

COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS
INFORMAL COMMENT PERIOD
MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING ESTABLISHMENTS
GAMBLING FLOOR OPERATIONS AND PLAY OF CONTROLLED GAMES.
CGCC-GCA-2011- -R

INFORMAL COMMENT PERIOD ENDING DECEMBER 17, 2010

The following written comments/objections/recommendations were made regarding the proposed action during the informal comment period that started on November 18, 2010 and ended on December 17, 2010:

1. Section 12360 contains definitions for the words and/or terms used throughout Chapter 7, of Division 18, of Title 4, of the California Code of regulations.
 - a. Mark Kelegian – Crystal Casino: The term “California Game” should be defined herein.
Response: This comment was accepted. The term is already defined in Section 12002(c) of Chapter 1, but there is no language at the beginning of Chapter 7 that incorporates that definition. As a result, the introductory sentence for Section 12360 was amended to incorporate the definitions in Section 12002. [The definitions in § 12002 are applicable to the entire division. Therefore, it is redundant and unnecessary to incorporate the § 12002 definitions here or to add a definition for CA games here.]
2. Section 12360(b) would define “house rules” as a set of written policies and procedures, established by a gambling enterprise, which set general parameters under which that gambling enterprise operates.
 - a. Alan Titus – Artichoke Joe’s: The definition is too broad, as it may include procedures for food or alcohol service. The definition should be limited to those rules that apply to the general play of games. As stated in the past, the definition should also allow for unwritten rules.
Response: The comment that the definition for house rules may be too broad was accepted and the proposed regulation amended to state: “House rules means a set of written policies and procedures, established by a gambling enterprise, which set general parameters under which that gambling enterprise operates *the play of controlled games*.”

The recommendation that the definition of house rules include *unwritten* rules was rejected. Rules can be *developed* in an unwritten way, such as through real world experiences. However, once they are accepted as a rule, they should be written down and made available to patrons and employees so that they can strive to abide by them. Otherwise, gambling establishments (cardrooms) could just make the rules up as they go to favor a specific situation. This could be perceived by patrons as an unfair way to conduct business. Further, nothing would prohibit cardrooms from developing a house rule that allows for discretion when unique circumstances develop.

3. Existing Section 12360(c) defines “licensee” to mean the same as is defined in Business and Professions Code section 19805(ac).
 - a. Alan Titus – Artichoke Joe’s: The referenced subdivision for section 19805 was renumbered from (ac) to (ad).

Response: This comment was accepted and the regulation amended as part of this action.

4. Section 12386(a)(6) would be amended to require that the *redemption* of chips only occur at the cage.
 - a. California Gaming Association: This change is bad customer service and disrupts the play of games. Some patrons simply exchange chips when they move to another table that requires different denominations. There may not be enough cage windows to accommodate chip denomination exchanges.

Chip runners receive the same type of training as cage employees. Both carry tracking sheets for large redemptions.

Response: These comments were rejected. Section 12386(a)(6) contains existing language that excludes the exchange of chips of equal total value from the cage requirement. Further, this regulation is necessary to ensure compliance with federal and state laws and regulations that relate to the reporting of large cash transactions.¹ Business and Professions Code section 19841(d) mandates that Gambling Control Commission (Commission) regulations require licensees to report and keep records of large cash transactions. It is important that this process be included in a cardroom’s policies and procedures, as it would direct all chip redemptions to the cage where a more controlled and consistent application of these reporting requirements can be applied.

5. Section 12388(a) would be amended to prohibit a licensee from extending credit to an employee for the purposes of playing any controlled game.
 - a. California Gaming Association: This amendment goes beyond the conforming change necessary to align it with the game play restrictions of Section 12391(a)(3). These new credit restrictions would apply to an employee’s play of games *on or off duty*, while the play restrictions apply only while an employee is *on duty*. Further, credit is not house funds, as the funds belong to the borrower who is obliged to pay the house back, regardless of the results of game play.
 - b. Mark Kelegian – Crystal Casino: We do not agree with prohibiting the extension of credit to employees. The prohibition on the use of house funds in Section 12391(a)(9) is sufficient to prevent the house from using its resources to disadvantage customers.

¹ United States Code, Title 31, sections 5313 and 5314; Code of Federal Regulations, Title 31, Sections 103.21, 103.22, 103.23, 103.63 and 103.64; Penal Code section 14162, subdivision (b); California Code of Regulations, Title 4, Section 12404.

Response (a & b above): Section 12388(a) should be consistent with Section 12391(a)(2) & (3). As a result, a response for these comments will be deferred, pending the outcome of discussions at a public workshop on March 29, 2011.

6. Section 12391(a)(1) would require that all areas of a cardroom where controlled games are being conducted be open to the public, except as provided in Business and Professions Code section 19861. This exception permits the licensing of small *private* cardrooms (5 or less tables), provided that they are located in an area that has a local ordinance allowing only private cardrooms and provided that they existed on December 31, 1997. There is only one cardroom in the state that meets these criteria.

a. Alan Titus – Artichoke Joe’s: This regulation is in conflict with statutes that prohibit persons under 21 and those on an exclusion list from entering a cardroom.

Response: This comment was accepted, and Section 12391(a)(1) amended to include Business and Professions Code sections 19844, 19845 and 19921 as exceptions to the *open to the public* rule.

7. Section 12391(a)(2) would prohibit a gambling enterprise employee and a key employee from playing controlled games during their work shift. Section 12391(a)(3) would prohibit licensees from playing any California Game on the premises of their own cardroom at any time.
 - a. Alan Titus – Artichoke Joe’s: Employees do not play controlled games as part of their duties. House funds are not used by employees to play games; employees use their own money. Likewise, employees keep their winnings. As a result, the house has no interest in the outcome of the game. Nothing in the Gambling Control Act (Act) requires these regulations, and Labor Code sections 2802(a) and 2860 do not apply.

The city of San Jose is widely known for being very strict in its regulation of gaming. Their rules should not be used for statewide minimum standards. Cardrooms have controls in place that minimize opportunities for collusion. These regulations should simply prohibit employees from being awarded a jackpot during their work shift. We would not oppose regulations that prevent key employees from taking the bank, and prohibiting shift coordinators from playing during their work shifts, as they are the ultimate judge of play.

The law has allowed owners to play since 1872. These regulations should simply prohibit a licensee from accepting the player-dealer position. This would prevent the game from being a house-banked/percentage game.

Stated reasons for these regulations include an appearance of a conflict of interest, which perhaps means that a dealer may not be able to objectively facilitate play while their employer is at the table. These regulations should apply to silent partners, such as landlords, if the cardroom pays a percentage rent.

The Act authorizes the Bureau of Gambling Control (Bureau) to approve the play of games. It does not authorize the Commission to establish regulations on these matters.

Finally, the words “key employee” could be deleted, as a key employee is included in the definition

of a “gambling enterprise employee.”

b. California Gaming Association: These regulations go well beyond minimum controls and exhibit an absence of concern for, or an understanding of, the cardroom industry. In addition, these regulations will increase unemployment and threaten the financial health of cardrooms. For more than 80 years, California cardrooms have used house proposition players to start games and to keep them going. Patrons will leave and not return if they can’t play. Tribal and Nevada casinos also use house prop players. As a result, these regulations would create a competitive disadvantage between California cardrooms and tribal casinos and put more than 400 house prop players out of work. If cardrooms cannot compete with the tribal casinos, these regulations could also jeopardize the more than 3,000 other employees working within the cardroom industry.

In 2000, legislation added section 330.11 to the Penal Code, which prohibits the house from occupying the player-dealer position.² This legislation did not bar owners and key employees from any other position in player-dealer games. Further, it did not bar other cardroom employees from playing in any games, from playing in player-dealer games, or from occupying the player-dealer position. Employees are not considered part of the house. Any argument for a change in this law should be directed to the legislature.

Penal Code section 330 prohibits only two specific types of financial interest in the games offered in cardrooms: house banking and collecting fees from a game calculated as a percentage of the amount wagered. The law does not bar the house from having other financial interests in the game, such as the collection of table fees.

It is not house banking when employees use their own funds to play games, incurring their own losses and keeping their winnings. At times when business is slow, dealers may choose to play games with their own money. If we must take them off the clock, their pay/hours will be reduced and their health and other benefits jeopardized.

Even if house prop players are staked with house money to play poker, numerous court decisions have held that poker is not a banking game.

Labor Code section 2802 only requires employers to reimburse employees for *necessary* expenditures, not for *discretionary* expenditures. Thus, house prop players are reimbursed for table/drop fees, but cardrooms are not required to reimburse them for losses from their own discretionary wagering decisions.

An owner or employee playing in a game does not give them an advantage when disputes arise. Game disputes are settled by floor persons who decide disputes based on game or house rules, where no discretion is applied.

There are several hundred thousand hands of cards played every day in California, and 99.9999% of patrons continue to play, even with badge-wearing employees at the tables. The Bureau has said that they get about 300 cardroom complaints each year, but refuses to state how many relate to a patron’s perception of unfairness. We have no data on how many complaints are substantiated or are from patrons that are merely disgruntled over their gambling losses. As a result, the Bureau’s claim that

² Chapter 1023, Statutes of 200 (AB1416 Wesson).

there is a *high* perception of unfairness is devoid of meaning. Agencies cannot create regulations based on appearances or perceptions from patrons.

The Administrative Procedures Act requires a showing of *necessity* for regulations based on *substantial evidence*. The Bureau cites two investigations of cheating involving marked cards and manipulation, but provides no usable findings. Two incidents are hardly substantial evidence to support the need for regulations, especially since cheating is already prohibited. Further, an employee with a non-employee accomplice would have the same advantage as two employees.

These regulations could simply say that any owner, employee or landlord who plays in a controlled game must comply with Penal Code section 330.11.

c. Mark Kelegian – Crystal Casino: These regulations would put hundreds of house prop players out of work, and could potentially shut down small cardrooms entirely. House prop players, who are limited to using their own funds, do not disadvantage customers. In fact, they provide the opportunity for customers to play.

d. Robert Peterson, poker dealer: I have seen patrons sit down at a table with 2-3 house prop players, not having a clue of who they are losing to. House prop players should be required to be licensed, and should display an identifying badge when playing.

e. Bureau of Gambling Control: The Bureau continues to have concern about licensees and employees playing poker games in their own cardrooms, on or off duty. This increases the risks of dishonest play, co-mingling of funds and the public's perception of unfair play. Suggest that this regulation allow licensees and employees to play poker off duty, provided that they:

- A. Not be the house dealer in the game,
- B. Display a license or work permit badge,
- C. Comply with all house and game rules,
- D. If a licensee, not share in the prize winnings of gaming activities, and
- E. Provide the Bureau with an incident report when an employee wins a prize in a gaming activity, and maintain surveillance footage of the event.

The Bureau also has concerns about licensees and employees playing California Games, but is not prepared to submit language suggestions to the Commission at this time.

Response (a - e above): A response for these comments is deferred, pending the outcome of discussions at a public workshop on March 29, 2011.

8. Section 12391(a)(5) would require a licensee to maintain, in written or electronic form, the following information, by shift and by date: the gaming tables that were open, the games played, the collection rates, the total time each table was in use, and the house dealers assigned to work the tables.
 - a. Alan Titus – Artichoke Joe's: This regulation would require licensees to maintain table logs. Instead, the regulation should require only primary information, since derivative information can easily be determined later. For example, table open and closed times could be recorded, with the *total table in use time* calculated later.

b. Mark Kelegian – Crystal Casino: This regulation should only require the names of the *house dealers* that are working the shift, not each dealer.

Response (a & b above): These comments were rejected. The comment that this regulation would require *table logs* was rejected because the proposed regulation no longer requires that table logs be kept. At the request of the cardroom industry at the January 21, 2010 workshop, this regulation was modified to delete the table log requirement and reduce the amount of information required.

The recommendation that the regulation should not require a *total table in use time* was rejected because the Bureau needs this information to estimate revenue and verify authorized table counts. Further, the cardroom industry had previously requested that other more detailed information be deleted. At the January 21, 2010 workshop, this commenter requested that the *total table in use time* be added, with other more detailed table information deleted.

The recommendation that the regulation should only require that the names of *house dealers* be provided was rejected because Section 12391(a)(5)(D) is already limited to only the names of “house dealers.”

9. Section 12391(a)(6) would require that the gaming table information required by paragraph (5) be made available to the Bureau immediately upon request, if the information pertains to a work shift in progress or when the request is made during normal business hours. If a request is made after normal business hours, and the request is for information about a prior work shift, it must be made available no later than two hours after the start of the next business day.

a. California Gaming Association: The records about a shift in progress may not yet exist, as the records are not compiled until after a shift ends. Even after the work shift ends, other required duties may need to be completed before the records could be produced, such as the recording of the drop collection. Finally, the employees with access to the records may be busy with other required duties, producing a short delay before the records could be accessed.

b. Mark Kelegian – Crystal Casino: The two hour requirement is too burdensome; it should say “as soon as it is available” on the next business day.

Response (a & b above): These comments were accepted in part, and paragraph (6) amended to require that the information be made available within two hours when the request is made during normal business hours; and within two hours after the start of the next business day when the request is made after normal business hours.

The recommendation that the information be provided as soon as *it is available* was rejected. This would not provide a definitive time in which the information must be provided, and could produce a situation in which Bureau investigations are stonewalled.

10. Section 12391(a)(9) would prohibit a licensee from providing house funds to any person for the purposes of playing a controlled game, including but not limited to:

- (A) A licensee of the cardroom,
- (B) An employee of the cardroom,
- (C) A patron, except for the purposes of participating in a gaming activity, and

(D) A contract employee of the cardroom.

a. Alan Titus – Artichoke Joe’s: This regulation would seem to *exempt patrons* from the prohibition of receiving house funds to play controlled games.

In addition, this regulation violates Business and Professions Code section 19984 by prohibiting cardrooms from paying third party proposition players for their services. Although third parties are not currently paid by cardrooms for their services, they have been in the past. Further, why doesn’t this raise issues of banking, while payments from third parties to cardrooms, which are allowed by the Commission, appears to be a sharing of the third party’s winnings, which looks very much like banking.

Response: The comment that the regulation allows house funds to be paid to patrons for playing *controlled games* was rejected because subparagraph (C) allows patrons to receive house funds only for the purposes of playing a *gaming activity*. A gaming activity is defined to mean any activity or event that is appended to a controlled game, such as jackpots, bonuses, promotions, cashpots or tournaments.³ This exception to receiving house funds is necessary when cardrooms award jackpots, bonuses and initiate promotions.

The comment that the regulation incorrectly prohibits payments to third party proposition players was accepted, and subparagraph (D) of Section 12391(a)(9) amended to except payments to third-party proposition players in accordance with a Bureau-approved contract, which was entered into pursuant to California Code of Regulations, Title 4, Section 12200.9.

b. Mark Kelegian – Crystal Casino: The term “house funds” should be defined.

Response: This recommendation was rejected because the word “house” is already defined in the Act to mean “the gambling enterprise, and any owner, shareholder, partner, key employee, or landlord thereof.” The word “funds” is widely known to mean *money*.

c. Bureau of Gambling Control: A business entity that sponsors any gaming activity or tournament should also be prohibited from receiving house funds with which to play controlled games.

Response: This recommendation was accepted, and a subparagraph (E) added to Section 12391(a)(9) which would prohibit providing house funds, with which to play controlled games, to a business entity that sponsors any gaming activity or tournament.

d. California Gaming Association: The staking of players in poker games, while not common, may be necessary when a smaller cardroom, in a less populated area, cannot find prop players to hire. Further, numerous court decisions have held that poker is not a banking game. This regulation should only prohibit the use of house money for the purposes of occupying the player dealer position, in a player-dealer game. House money can be used to occupy other positions within a player-dealer game, and it can also be used to play poker.

³ California Code of Regulations, Title 11, Section 2010, subsection (f); proposed California Code of Regulations, Title 4, Section 12360, subsection (a).

Response: Section 12391(a)(9) should be consistent with Section 12391(a)(2) & (3). As a result, a response for this comment will be deferred, pending the outcome of discussions at a public workshop on March 29, 2011.

11. Section 12391(a)(10) was deleted from the most recent draft of these proposed regulations. It required cardrooms to account for the awarding of complementary items and services with an individual value of \$50 or more and an aggregate value of \$250 or more in a calendar month.
- a. Bureau of Gambling Control: The Bureau is concerned that this language has been deleted. Cardrooms should already be tracking the awarding of complimentary items and services. The Bureau suggests that this proposed regulation be restored and amended to exempt food and beverage awards, and simply require a \$300 *aggregate* reporting value, with no *individual* value requirement.

Response: This proposed regulation was deleted because Commission staff felt that it should be in the accounting regulations, as part of Article 4, rather than Article 3. As a result, this issue should be dealt with separately, outside these proposed MICS III regulations.

12. Section 12391(b) would require Tier II through V cardrooms to have at least one licensee or key employee on the premises at all times the cardroom is open to the public to supervise the gambling operation and ensure immediate compliance with the Act and its regulations. Tier II through V cardrooms would also be required to have at least one floor employee on duty for every seven open tables, to monitor the gambling operation at those tables.
- a. Alan Titus – Artichoke Joe's: The requirement that a licensee or key employee be on duty is duplicative of Title 11, Section 2050. The language of the second sentence should make it clear that the *floor employee* requirement is in addition to the *licensee/key employee* requirement. Appropriate staffing levels are dependent on the size of the games and the number of players at the table, not just the number of tables. As a result, the cardrooms should be allowed to determine their own staffing needs. This regulation could put financial strains on cardrooms, and may impose a competitive imbalance between cardrooms and tribal casinos.
- b. California Gaming Association: This regulation would require small Tier II cardrooms to hire an additional staff member for each shift, which could put them out of business. With only 6-10 tables, these smaller cardrooms already have a key employee on duty to monitor the gambling operation. At one employee for every seven tables, even the larger cardrooms will experience the harsh burden of hiring additional staff.
- c. Mark Kelegian – Crystal Casino: Only a key employee should be required when a cardroom has only seven tables in operation.
- d. Bureau of Gambling Control: The Act or regulations may need to be amended if the Commission wishes to create a new non-supervisory category for a cardroom employee. Further, a definition of “employee” may be necessary.

Response (a - d above): These comments were accepted in part, and Section 12391(b) amended to require one employee for every **10 tables** in Tiers **III** through **V** only. This 10 table requirement would be consistent with the 10 table limit in Tier II cardrooms, where one key employee should be enough. The floor employee staffing levels required by this regulation are considered *minimum*

standards. It takes into account the size of the gambling operation, and is flexible with the varying levels of business on different days. This proposed regulation originally required a more complex formula: one employee for every ten poker tables, and one additional employee for every five California game tables. At the request of industry, the distinction between the games was deleted, and a simple per table formula applied. Cardrooms are free to expand upon these minimum standards to suit their individual needs.

The comment that the first sentence duplicates Section 2050 in Title 11 was rejected. The proposed regulation requiring a licensee or key employee to be on the premises has additional requirements above and beyond that stated in Section 2050. That is the reason for the “notwithstanding” language in this proposed regulation. Further, the second sentence already contains the word “also” which signifies that it is in addition to that which is stated in the first sentence.

13. Section 12392(a) would require cardrooms to establish minimum written house rules for specified situations. Subsection (b) would require that a cardroom’s house rules be made available to patrons and the Bureau upon request.

a. Alan Titus – Artichoke Joe’s: Subsection (b) should only require that the minimum house rules required by subsection (a) be made available upon request. Those rules not required by subsection (a) may not be in writing.

Response: This comment was rejected. All house rules should be in writing and provided to patrons upon request. Rules can be *developed* in an unwritten way, such as through real world experiences. However, once they are accepted as a rule, they should be written down and made available to patrons and employees so that they can strive to abide by them. Otherwise, cardrooms could just make the rules up as they go to favor a specific situation. This could be perceived by patrons as an unfair way to conduct business. Further, nothing would prohibit cardrooms from developing a house rule that allows for discretion when unique circumstances develop.

14. Section 12392(a)(5) would require that cardroom house rules address specified circumstances when applicable during the course of a *controlled game*.

a. Bureau of Gambling Control: Suggest that this regulation state where applicable during the course of a controlled game *or gaming activity*.

Response: This comment was accepted, and Section 12391(a)(5) amended accordingly.