) and (B), the cardroom business licensee need only submit an "Incident Report Form," CGCC-CH7-08, if the suspected violation or incident occurred within the gambling establishment or in any adjacent space owned, managed, controlled, rented, or utilized by the cardroom business licensee for or in connection with the gambling operation. This includes, but is not limited to parking lots, restrooms, restaurants, or hotels. For purposes of this paragraph, the cardroom business licensee is not required to submit an incident report for an incident that occurs in a part of the gambling establishment or adjacent space owned, managed, or rented by the cardroom business licensee if that space is solely utilized by the TPPPS business licensee under the terms of the TPPPS contract.

[Note: Paragraph (3) has been renumbered to paragraph 4 in conjunction with the response to comment I.B.1.a. Clause 3 of subparagraph (C), which has been moved from paragraph (3), has been amended in conjunction with the response to comment I.A.11.a.]

Additionally, the Commission proposes amendments to references in Sections 12282 and 12396, and the Incident Report Form, CGCC-CH7-08, to conform to this renumbering.

- b. **Yolanda Morrow, representing the Bureau**: Ms. Morrow suggested that the form contain a new section, titled Optional Items and consisting of the following:

Note: Please list any additional documentation in connection with the incident. Additional information is voluntary and may include, but is not limited to, security reports and/or a supplemental narrative. Failure to provide any supporting documentation may delay the investigation of your incident.

Response: This comment was accepted, in part. The Commission proposes the following new section:

SECTION 8: ADDITIONAL RELATED DOCUMENTATION	
<u>PLEASE LIST ANY ADDITIONAL DOCUMENTATION THAT MAY EXIST IN CONNECTION WITH THE REASONABLY SUSPECTED VIOLATION OR INCIDENT. INCLUDING ADDITIONAL INFORMATION WHEN SUBMITTING THE INCIDENT REPORT IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE ANY SUPPORTING DOCUMENTATION MAY DELAY THE INVESTIGATION OF THE INCIDENT.</u>	
<u>MARK THE BOX NEXT TO EACH ITEM TO INDICATE THAT IT EXISTS.</u>	
<input type="checkbox"/>	<u>INTERNAL SECURITY REPORT</u>
<input type="checkbox"/>	<u>SECURITY FOOTAGE</u>
<input type="checkbox"/>	<u>OTHER (PLEASE SPECIFY):</u>

5. Subparagraph (D) of paragraph (3) of subsection (a) [pg. 4, line 1] provides that an incident report must be filed for any incident involving a property loss valued consistent with the amount provided in subdivision (a) of Penal Code section 487.
- a. **Alan Titus, representing Artichoke Joe's**: Mr. Titus expressed concern that implementing this provision might be hard, as it might be difficult to determine whether the value of a stolen item meets the \$950 threshold. Additionally, Mr. Titus suggested that the provision should provide a summary of Penal Code section 487(a) in order to promote compliance. Finally, Mr. Titus noted that this provision includes the crime of embezzlement but does not explicitly identify it.

Response: This comment was rejected. The provision does not require an absolute accounting of items. The true value of a stolen item need not be determined, as long as a reasonable evaluation can be made, for example, by an internet search with basic information the owner of the stolen item could provide.

Additionally, the reference to Penal Code section 487(a) is explicit and clear. The Commission is not proposing to clarify the provision nor are regulations necessary to make it effective, and as such no additional summary is appropriate.

6. Subparagraphs (G), (H), and (I) of paragraph (3) of subsection (a) [pg. 4, line 7] provide specific incidents for which an Incident Report form must be submitted. These subparagraphs cover incidents for theft of chips, discovery of counterfeit currency and/or chips in a 24-hour period, and the cumulative discovery of counterfeit currency and/or chips linked to a specific individual over a two-week period, all with a minimum limit of \$500.
 - a. **Yolanda Morrow, representing the Bureau**: Ms. Morrow suggested the minimum limit of \$500 be replaced in each of these subparagraphs with a reference to the dollar amount in subdivision (a) of Penal Code section 487.

Response: This comment was rejected. The Commission has provided a standard linked to Penal Code section 487(a) in Section 12395(a)(3)(D). In amending 12395(a)(3)(L) to remove Penal Code section 488 (petty theft), the Commission elected to leave these three incidents at a lower threshold than Penal Code section 487(a), currently \$950, because these issues are directly related to the operation and safety of controlled gambling.

7. Subparagraph (K) of paragraph (3) of subsection (a) [pg. 4, line 1] provides an incident report must be filed for any event that requires the immediate evacuation of the gambling establishment.
 - a. **Alan Titus, representing Artichoke Joe's**: Mr. Titus expressed concern that innocuous circumstances in the surrounding area that could require evacuation of a gambling establishment, and that this provision should be limited to incidents at the gambling establishment itself.

Response: This comment was rejected. The reason that the gambling establishment was evacuated is not relevant to the need to promptly inform the Bureau. Whatever the reason, evacuation as an event would be a sudden disruption of controlled gaming activities and associated security processes and, as stated in the ISOR, could necessitate the Bureau being involved in the process to ensure the re-establishment of security procedures and that the integrity of the controlled games has not been put into jeopardy.

8. Subparagraph (L) of paragraph (3) of subsection (a) [pg. 4, line 18] provides an incident report must be filed for any reasonably suspected violation of list of additional Penal Code sections.
 - a. **Alan Titus, representing Artichoke Joe's**: Mr. Titus expressed concern about the inclusion of following Penal Code sections:

- Sections 226h (pimping a minor), 266i (pandering a minor), and 288 (lewd and lascivious acts on a child) – Unnecessary because no one under 21 is allowed on the premises and therefore the chances of this occurring are extremely remote.

- Section 347 (poisoning food or drink) – Unnecessary because it is unlikely to occur, and if it does it is not likely to be suspected or known at the time of the incident.
- Section 422 (personal threats) – This type of non-violent incident requires a lot of interpretation (words, tone, demeanor, and gestures) and is not the type of crime staff should be responsible to identify.

Response: This comment was rejected. The likelihood of these specific incidents occurring is not a reason to exclude them from the regulation. The Commission has the responsibility to ensure that gambling operations are licensed, regulated, and operated in a manner to protect the public health, safety, and general welfare of the residents of the State. The indicated Penal Code sections directly relate to the public health, safety, and general welfare of the residents of the State, and as such, the Bureau must be made aware of when such incidents occur to ensure that proper investigations and necessary changes to security procedures are made to limit recurrence.

9. Paragraph (5) of subsection (a) [pg. 5, line 17] provides that when a gambling enterprise submits a Title 31 Suspicious Activity Report (SAR) to the Financial Crimes Enforcement Network (FinCEN), the cardroom business licensee must submit an Incident Report Form to the Bureau and provide a copy of the SAR. Upon request of the Bureau, the cardroom business licensee must also provide any transactions or documents upon which the SAR was based.
- a. **Yolanda Morrow, representing the Bureau:** Ms. Morrow suggested that the Bureau does not need cardroom business licensees submit this information as it would be duplicative of information already collected by the Bureau.

Response: This comment was accepted. The inclusion of this provision was at the Bureau's request during the informal development of this proposed action. As the Bureau now indicates its inclusion is not necessary, the Commission sees no reason to maintain it.

- b. **David M. Fried, representing the California Grand Casino and Oaks Card Club:** Mr. Fried expressed concerns about a cardroom business licensee being required to submit copies of SARs to the Bureau. Specifically, Mr. Fried expressed concern that:
- SARs are highly confidential and the Bureau may not have a way to have SARs transmitted in a secure fashion;
 - There needs to be clear explanation of the regulatory authority under the Gambling Control Act;
 - There needs to be an explanation about how this provision complies with FinCEN regulations; and,
 - There should be an option to require cardroom business licensees to notify the Bureau when a SAR has been filed and provide the document control number assigned by FinCEN.

Response: This comment was rejected. With the Bureau indicating that it is no longer necessary for cardroom business licensees to provide SARs or information related to SARs, the Commission proposes removal of the provision and these comments are no longer relevant.

c. **Alan Titus, representing Artichoke Joe’s**: Mr. Titus expressed concerns about a cardroom business licensee being required to submit copies of SARs to the Bureau. Specifically, Mr. Titus expressed concern that:

- The requirement is unnecessary as the Bureau already obtains from other sources copies of all SARs filed by cardrooms.
- It is possible that providing SARs to the Bureau would be a violation of the Bank Secrecy Act (BSA) -31 CFR 1021.320(e).
- The purpose for a cardroom providing a SAR to the Bureau provided in the ISOR is inconsistent with the allowed reasons to share SARs with regulatory agencies provided in the BSA.
- The regulatory language used to require a SAR is inconsistent with the language for other incident reports.
- Requiring an incident report for a SAR can be duplicative of other requirements to file an incident report.
- The requirement to submit a SAR would significantly increase the number of incident reports required to be submitted.

Mr. Titus recommended the following revision:

(5) Within five business days of filing a Title 31 Suspicious Activity Report with the Financial Crimes Enforcement Network (FinCEN), the cardroom business licensee must submit an “Incident Report Form,” CGCC-CH7-08, and provide any transactions and documents upon which the [SAR] was based. ~~a copy of the Title 31-2 Suspicious Activity Report to the Bureau.~~ ~~Upon request by the Bureau, the cardroom business licensee must provide any transactions and documents upon which the Title 31 Suspicious Activity Report was based.~~

Response: This comment was rejected. With the Bureau indicating that it is no longer necessary for cardroom business licensees to provide SARs or information related to SARs, the Commission proposes removal of the provision and these comments are no longer relevant.

10. Paragraph (6) of subsection (a) [pg. 5, line 23] provides that when a forfeiture of any unredeemed jackpot or prize is made consistent with the gambling establishment’s policies and procedures for either the Self-Restriction or Self-Exclusion Program, the gambling enterprise must provide notification to the Bureau in an incident report.

- a. **Alan Titus, representing Artichoke Joe’s**: Mr. Titus expressed concern that the references to Sections 12463 and 12464 are without context in paragraph (6) and suggests that the general nature of the cross-referenced regulations should be stated.

Response: This comment was rejected. The specific nature and requirements of Sections 12463 and 12464 are provided in those sections and restatement here is not necessary.

11. Paragraph (8) of subsection (a) [pg. 6, line 1] provides that a cardroom business licensee must submit an incident report within five business days of any of its associated cardroom endorsee licensees, cardroom employee types licensees, or holders of a local work permit having a local city, county, or city and county license, permit, or authorization to work in a gambling establishment approved with conditions, denied, suspended, or revoked. For a denial, a report need only be filed if the denial is pursuant to Business and Professions Code section 19912 or for a reason substantially similar to either subdivision (a) or (b) of Business and Professions Code section 19857.

- a. **Alan Titus, representing Artichoke Joe’s and David M. Fried, representing the California Grand Casino and Oaks Card Club**: Mr. Titus and Mr. Fried suggested that the provision should refer to Business and Professions Code sections 19857, subdivisions (a) and (b), and 19859, subdivisions (a) through (g). Mr. Titus additionally suggested the reference to Business and Professions Code section 19912 be removed because section 19912 precludes issuance of a work permit to any person disqualified from holding a state gambling license for the reasons specified in subdivisions (a) through (g) of section 19859.

Response: These comments were accepted, in part. In conjunction with the proposed response to comment I.B.4.a, the Commission proposes the following modifications:

~~3.(8) The cardroom business licensee must submit an “Incident Report Form,” CGCC-CH7-08, within five business days of any~~ The approval with conditions, denial, suspension, or revocation of a license, permit, or authorization to work in a gambling establishment by any city, county, or city and county regarding any associated cardroom endorsee licensee, cardroom employee type licensee, or holder of a local work permit. An incident report does not need to be filed for a denial unless that denial is ~~pursuant to Business and Profession Code section 19912~~ for a reason that is substantially similar to either subdivision (a) or (b) of Business and Professions Code section 19857 or any subdivision of Business and Professions Code section 19859.

An equivalent change is proposed to subdivision (b) of Section 12282, which contains the same final sentence referring to Business and Profession Code sections 19857 and 19912 beginning with “An incident report does not...”

II. 15-DAY WRITTEN COMMENT PERIOD

There were no comments, objections, or recommendations received during the 15-day written comment period that commenced February 14, 2023 and ended March 1, 2023.

III. COMMENT RECEIVED OUTSIDE THE PUBLIC COMMENT PERIODS

The Commission received the following written comments/objections/recommendations regarding the text of the proposed action outside of any public comment period:

- Fried, David M. Law Offices of David M. Fried. Incident Reporting Regulations: Feb. 3, 2023. February 6, 2023. Via email only.
- Henderson, Conner. Information Request – Proposed Incident Reports Regulations. April 20, 2023. Via email only.

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