

HISTORY OF COMMENTS AND RESPONSES
MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING
ESTABLISHMENTS

GAMBLING FLOOR OPERATIONS AND HOUSE RULES.

CGCC-GCA-2010- -R

WRITTEN 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.

Recommended 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.

Recommended 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).

Recommended 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.

Recommended 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.

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

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.

Recommended Response (a & b above): Should be consistent with response for 12391(a)(2) & (3).

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.

Recommended 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.

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

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 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.

Recommended Response (a - e above): To be determined following next workshop.

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.

Recommended 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.

Recommended 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.

Recommended 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.

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

Recommended 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.

Recommended 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.

Recommended Response: Should be consistent with responses for §§12391(a)(2) & (3).

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.

Recommended 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.

Recommended 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.

Recommended 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*.

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

COMMENTS FROM WORKSHOP OF JUNE 30, 2010

The following oral comments/objections/recommendations were made regarding the proposed action at the informal workshop on June 30, 2010. The following also includes written comments, objections or recommendations made 10 days prior to, and 45 days after, the workshop.

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. Chapter 7 deals with conditions of operation for gambling establishments (cardrooms).

a. Joy Harn – The Bicycle Casino: Section 12360 should include a definition for the word “floorstaff”, as we are recommending that this term be used later in proposed Section 12391(b) to describe cardroom employees whose duties include the non-discretionary enforcement of house and game rules.

Recommended Response: This comment was rejected. The Act only calls for a work permit or a key employee license, no distinction is made for a floor person. Further, floor persons should be licensed as key employees if they *supervise* or make *discretionary decisions*, or hold a work permit if they only monitor the operation.⁴

2. As amended by this action, Section 12360(b) defines “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.

⁴ Business and Profession Code, section 19805, subdivisions (n), (x), (y) and (ak).

- a. Alan Titus – Artichoke Joe’s: The definition for “house rules” should include *unwritten* as well as written rules. Rules are not always written in the beginning when they are first developed.
- b. Mark Kelegian – Crystal Casino: House rules should always be in writing.
- c. Kermit Schayltz – Lucky Derby Casino: There could be instances where a discretionary decision must be made when current house rules do not cover a specific circumstance.
- d. Martin Horan – Bureau of Gambling Control (Bureau): House rules should be in writing so that employees and patrons know what the rules are. Some cardrooms have written house rules and others don’t.

Recommended Response (a - d above): The comment made by Artichoke Joe’s 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, 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, house rules could include a provision that allows for discretion when unique circumstances develop.

3. Section 12391(a)(2) would require cardrooms to develop policies and procedures pursuant to Title 11, CCR, Section 2050. During all hours when open to the public, this section requires cardrooms to have a key employee on duty that has the responsibility and authority to ensure immediate compliance with the Gambling Control Act (Act).

a. Alan Titus – Artichoke Joe’s: This regulation is unnecessary because it duplicates Section 2050 and other regulations.

Recommended Response: This comment was accepted and Section 12391(a)(2) deleted from these proposed regulations, as it duplicates proposed Section 12391(b) which also references Section 2050 and establishes additional monitoring requirements for Tier II through V cardrooms. As a result of this deletion, subsequent paragraphs in Section 12391(a) were renumbered accordingly.

4. Section 12391(a)(3) would prohibit cardroom employees from playing poker while on duty. This section would also require employees while playing poker off duty, and owners while playing poker at any time, to adhere to the following conditions:
 - (A) Not share in gambling activity prize winnings,
 - (B) Not be the house dealer and a player in the same game,
 - (C) Display their Commission issued badge, and
 - (D) Comply with all house and game rules.

Section 12391(a)(4) would prohibit cardroom employees and owners from playing California Games at any time.

a. David Fried – Oaks Card Club/California Grand Casino: These issues should be addressed by the legislature, as California law already allows cardroom owners to play California games, provided that they not bank the game and not occupy the player-dealer position.⁵ Further, owners have a long standing tradition of playing in poker games and patrons expect and want them to play.

California labor laws already require that cardroom employers reimburse their employees for expenses incurred while working. House prop players are the only employees whose duties include playing in the games. In contrast, all other employees are not required to play, as part of their job. As a result, these other employees would not be reimbursed for any losses. For example, house dealers may simply choose to play, with their own money, when business is slow and their table is not active. As the law requires, these employees are still paid wages during these slow periods.

The Act prohibits house banking, percentage games, and the house from occupying the player-dealer position. Staking a house prop player with money to play poker or even a California Game is not illegal, as long as they don't use the money to occupy the player-dealer position. Even in California Games, a house prop player may be needed to sit in on a game in an attempt to stimulate activity.

Cheating is already illegal. Prohibiting employees from playing will not prevent collusion and cheating, since employees could simply use friends to act as an accomplice player. The specific illegal act of cheating should be regulated, rather than the blanket prohibition of employees playing in the games.

Suggest the following language to replace paragraphs (3) and (4) of section 12391(a):

- (3) An owner, key employee or employee may play any game provided:
 - (A) An owner-licensee or key employee does not accept the deal in a player-dealer game;
 - (B) Owner-licensees do not participate in jackpots;
 - (C) Does not use house funds in the player-dealer position in player-dealer games;
 - (D) Is not the house dealer; and
 - (E) Is subject to all rules applicable to the game.

b. Charles Bates- Bay 101: Employees and owners should be allowed to play any game *on duty*, provided they not occupy the player-dealer position in a California Game. Further, *employees* should be allowed to play any game and occupy the player-dealer position while *off duty*.

c. Andy Schneiderman – Commerce Casino: This regulation should establish minimum guidelines, not legal/detailed requirements that may be considered best practices. Owners and employees playing poker or the non-dealer position in a California Game do not violate the Penal Code. Further, any labor issue involving employees playing controlled games are far removed from the Commission's authority under the Act.

⁵ Penal Code, section 330.11.

d. Mark Kelegian – Crystal Casino: This proposed regulation will prohibit the use of house prop players, since they are *employees* and cannot play while on duty. Employees cannot control the outcome of the game without cheating, which is either already illegal or can be addressed in the house rules. The Bureau should provide some statistical data on the frequency of the type of illegal activity that would be diminished by this proposed regulation. Further, if employees that play can be identified by their badge, patrons can decide whether or not to play.

Based on game rules, employees playing poker do not have the option to not pay the jackpot drop or decline their share of the jackpot winnings. Likewise, employees cannot control the outcome of the jackpot. As a result of this regulation, employees may be forced to go to another cardroom to play while off duty.

e. Kermit Schayltz – Lucky Derby Casino: The business of smaller cardrooms was built around the owner playing poker with the patrons. House prop players get paid to keep the game together. To prohibit either would create a hardship. Customers regulate my business better than government can. If my customers are unhappy with their experience, they simply don't return. Further, allowing employees to play helps to keep house dealers on site, standing by while waiting for more customers.

f. Ileana Harris – Casino Club: Why is this regulation so worried about our employees cheating while playing poker? During the license/permit application process, our employees receive a significant background investigation by the bureau. Further, as the cardroom owner, I often have to play because in Redding you can't find anyone with a bank roll that is willing to play as a prop player.

g. Brian Altizer – Napa Valley Casino: As the owner, patrons come in to play with me. Taking that away would take away my purpose. When it's slow, my dealers play poker with their own money because they want to play. I still pay them wages and benefits to stand by in case I need them to deal. Collusion should be investigated rather than stifling our businesses with regulations.

h. Keith Sharp – Hawaiian Gardens Casino: Employees are paid their regular salary while on standby, and if they choose to play during that time, they play with their own money. Employees and owners should be allowed to play any game, on or off duty, provided that they not occupy the player-dealer position in a California Game and not participate in jackpots. Also, employees should not be required to where their badge when playing, as it may be interpreted as representing the house.

i. Paul Chilleo – Hollywood Park Casino: Employees who have financially contributed to jackpots should be allowed to collect their share of the winnings.

j. Alan Titus – Artichoke Joe's: Cardroom owners have always been allowed to play in games, provided that they not take on all players in a game that has a built-in advantage. Penal Code section 330.11 clearly contemplates the house playing California Games, as long as they do not accept the player-dealer position. Further, the law only prohibits owners and

key employees from accepting the deal in California Games. Even though few employees accept the deal, they are not prohibited from doing so. The Commission can regulate gaming, but not prohibit activity that has been allowed by the legislature. The term house banking applies only to California Games, not poker.

Patrons expect and want owners and employees to play in the game. Patrons would not tolerate collusion, as they would stop playing and complain to the authorities. Employees will typically play with their own money when they have down time and business is slow.

Jackpots are shared among all the players at a table. There is no reason to deny an employee who contributed to the jackpot from sharing in the winnings.

k. Joy Harn – The Bicycle Casino: These proposed regulations should be changed back to the February 23, 2010 version whereby licensees and employees were allowed to play any game as long as they do not accept the player-dealer position in a California Game and abide by other rules as specified.

l. Martin Horan/Jacob Appelsmith – Bureau: There are legal concerns that need to be addressed relating to employees using house funds to gamble and employees being reimbursed for their losses.

At earlier stages in developing this and other regulations, the industry expressed a legitimate need to have its employees play poker while on duty in an effort to get a game going. Nothing was said of any need for employees to play in California Games. The Bureau has investigated a recent case where an employee acting as the house dealer and another employee acting as a player used marked cards in a California Game to defraud the licensed proposition player and cardroom. The fact that both of the suspects in the case were employees gave them a distinct advantage, since they had access to the cards, knowledge of the play of the game, and friendships or arrangements with other employees.

The practice of owners and employees participating in controlled games increases the risks of dishonest play, co-mingling of funds, and the public's perception that games may not be played fairly. However, the Bureau is mindful of the long history of owners and employees playing poker in cardrooms. As a result, the Bureau believes that owners and employees should be allowed to play poker, on or off duty, provided that they adhere to the conditions as specified. However, to prevent any occurrence of house banking, owners should not be allowed to play California Games in their own cardrooms. Employees could be allowed to play California Games, provided that they adhere to specified conditions.

Recommended Response (a - l above): The industry comments were accepted in part and the proposed regulations amended to permit cardroom *owners and employees* to play *any* controlled game, provided that they:

- (A) Not occupy the player-dealer position in a California Game;
- (B) Not be the house dealer for the game in which they play;
- (C) If an employee or key employee, display a work permit or key employee badge issued by the Commission or a local jurisdiction; and,

(D) Comply with all house and game rules applicable to the game being played.

As a result of this amendment, subsequent paragraphs in Section 12391(a) were renumbered accordingly.

It is important that the house not have a financial interest in the funds that are wagered, lost or won in a controlled game that is played on the premises of their gambling establishment. The Act and the Penal Code clearly prohibit house-banked games at California cardrooms.⁶ Toward this end, the Act prohibits a cardroom from having any interest, whether direct or indirect, in the funds that are wagered, lost or won by licensed third-party providers of proposition player services.⁷ If the legislature was clear in their intention to not allow cardrooms to have any interest in the funds that are wagered by a third party, then surely they would object to cardrooms having an interest in the funds that are wagered by their owners or employees.

Business and Professions Code section 19841(o) mandates that the Commission's regulations, consistent with the purposes of the Act, restrict, limit or otherwise regulate any activity that is related to controlled gambling. Further, section 19841(p) mandates that the Commission's regulations define and limit the method of gambling operations when the Commission and the Bureau determine that local regulations are insufficient to protect the health, safety or welfare of residents near cardrooms. The City of San Jose already has stringent restrictions against employees and licensees playing controlled games in their own cardroom.⁸ However, since many local ordinances do not address this issue, it is appropriate for the Commission to propose these minimum standards. The Act instructs the Commission to adopt regulations that help to ensure that gambling activities are fair to the public.⁹ Further, the Act assigns the Bureau with the responsibility to place restrictions and limitations on how controlled games are played.¹⁰

This proposed regulation will help to ensure that controlled games are played fairly by prohibiting cardroom owners and employees from accepting the player-dealer position in California Games and by prohibiting them from playing in a game that they are also acting as the house dealer.

5. Section 12391(a)(5) prohibits licensees from forcing their employees to play controlled games in their cardrooms.

a. Joy Harn – The Bicycle Casino: This regulation should not apply to house prop players, since it is their duty to do play.

⁶ Business and Professions Code, sections 19801, subdivision (a) and 19805, subdivision (c); Penal Code, sections 330 and 330.11.

⁷ Business and Professions Code, section 19984, subdivision (a).

⁸ San Jose City Ordinance, Section 16.22.010 states that, with the exception of proposition players, cardroom employees cannot play any controlled game during their work hours. Section 16.22.030 states that owners and key employees cannot play any controlled game on the premises of their own cardroom.

⁹ Business and Professions Code, sections 19801, subdivisions (g) and (h), and 19841, subdivisions (b) and (o).

¹⁰ Business and Professions Code, section 19826, subdivision (g).

b. David Fried – Oaks Card Club/California Grand Casino: This regulation should not apply to house prop players.

Recommended Response (a & b above): These comments were accepted, and the proposed regulation amended to except *house prop players* and *public relations players* from this rule.

6. Section 12391(a)(6) would require cardrooms to make immediately available to the Bureau the following information relating to gambling table activity by shift and by date:

- (A) The gaming tables that were open;
- (B) The controlled games that were played and the collection rate(s) at each open gaming table;
- (C) The total amount of time that each gaming table was in use;
- (D) The dealers that were assigned to work the gaming tables; and
- (E) The name of all “house prop players” and “public relations players” on duty.

a. David Fried – Oaks Card Club/California Grand Casino: These records are maintained by accounting or HR/payroll staff. As a result, past records may not be *immediately* available at night, as these staff members primarily work a traditional daytime business hour schedule.

b. Ileana Harris – Casino Club: To get these records at night, I would have to be called-in from home. Can't the Bureau wait until the next morning at the opening of the next business day?

c. Alan Titus – Artichoke Joe's: These records contain sensitive personal information. Providing them to the Bureau may violate our employee's privacy rights. Further, the requirement that table logs be kept is overly burdensome and do not justify the benefits obtained.

d. Joy Harn – The Bicycle Casino: Information as to who is working at the time of the request and what tables are open can be made available immediately. A good faith effort should be made to make historical records available to the Bureau by the close of the next business day following the day of the request.

e. Andy Schneiderman – Commerce Casino: It may be impossible to make these records *immediately* available if the Bureau requests them at 2:00 in the morning. Suggest changing the regulation to require that the records be *reasonably* available.

f. Keith Sharp – Hawaiian Gardens Casino: These records should be produced in a *reasonable* period of time following the Bureau's request.

g. Charles Bates – Bay 101: Historical records must be researched and retrieved from locked offices. There is no need for the Bureau to immediately retrieve records of historical nature. This is a demand for the impossible. The word “immediately” should be deleted from this regulation.

h. Mark Kelegian – Crystal Casino: If the Bureau wants to know who is working at the time they ask, most cardrooms should be able to provide that information on the spot. However, if you go back in time, no one has the ability to retrieve that information at 4:00 in the morning.

i. Martin Horan/Susanne George – Bureau: This section previously contained the requirement for a formal table log. In working with the industry, the Bureau conceded to the requirement that cardrooms simply make some basic gambling table activity information available. However, we continue to be open for discussion on this issue. We should be able to wait until the next morning for the information.

Recommended Response (a - i above): The industry comments were accepted in part and the proposed regulation amended by adding a paragraph that would require the information be provided immediately when it's related to the work shift that is in progress *or* when the request is made during normal business hours. However, if the request is made after normal business hours *and* the information requested relates to a *prior* work shift, the cardroom would have until two hours following the start of the next business day to provide the information.

The comment that personnel records may contain sensitive information which could violate privacy rights if provided to the Bureau was rejected. This proposed regulation only requires that the cardroom identify which employees worked on a given day and shift. It is not asking for any sensitive information from an employee's personnel file. Further, the Bureau has already conducted a detailed background investigation on every gambling enterprise employee working at the cardroom. As a result, the Bureau's records are likely to be more sensitive than what is in the cardroom's personnel files. Finally, the Gambling Control Act authorizes the Bureau to monitor gambling operations, conduct investigations and inspect records.¹¹ Determining which employees worked during specified shifts is well within the Bureau's responsibility to investigate possible violations of the Act.

The comment that table logs would be burdensome was rejected because the proposed regulation no longer requires that table logs be kept. The regulation was modified following the January 21, 2010 workshop to delete the table log requirement and reduce the amount of information required.

Finally, because these amendments added a paragraph, subsequent paragraphs in Section 12391(a) were renumbered accordingly.

7. Section 12391(a)(7) would prohibit cardrooms from having more tables on the gambling floor than which is authorized by their license unless the tables in excess are covered, prominently labeled or identified as non-operational and under continuous video surveillance.

a. Andy Schneiderman – Commerce Casino: These closed tables should be labeled *or* covered, rather than both labeled and covered. Some cardrooms use covers to close their tables, while others use signs.

¹¹ Business and Professions Code, section 19826, subdivisions (b), (c) and (d), and section 19827, subdivision (a).

b. Joy Harn – The Bicycle Casino: Should be labeled *or* covered, rather than both labeled and covered.

c. David Fried – Oaks Card Club/California Grand Casino: These closed tables should be labeled *or* covered, rather than both labeled and covered.

d. Susanne George – Bureau: The “or” applies to the entire sentence, covered *or* labeled *or* identified as non-operational.

Recommended Response (a - d above): These comments were accepted and the proposed regulation amended to clarify that excess tables be covered *or* labeled.

The number of tables on the gambling floor of a cardroom is an important benchmark when considering the amount of controlled gambling that is permissible within the State of California.¹² While the number of permissible tables is primarily determined by local jurisdictions, it remains the Commission and Bureau’s responsibilities to ensure that licenses are issued to, and maintained by, only those cardrooms that adhere to these limits.¹³

8. Section 12391(a)(8) would require cardrooms to comply with the terms of any contract with a licensed provider of third-party proposition player services that is established pursuant to Sections 12200.7 and 12200.9.

a. David Fried – Oaks Card Club/California Grand Casino: Section 12200.7 contains the various provisions of the contract with licensed proposition players, which may or not relate to the play or regulation of controlled games. Likewise, our proposition player contracts include provisions that go beyond the regulatory requirements. A violation of the contract should not also be a violation of a regulation. This proposed regulation should be deleted.

b. Andy Schneiderman – Commerce Casino: A violation of a contract with a third-party proposition player should not be elevated by regulation to a disciplinary matter.

c. Joy Harn – The Bicycle Casino: The reference to Sections 12200.7 and .9 should state as *required* by these sections rather than as *established* by them.

d. Keith Sharp – Hawaiian Gardens Casino: Contracts with third-party proposition players may contain terms that are not required by regulation. Cardrooms should not be held liable for contract terms that apply to the third-party alone or for terms that are not required by regulation.

e. Mark Kelegian – Crystal Casino: Only the cardrooms obligations and responsibilities should be in this regulation.

¹² Business and Professions Code sections 19801, subdivision (l), 19862, subdivision (b), and 19961, subdivision (b).

¹³ Business and Professions Code sections 19801, subdivision (l), 19826, subdivision (c), 19841, subdivision (p), 19860, subdivision (a), paragraph (5), and 19960, subdivision (c), paragraph (2), subparagraph (E).

f. Susanne George/Deborah Dunn – Bureau: This proposed regulation requires cardrooms to adhere to and comply with the *terms* of a contract established pursuant to both 12200.7 and 12200.9. It could be reworded to state that the cardroom comply with the *regulatory criteria* of the contract and only those criteria that the cardroom is responsible for.

Recommended Response (a - f above): These comments were accepted and Section 12391(a)(8) was deleted from these proposed regulations. State laws and regulations already require that a Bureau-approved contract exists between the cardroom and the provider of proposition player services.¹⁴ Further, a companion regulation that would have applied the same requirement to providers of third-party proposition player services was abandoned when a proposed licensing regulation was scaled-back and simplified. Finally, because this amendment deleted a paragraph, subsequent paragraphs in Section 12391(a) were renumbered accordingly.

9. Section 12391(a)(9) would require that the purchase or redemption of chips be transacted only at the cage, and only by employees who have the training required by section 103.64 of Title 31 of the Code of Federal Regulations. This federal regulation requires cardrooms to train employees on the reporting requirements for cash transactions in excess of \$10,000 and other cash transactions that are considered unusual or suspicious.

a. Kermit Schayltz – Lucky Derby Casino: The redemption of small amounts (\$100 or less) should be allowed to occur through designated employees on the gambling floor who have received Title 31 training.

b. Keith Sharp – Hawaiian Gardens Casino: This proposed regulation is in conflict with existing regulation Section 12386(a)(6) which allows the purchase and redemption of chips to occur only through designated employees in the cage *or on the gambling floor*. Further, employees working the gambling floor are in a better position to detect situations which give rise to large currency transactions and other suspicious activity. This regulation should only require compliance with Title 31 training requirements.

c. Andy Schneiderman/Dante Oliveto – Commerce Casino: This proposed regulation should revert back to earlier versions which required compliance with Title 31, but allowed chips to be sold and redeemed by employees in the cage and on the gambling floor. We use chip runners on the gambling floor that have been trained for Title 31 compliance and the redemption of chips can only occur at the cage. Chip runners are sometimes in a better position to detect suspicious transactions that are going on at the table, such as the stakes that a patron is playing. Finally, there is no need for regulations that duplicate other regulations.

d. Mark Kelegian – Crystal Casino: The Bureau and Commission should only be concerned that the employee who sells and redeems chips has received Title 31 training. Further, all transactions are ultimately reconciled with the cage. Requiring patrons to get up from a poker game and go to the cage would halt the game, interfere with gaming operations and decrease cardroom revenue. We have gone through audits lately and nothing was said of our

¹⁴ Business and Professions Code section 19984, subdivision (a); California Code of Regulations, Title 4, Section 12200.9, subsection (a), paragraph (1).

chip runners or floor persons selling chips. Finally, an exception could be made for smaller Tier I and II cardrooms that need the flexibility to cash-out small amounts when their one-and-only cage is closed during a shift change.

e. Ronald Werner/Charles Bates – Bay 101: This regulation shouldn't require that smaller cardrooms change how they operate. This regulation should only require that employees who sell or redeem chips receive Title 31 training. The language relating to who can sell or redeem chips should be deleted. We already have employee training programs and quality checks in place to insure compliance in this area. In a 2008 publication, the federal government (FinCEN) stated that it was encouraged by the high rate of compliance for the reporting of large cash transactions at casinos. Further, this regulation seems to duplicate existing federal requirements.

f. David Fried – Oaks Card Club/California Grand Casino: As a minimum internal control standard, this regulation should only require compliance with Title 31. Transactions should be done at the cage or by floor employees, provided that they have the currency reporting training.

g. Ileana Harris – Casino Club: Our employees are all cross-trained to do most jobs and we do use a podium as a satellite cage. Smaller cardrooms need the flexibility to allow small transactions to occur on the floor, but are open to requiring that Title 31 transactions be referred to the cage. Our cage closes for 30 minutes during shift change. There needs to be another place for patrons to cash-out when the cage is closed.

h. Alan Titus – Artichoke Joe's: The purchase of chips at Artichoke Joe's is done both at the cage and on the gambling floor. However, the redemption of chips only occurs at the cage, and patrons only receive cash for chips. A patron cannot come in with cash and leave with a check. This helps to prevent money laundering. Cardrooms that redeem chips only for cash should be allowed to sell chips on the gambling floor.

i. Joy Harn – The Bicycle Casino: This proposed regulation should be changed back to earlier versions which allowed for the purchase or redemption of chips to occur at the cage or on the gambling floor.

j. Brian Altizer – Napa Valley Casino: At shift change we briefly close the cage to reconcile the count. We depend on a satellite cage during these periods. Our employees are Title 31 trained and check the satellite cage for multiple transactions.

k. Martin Horan/Susanne George/Jacob Appelsmith – Bureau: This proposed regulation requires that chips be purchased and redeemed only at the cage to help insure compliance with Title 31. The federal government reports that the gaming industry has a poor record of reporting large cash or suspicious transactions, which encourages money laundering. A podium on the gambling floor of a cardroom that has money and chips in a locked drawer, with multiple employees having access to it, is not a well-controlled system. The cage is a more reliable place to insure accurate and consistent Title 31 reporting.

A recent article in the Las Vegas Sun reported that the IRS was asking casinos to immediately call-in suspicious cash transactions so that the IRS could respond in a manner more timely than the written reporting requirement.¹⁵ The IRS is concerned about ill-gotten funds being laundered at the casinos. Likewise, the Bureau is concerned with the potential of money laundering, loan sharking, skimming, embezzlement and other cash-related crimes.

The Bureau is OK with chip runners *selling* chips on the gambling floor, but chip *redemption* should only occur at the cage. As a result, existing Section 12386(a)(6) should be amended accordingly.

Recommended Response (a - k above): The industry and Bureau comments were accepted in part and the proposed regulation amended to simply require that the selling and redemption of chips be transacted only by those designated employees who have received the training required by section 103.64 of Title 31 of the Code of Federal Regulations. The requirement that chips be sold and redeemed only at the cage was deleted from this regulation.

This proposed regulation was originally developed for the purpose of ensuring that cardrooms have a policy that their employees be trained on the recognition and reporting of large cash or suspicious transactions. Existing regulation already addresses the issue that the sale or redemption of chips can occur at the cage or through a designated employee on the gambling floor.¹⁶ However, given the concerns of the Bureau regarding the redemption of chips on the gambling floor, the amendment of Section 12386(a)(6) was included in this rulemaking. This amendment would allow for the *sale* of chips to occur at both the cage and on the gambling floor, but would limit the *redemption* of chips to occur only at the cage.

This proposed regulation is consistent with Business and Professions Code section 19841(d) which mandates that the Commission's regulations require licensees to report and keep records of these large cash transactions. It is important that the Title 31 training be included in a cardroom's policies and procedures (MICS), as it would help employees to understand the importance of their role in reporting and documenting these transactions.

10. Section 12391(a)(10) would require cardrooms to establish policies and procedures for the awarding and accounting of complimentary items and services. The cardroom must identify those persons who are authorized to award complimentary items or services, as well as those persons authorized to access patron data regarding complimentary items and services. The cardroom must also account for those complimentary items or services with an individual value of \$50 or more *and* an aggregate value of \$250 or more, per person, per month.
 - a. David Fried – Oaks Card Club/California Grand Casino: There is no tax compliance issue for patrons receiving comps. Further, at the last workshop, meals were not the issue or target of this proposed regulation. The new *aggregate* requirement will dictate that cardrooms track *all* comps throughout the month, including meals. This is because we don't know what

¹⁵ Las Vegas Sun, Thursday, August 5, 2010, "IRS Urges Casinos to Report Suspicious, Big-Money Players", By: Liz Benston

¹⁶ California Code of Regulations, Title 4, Section 12386, subsection (a), paragraph (6).

each person's aggregate will be until the month is completed. Larger clubs do give away sporting tickets. This regulation should be amended back to the February 23, 2010 draft, requiring only that comps comply with IRS regulations and accounting standards. The Bureau should justify the need before burdening cardrooms with the tracking of their comps. If required to track comps, it should only be those with an individual value greater than \$250.

b. Mark Kelegian – Crystal Casino: This regulation creates an accounting nightmare. There should be just a flat amount per occurrence, not an aggregate total. The flat amount should be raised to an individual value that gives us the assurance that cardrooms are not paying people that should not be getting money from cardrooms.

c. Andy Schneiderman/Dante Oliveto – Commerce Casino: At high-limit tables, patrons automatically get comp meals. At the last workshop, it was agreed that this regulation was not going to target comp meals. This regulation should not target individual comps valued at less than \$250.

d. Alan Titus – Artichoke Joe's: The tracking of comps would not be an easy task. However, if a cardroom's comps exceed a certain level, there may be reason for concern. Further, there may be privacy issues involved in the tracking of patron comps.

e. Joy Harn – The Bicycle Casino: This proposed regulation should only require that cardrooms comply with IRS laws and regulations regarding the provision and documentation of complimentary items and services.

f. Keith Sharp – Hawaiian Gardens Casino: If cardroom funds are being funneled to non-licensees, we suggest that the matter be left to the investigatory and disciplinary processes rather than this sweeping regulation. If a regulation is necessary, the Commission should adopt an earlier version that merely required compliance with IRS laws and regulations.

g. Charles Bates – Bay 101: Complimentary items are mostly advertisements or goodwill gestures. This regulation should only require that the awarding of complimentary items comply with IRS and FTB laws and regulations.

h. Norm Pierce/Martin Horan/Susanne George/Jacob Appelsmith – Bureau: The purpose of this regulation is to track cardroom proceeds, not tax issues. Whether its meals or tickets to a sporting event, cardrooms should have to track comps with a significant value. For example, a cardroom may list a total of \$200,000 in promotional giveaways with no documentation as to what was given to whom. Bureau auditors need details when they see significant cardroom proceeds going to outside sources under the guise of complimentary items or services. Our auditors often get no response when requesting cardrooms to detail their promotional line items. The Bureau suggests deleting the *individual* amount and adjusting the *aggregate* amount to \$300, with an exception for internal food and beverages. The monthly aggregate value is the primary concern, where legitimate questions may be raised regarding the gifting of a cardroom's assets to non-licensed parties. The Bureau also recommends including gifts to *entities* as well as persons. Specific information should also

be required, including a description and cash value of the item or service along with the recipient's name.

Recommended Response (a - h above): The industry and Bureau comments were accepted in part. However, this regulation is more of an accounting or financial reporting issue rather than one involving minimum internal controls standards (MICS). As a result, this paragraph was deleted from these proposed regulations. Future consideration will be given to the tracking of complimentary items and services by amending the cardroom accounting regulations in Article 4 of Chapter 7. As a result of this deletion, subsequent paragraphs in Section 12391(a) were renumbered accordingly.

11. Section 12391(a)(11) would prohibit cardrooms from providing house funds to employees or patrons for the purposes of playing a controlled game.

a. Alan Titus – Artichoke Joe's: The prohibition against providing house funds to patrons seems vague and unclear. Further, it may prevent payment to house proposition players and licensed proposition players.

Recommended Response: This comment was rejected. Existing regulations prohibit a licensee from extending credit to house prop players and licensed third-party proposition players.¹⁷ If the house cannot extend credit to these parties, due to the perception of house banking, then surely they can't just give them money to play. The more money that is provided by a cardroom to proposition players to bank games, the greater the possibility that the house may be taking advantage of the percentage odds in favor of the player-dealer and thus the house may have an interest in the outcome of the game. This may turn the games into house banking and percentage games. Further, a cardroom employee playing with house funds may also increase the chances of an unfavorable decision against a patron who may have a game dispute with that employee. When making a decision about a game dispute, how could a key employee be impartial when house funds are at stake? The Bureau recently worked a case where an on-duty chip runner was playing at the table with funds from the chip tray, and repeatedly went back to the cage for more chips; providing, what appears to be, access to house funds with which to play. The Act requires the Commission to adopt regulations to help ensure that gambling activities are fair to the public.¹⁸

12. Section 12391(b) would require Tier II through V cardrooms to have at least one key employee on duty to supervise the gambling operation for every seven or fewer open gaming tables.

a. Mark Kelegian – Crystal Casino: Key employees supervise and make discretionary decisions. In contrast, it is the floor person that oversees the gambling operation and enforces house rules. There is no relationship between tables and key employees. Further, the floor person's salary takes into account the tips received. If floor persons were elevated to key employees, they would be supervisors and could not share in the tips received. As a result, the cardroom would be required to make up the difference by increasing their salaries.

¹⁷ California Code of Regulations, Title 4, Section 12388, subsection (a).

¹⁸ Business and Professions Code sections 19801, subdivisions (g) & (h), and 19841, subdivisions (b) & (o).

For example, one cardroom tells me that, under the current proposed regulation, they would need to incur an additional \$1.4 million in salaries. There is no need to have more than one key employee on duty to supervise and make discretionary decisions. In fact, it would be better and more consistent to have only one person make those discretionary decisions. The ratio of tables to employees should apply to floor persons, not key employees.

b. David Fried – Oaks Card Club/California Grand Casino: Tier III and above cardrooms would be required to hire more key employees. We are not aware of any other state that requires staffing levels based on the number of tables. Cardroom owners should be allowed to make staffing level decisions. The February 23, 2010 draft text was worded more realistically, where only one key employee was required for each shift in each separate room.

c. Alan Titus – Artichoke Joe’s: The requirement for one key employee for every seven tables is a radical increase in the amount of key employees presently used. The floormen are there in numbers to assist and monitor the games, whereas the shift coordinator (key employee) is there to supervise the gambling operation. Floormen were never intended by statute to be key employees. This regulation goes far above the minimum key employee requirements of Title 11, Section 2050.

d. Paul Chilleo – Hollywood Park Casino: Adding more key employees will not increase the integrity of gaming, it will only result in higher operating expenses that will be passed on to our patrons.

e. Joy Harn – The Bicycle Casino: This proposed regulation should only require one key employee per shift to supervise the gambling operation and should require a *sufficient* number of *floorstaff* to observe the games and enforce house and game rules.

f. Andy Schneiderman – Commerce Casino: This proposed regulation would require Commerce Casino to increase its minimum staffing of key employees from one to as many as 35 per shift. Currently, dealers and floor persons settle disputes according to game rules and shift managers settle issues that require discretionary decisions. This arrangement works well and we see no benefit to imposing this staggeringly expensive mandate.

g. Keith Sharp – Hawaiian Gardens Casino: The shift manager (key employee) is there to make the rare discretionary decisions. Most of the issues that develop on the gambling floor are addressed in the game rules, which are conveyed by floor staff.

h. Charles Bates – Bay 101: It is unreasonable and burdensome to require our leads and floor persons to be licensed as key employees, as these persons are non-supervisory and non-discretionary decision makers. Recommend that the regulation require one employee for every eight tables to monitor gambling operations.

i. Martin Horan/Susanne George/Jacob Appelsmith – Bureau: To ensure the integrity of the gambling operation, licensed proposition players have expressed a desire to have a formula for the number of tables per key employee. Further, the position of “floor person” is not defined in law, nor are the duties. Introducing a floor person may require legislation. If a

person supervises staff or makes discretionary decisions, they must be a key employee. The key employee-to-table ratio is predicated on years of experience and judgment in the field.

Recommended Response (a - i above): The industry comments were accepted in part, and Section 12391(b) amended to require only one *licensee or key employee* to be on duty at Tier II through V cardrooms to supervise the gambling operation and ensure immediate compliance with the Act. These amendments would also require cardrooms to designate at least one *employee* for every seven tables to monitor the gambling operation at those tables.

By providing oversight responsibilities, this proposed regulation promotes compliance with the Act and its regulations, helps to provide for a more secure environment for patrons, and helps to ensure that games are played by the rules, in an honest and fair way.¹⁹

13. Section 12392(a) would require cardrooms to adopt house rules that promote the fair and honest play of controlled games and establish minimum guidelines for specified issues.

a. Mark Kelegian – Crystal Casino: The list of specified issues to be addressed in the house rules should include *all game rules that have been approved by the Bureau*.

Recommended Response: This comment was rejected. The proposed definition defines house rules as *general* parameters under which a gambling enterprise operates. Further, proposed section 12392(a)(4) requires that house rules be in addition to, and not conflict with, game rules. In this sense, house rules are differentiated from game rules; and game rules are not part of this proposed rulemaking.

b. Joy Harn – The Bicycle Casino: The term “gaming activities” should be added to paragraphs (2) and (4) where *games* or *controlled games* currently appear. Also, the term “house way” should be added to the list of circumstances in paragraph (5) that house rules must cover.

Recommended Response: This comment was accepted and paragraphs (2), (4) and (5) amended accordingly.

COMMENTS FROM THE BUREAU ON APRIL 20, 2010

The following comments/objections/recommendations were made in writing regarding the proposed action by the Bureau of Gambling Control (Bureau) on April 20, 2010.

1. Section 12391(a)(3) permits an employee, key employee and licensee to play poker in their own cardroom, on or off duty, provided that they: not share in the prize winnings of any gaming activity; not be the house dealer in any game where he or she is participating; if an employee or key employee, display on their person a work permit or key employee badge; and be subject to all house and game rules applicable to all players participating in the game.

¹⁹ Business and Professions Code sections 19801, subdivision (g), 19823, 19826, 19841, subdivision (b), 19920, 19924 and 19971.

Section 12391(a)(4) prohibits employees, key employees and licensees, on or off duty, from playing any California game in the cardroom at which they are employed or licensed.

a. Bureau: The Bureau recognizes that owners routinely serve as "game starters" in their own establishments, and utilize key employees for that same purpose. However, the Bureau believes strongly there remains a significant conflict of interest with these practices, with un-resolvable confusion as to where the money "house players" wager with comes from, and the perception of house banking and collusion.

Only owner licensees should be permitted to gamble in games that do not feature a player/dealer position, at any time. All other gambling enterprise employees (key employees, work permit holders, etc.), may only gamble in the establishment at which they are employed while off duty, and only in those games that do not feature a player/dealer position. The cardroom always has the option to hire and utilize proposition players, to start and/or maintain games.

Proposed Response: This change was made in the proposed text, but referred to the industry workshop of June 30, 2010 for further discussion.

The original January 21, 2010 workshop version of the text prohibited cardroom employees (work permittees) from playing *any controlled game* while on duty, except for house prop players. The workshop version also prohibited licensees from playing any controlled game in their own cardroom, on or off duty.

At the workshop, the industry objected strongly to this proposal, sighting Penal Code section 330.11, which they believe authorizes the house to play in California Games, as long as they do not accept the player-dealer position.

At the workshop, the Bureau agreed to some changes, but insisted that employees and licensees not participate in jackpots, and that dealers not play while they were dealing. At the workshop, the Bureau also insisted that employees and licensees be prohibited from playing any California game.

Following the workshop, CGCC staff sent to the Bureau a revised text that allowed employees and licensees to play any controlled game while on duty, with specified limitations. These limitations included that they not accept a player-dealer position and not participate in any gaming activity (jackpots).

In response to the CGCC proposed changes, the Bureau returned a version of the text which allowed employees and licensees to play poker while on duty, provided that they not accept jackpot winnings and not play while also dealing the cards. The Bureau's changes also prohibited employees and licensees from playing any California Game, on or off duty. These changes were consistent with the Bureau's position taken at the workshop.

At a joint Commission/Bureau staff meeting on March 4th, Commission staff agreed to the Bureau's changes, and the March 25th version of the text allowed employees and licensees to

play poker while on duty, provided that they not accept jackpot winnings and not play while also dealing the cards. This version also prohibited employees and licensees from playing any California Game, on or off duty.

The most recent recommendations from the Bureau are inconsistent with their position taken at the workshop and at the CGCC/BGC meeting on March 4th. These new recommendations go back to the original text, prohibiting employees from playing any game while on duty, allowing only owner-licensees to play poker while on duty. As before, these recommendations would prohibit employees and owner-licensees from playing any California Game, on or off duty.

These latest Bureau recommendations would, in one way, be more restrictive than the original workshop language by prohibiting *house prop players*. Since house prop players are cardroom employees that hold either a work permit or a key employee license, the Bureau's latest proposed changes would not allow them to play poker while on duty. Existing regulations already acknowledge the existence of house prop players.²⁰ The Bureau's only solution offered would be for the cardroom to utilize "proposition players" to start and/or maintain poker games. This solution is presumed to mean licensed *third-party proposition players*. It is not known whether third-party proposition players would be interested in playing poker, as their primary focus is California games.

The Bureau's latest rationale expresses concern about the perception of *house banking* when justifying why employees should not be allowed to play poker while on duty. However, this same rationale could be applied to the owner of the cardroom, who would still be allowed to play under the Bureau's proposal. Some may say that there is a greater propensity for patron's to believe that the house is funding an owner, rather than an employee.

The bottom line may be that there was little concern about *house banking* until the law was changed to allow California style games in cardrooms. That may be why the industry has claimed that their owners and employees have a long standing tradition of sitting in on poker games at their own cardrooms.

2. Section 12391(a)(9) requires that the purchase or redemption of chips be transacted at the cage or on the gambling floor only by those designated employees who have received the training required by federal Title 31 regulations relating to the documentation of large cash transactions.
 - a. Bureau: Compliance with federal Title 31 regulations is very difficult to ensure. Limiting the locations where chips can be purchased or redeemed for cash value would increase likely compliance. The Bureau would like more information from several cardrooms from the various tiers as to what measures are currently taken to ensure Title 31 compliance. Because the Department of the Treasury is reporting such a high level of non-compliance from the gambling industry, having the industry provide its rationale for why chips sales/redemption should not take place solely at the cage needs to be better substantiated.

²⁰ California Code of Regulations, Title 4, Section 12388, subsection (a).

Proposed Response: This change was made in the proposed text, but referred to the industry workshop of June 30, 2010 for further discussion.

Prior to the workshop of January 21, 2010, the Bureau did propose that chip purchasing and redemption occur only at the cage. However, that proposal was abandoned due to the common industry practice of utilizing chip runners on the floor. As a result, the original workshop version of the text allowed for the purchase and redemption of chips to be transacted by a designated employee at the cage or on the gambling floor, provided that the employee has received the training specified in federal regulations regarding the documentation of large cash transactions.

Until now, this provision of the proposed regulations had not been objected to by the industry or the Bureau since originally proposed at the workshop.

The March 25th version of the text that was recently sent to the Bureau contained only a technical non-substantive change to this provision involving word order.

Further, existing regulations already require that the purchase and redemption of chips be conducted at the cage *or by designated employees on the gambling floor.*²¹

3. Section 12391(b)(1) requires Tier II through V cardrooms to have, for each shift, at least one key employee to supervise the gambling operation for every eight gaming tables or fewer in operation.
 - a. Bureau: The Bureau's concern regarding adequate supervision of gaming tables stems from the considerable differences between poker games and California games. Where one key employee may be able to supervise ten or less poker style games/tables in progress, expecting that this same employee can simultaneously supervise California games in addition to poker, 1:8 is not as realistic. California games require much closer supervision than their poker-style counterparts do.

The Bureau suggests the key employees to table ratio be 1:7, or lower. The Bureau originally suggested 1:5 for California games and 1:10 for poker-style games, however the industry had reasonable concern that having two different ratios burdensome to comply with if they had to jockey staffing levels based on the ever-changing number and variety of tables in operation. Even with having just one fixed ratio, the cardroom would have to make staffing adjustments, but not the complex extent of having two ratios.

Proposed Response: This change was made in the proposed text, but referred to the industry workshop of June 30, 2010 for further discussion.

The original January 21, 2010 workshop version of the text required at least one *key employee* to be on duty for each separate room, and required one *employee* (work permittee) to oversee every ten poker tables and one *employee* (work permittee) to oversee every five California tables.

²¹ California Code of Regulations, Title 4, Section 12386, subsection (a), paragraph (6).

At the workshop, industry, Bureau and Commission staff all agreed that the language of this regulation could be simplified. Industry also objected to the need for multiple key employees for separate rooms. After the workshop, Commission staff sent to the Bureau a revised text that continued to require one key employee for each separate room, but allowed only one key employee for two rooms when one room was observable from the other. The revised text also simplified the number of employees to oversee tables by requiring one employee for each eight tables, with no distinction between poker or California tables.

In response to the proposed changes from Commission staff, the Bureau returned a version of the text which inserted the word “key” in front of employee, thus requiring one key employee for every eight tables.

At the Commission/Bureau staff meeting on March 4th, it was agreed that since a key employee would be required for every eight tables, the *one key employee in every room* requirement is redundant and should be abandoned. As a result, the March 25th version of the text deleted the requirement for a key employee in every room, leaving only the requirement that there be one key employee for every eight tables.

The most recent recommendations from the Bureau are inconsistent with their position taken at the meeting on March 4th. There was never any mention of reducing the eight tables to seven.

The Commission and the Bureau can expect opposition from the industry, especially from the larger cardrooms. Commission licensing records reflect a disproportionately higher key employee-to-table ratio at the Tier V level. The following licensing data shows the average number of key employees and authorized tables within each tier. These averages were calculated by dividing the total number of key employees or tables within each tier by the total number of cardrooms within that tier. The ratio of tables per key employee was then calculated by dividing the average tables by the average number of key employees. The resulting ratio at Tier V is one key employee for every eight tables (1 : 8). This number could actually be much higher, since the number of key employees may need to be adjusted by allowing for three work shifts per day and allowing for the fact that some current key employees may have duties other than supervising the gambling floor. Licensing records show that many key employees within Tier V cardrooms have titles such as *surveillance* manager, *security* manager or *cage* manager. After calculating these allowances for Tier V cardrooms, there may actually be only an average of six key employees available per shift to oversee the gambling floor. This would make the tables-to-key employee ratio as high as one key employee for every 27 tables.

Average Key Employee-To-Table Ratio

	<u>Tier</u>	<u>Avg Keys</u>	<u>Avg Tables</u>	<u>Ratio</u>
I	1.0	3.3	1 : 3	
II	5.2	7.7	1 : 2	
III	9.2	16.1	1 : 2	
IV	14.0	45.0	1 : 3	

V 20.0 162.8 1 : 8

As a result of the above information, the Bureau should develop a rational for its key employee-to-table ratio that is based upon scientific data, such as a formula that may have been developed as part of a study or operational experience in California tribal casinos or other states that have gaming.

COMMENTS FROM WORKSHOP OF JANUARY 21, 2010

The following comments/objections/recommendations were made regarding the proposed action, either in writing or orally, at the informal workshop on January 21, 2010.

1. As amended by this action, Section 12360(a) defines a “gaming activity” as the same as that which is defined in Title 11, CCR, Section 2010, subsection (f), which states that a gaming activity is any activity or event including, but not limited to, jackpots, bonuses, promotions, cashpots, tournaments, etc., that is appended to or relies upon any controlled game.

a. Alan Titus – Artichoke Joe’s: In Section 2010, *tournaments* are included in the definition for *gaming activity*, yet tournaments are not appended to a controlled game, they actually *are* a controlled game.

Proposed Response: This comment was rejected. Any modification of Section 2010 should be addressed by the Bureau in a separate rulemaking.

2. As amended by this action, Section 12360(b) defines “House Rules” as a set of written policies and procedures, established by a gambling enterprise, which set general parameters for the play of controlled games.

a. Alan Titus – Artichoke Joe’s: Not all house rules relate specifically to the play of controlled games. Some relate to general patron conduct, such as a *no photographs* rule.

Proposed Response: This comment was accepted and proposed Section 12360(b) amended to read that house rules are “a set of written policies and procedures, established by a gambling enterprise, which set general parameters under which that gambling enterprise operates.”

3. Section 12391(a) prohibits cardroom employees from playing controlled games while on duty, except for house prop players, and prohibits licensees from playing controlled games at any time.

a. Turlock Poker Room: We support this regulation. Cardroom owners and employees should not play, as it threatens the integrity of the game. How can one adequately manage staff while also focusing on playing a game?

b. Mark Kelegian – Crystal Casino: These regulations should be limited to problems that are shown to be widespread or systemic.

Proposed Response (a. & b. above): These comments were accepted and considered in the further development of this regulation.

4. Section 12391(a)(1) requires that all areas of a gambling establishment where controlled games are conducted be open to the public.

a. Alan Titus – Artichoke Joe’s: There’s no reason to apply this rule to areas that are not *currently* being used, such as tournament rooms. Suggest the phrase read: “... are *being* conducted ...”

Proposed Response: This comment was accepted and the regulation amended accordingly.

5. Section 12391(a)(2), in accordance with Title 11, CCR, Section 2050, requires cardrooms to have an owner-licensee or key employee on duty during all hours of operation to supervise the gambling operation and insure compliance with the Act, these regulations and any other provision of law.

a. Mark Kelegian – Crystal Casino: These duties are conducted by gambling floor employees.

b. Alan Titus – Artichoke Joe’s: The Commission enforces the Act. The phrase “*and any other provision of law*” should be deleted.

Proposed Response (a. & b. above): These comments were accepted and Section 12391(a)(2) amended to simply require compliance with Title 11, CCR, Section 2050.

6. Section 12391(a)(3) prohibits cardroom *employees* from playing controlled games or participating in gaming activities while on duty, except for house prop players. Section 12391(a)(5) prohibits a *licensee* from playing any controlled game at any time.

a. Industry in general: Employees have always been allowed to play on breaks or when they have down time. Owners have always played, and patrons expect them to play.

b. Alan Titus – Artichoke Joe’s: No authority to adopt this reg. The Act and Penal Code section 330.11 permit them to play.

c. David Fried – Oaks Card Club: Employees and owners should be allowed to play any game as long as they do not occupy the player/dealer position, don’t participate in jackpots, do not use house money, and all game rules apply.

d. Paul Chilleo- Hollywood Park Casino: I have dealers and hosts playing while on the clock. If I change them back to props, it will cost me more money because hosts and dealers get part

of their salary from the tip pool. As an owner, I get information from customers while playing.

e. Mark Kelegian – Crystal Casino: Owners should be allowed to play non-banked games.

f. Bureau: Changes are possible, but must prohibit employees and licensees from jackpots and California games. Dealers can't play while dealing.

Proposed Response (a. - f. above): These comments were accepted and Sections 12391(a)(3) and (a)(5) were consolidated into one section and amended to allow employees, while on duty, and licensees to play any controlled game, provided that they: not accept the deal in any game with a rotating player-dealer position; not participate as a player in any gaming activity; not use house funds; not be the house dealer for the game; and be subject to and comply with all house and game rules applicable to all players participating in the game. Paragraph (a)(5) was deleted, since it was consolidated with paragraph (a)(3), and subsequent paragraphs were renumbered accordingly.

7. Section 12391(a)(4) prohibits cardroom licensees and employees from forcing an employee to play controlled games on the premises of the gambling establishment during his or her non-work hours.

a. Industry in general: Industry generally supports this regulation.

Proposed Response: This comment of support was accepted and considered in the further development of this regulation.

8. Section 12391(a)(6) requires licensees to maintain a table log which tracks, by shift and date, the tables that were open, the games that were played at each table, table limits, table collection rates, the total time that all hands were played at each table, the employees assigned to each table, and the names and duty hours of the house prop players. Section 12391(a)(7) requires that the table logs be certified under penalty of perjury, and Section 12391(a)(8) requires that written table logs be stored chronologically.

a. Industry in general: Would be burdensome to create a written log for each table.

b. Alan Titus – Artichoke Joe's: Would be an inexact way of tracking table revenue. Should read: "The total time each table was *in use*." Dealers rotate between tables. The retention requirement for the table logs should be less than seven year standard.

c. David Fried – Oaks Card Club: The tables that were open during a shift are already identified on the count sheets. The games that were played at each table can be identified by using the table number on the count sheets. Table limits are not currently tracked. Already have a collection rate schedule. Payroll records identify dealers by shift, and we have a table rotation schedule. No time records kept on when a dealer is at each table.

d. Bureau: May be willing to exclude requirement for a specific log, but info in (A), (B) & (C) must be made available to Bureau upon request. Don't need table limits and the house prop player portion could be relaxed, as long as there's an audit trail.

Proposed Response (a. - d. above): These comments were accepted and this regulation was amended to only require that specified information be maintained by shift and by date. The requirement for a table log and the tracking of table limits were deleted. Since there would be no table log, paragraphs (a)(7) and (a)(8) were also deleted and subsequent paragraphs renumbered accordingly.

9. Section 12391(a)(9) requires that the name of each game and gaming activity, the table limit(s), and the collection rate(s) applicable to each table be prominently displayed on that table and clearly visible from each seated player's position at the table.

a. Alan Titus – Artichoke Joe's: Impractical that they be *clearly visible* to each *seated* player. *Prominently displayed* would be better. Duplicates Section 2070 in Title 11.

b. David Fried – Oaks Card Club: Duplicates Section 2070 in Title 11. Licensees should have only one place to view these regulations.

c. Bureau: This information does not need to be displayed on a poker table. May be coming out of MICS and stay in Section 2070.

Proposed Response (a. - c. above): These comments were accepted. Paragraph (a)(9) was deleted and subsequent paragraphs renumbered accordingly.

10. Section 12391(a)(10) requires that licensees not have more tables in rooms where controlled games are conducted that that which is authorized by their license.

a. Industry in general: Licensees should be allowed to label non-operational tables, without removing them from the premises.

b. Alan Titus – Artichoke Joe's: Should state that the licensee not have on the *gambling floor*, more gaming tables that permitted by the license.

c. Mark Kelegian – Crystal Casino: Some jurisdictions allow more tables on the floor to accommodate fluctuations.

d. Bureau: Could allow tables to be labeled as non-operational.

Proposed Response (a. - d. above): These comments were accepted and the regulation amended to permit tables to be covered and labeled as non-operational.

11. Section 12391(a)(11) requires cardroom licensees to adhere to the provisions of a contract with a third party provider of proposition player services.

a. Alan Titus – Artichoke Joe’s: Licensees should be allowed to legally breach their contracts for legitimate business purposes.

b. Bureau: May be willing to amend for this purpose.

Proposed Response (a. & b. above): These comments were rejected, as existing Section 12200.7(f) requires cardrooms to receive Commission approval to terminate a contract with a third party provider of proposition player services, and only after considering the results of an inquiry from the Bureau.

12. Section 12391(a)(12) requires that chips be purchased or redeemed only from designated employees in the cage or on the gambling floor who have received the training required by federal regulations relating to the documentation of large cash transactions. This section also prohibits the sale or redemption of chips by a third party provider of proposition player services.

a. Alan Titus – Artichoke Joe’s: The second part of this regulation should be in prop player contract criteria regulations, not in cardroom MICS.

b. David Fried – Oaks Card Club: The second part of this regulation duplicates MICS I Section 12386(a)(6).

Proposed Response (a. & b. above): These comments were accepted and the second portion of this regulation was deleted, as Section 12386(a)(6) already prohibits the sale or redemption of chips by a third party provider of proposition player services.

13. Section 12391(a)(13) requires cardroom licensees to have policy and procedures that ensure compliance with existing regulations that require documentation of large cash transactions, specifically, section 12404.

a. Alan Titus – Artichoke Joe’s: Section 12404 does this on its own, without this duplication.

Proposed Response: This comment was rejected, as Section 12404 does not require cardrooms to have *policies and procedures* about large cash transactions. Having 12404 in MICS will help to ensure that employees understand their role in documenting these transactions. However, since paragraph (a)(13) deals with a subject that is similar to paragraph (a)(12), its contents were moved to paragraph (a)(12) and the subsequent paragraphs were renumbered accordingly.

14. Section 12391(a)(14) requires that cardrooms document complimentary items and services that are provided to patrons. Specifically, cardrooms would be required to establish criteria for awarding and redeeming complimentary items or services, limit the authority to approve complimentary items or services to owners or key employees, control personal information of patrons participating in a player rewards programs, report complimentary items and services in financial statements, and prepare quarterly reports regarding complimentary items or services.

a. Industry in general: This regulation is overly burdensome and should focus on comps that are more significant than bottled water or coffee. Perhaps a dollar value threshold would work.

b. Alan Titus – Artichoke Joe’s: The awarding of comps is an external operational control, not a minimum internal control. Section 2071 pertains to game rules, whereas this regulation is about comps. Further, the regulation of comps is unnecessary and the reporting of patron’s names violates privacy rights.

c. David Fried – Oaks Card Club: Why is this necessary? The Bureau already approves promotions. Comps of coffee/drinks are small in dollar value. This regulation should only require a policy that requires comps to be approved by management.

d. Bureau: Don’t need to know about coffee/drink comps. But larger comps are often listed as an expense, to reduce profit. In these cases, comp criteria should be established. A dollar value threshold may help.

Proposed Response (a. - d. above): These comments were accepted and the proposed regulation amended to only require that cardrooms comply with specified federal laws and all regulations that relate to the provision or documentation of complimentary items or services to patrons.

15. Section 12391(a)(15) prohibits a cardroom licensee from providing funds to an employee for the purposes of playing a controlled game.

a. Alan Titus – Artichoke Joe’s: Should read: “... shall not provide *house* funds to any person ...”

Proposed Response: This comment was accepted and the regulation amended accordingly.

b. Alan Titus – Artichoke Joe’s: Cardrooms are only prohibited from having a financial interest in the outcome of those games that have a player-dealer position.

c. David Fried – Oaks Card Club: Should read: “.. for the purposes of playing a controlled game *with a player-dealer position, ...*” There is no legal prohibition of *staking* poker games with house-funded prop players.

d. Mark Kelegian – Crystal Casino: We assume that this regulation seeks to prohibit staking employees with money to play and then sharing in the outcome, while still allowing credit. If this assumption is incorrect, please advise.

e. Bureau: Other than credit, no employees should get house funds to play any game.

Proposed Response (b. – e. above): These comments were rejected. An employee playing with house funds not only gives the impression that the house has a financial interest in the game, but also increases the chances for an unfair decision against a patron who may have a

game dispute with that employee. The Act requires the Commission to adopt regulations that ensure that gambling activities are fair to the public.²²

16. Section 12391(b)(1) requires licensees in Tiers II through V to have at least one key employee in each room to oversee gambling operations.

a. Industry in general: What is a separate room?

b. David Fried – Oaks Card Club: Should not be required in Tiers I- IV, where only one key employee is on duty for each shift.

Proposed Response (a. & b. above): These comments were accepted in part and the regulation amended to require only one key employee for two rooms when one room is clearly visible from the other.

c. Alan Titus – Artichoke Joe’s: Floor persons were never intended by legislation to be licensed as key employees.

d. Bureau: Key employees are defined in the Act as those that supervise and make discretionary decisions, such as pit bosses. May need a definition for a floor person.

Proposed Response (c. & d. above): These comments were rejected in part. The Act only calls for a work permit or a key employee license, no distinction is made for a floor person. As stated in the Bureau’s comment, floor persons should be keys if they *supervise* or make *discretionary decisions*.²³

17. Section 12391(b)(2) requires a licensee to have at least one employee, for every ten poker game tables to oversee those gambling operations and Section 12391(b)(3) requires one employee for every five California game tables to oversee those gambling operations.

a. Alan Titus – Artichoke Joe’s: The term *California game tables* should be defined.

Proposed Response: This comment was rejected, as a California game is already defined in Title 4, Section 12002(c).

b. Alan Titus – Artichoke Joe’s: What does oversee mean? Would the dealer at each table qualify, since they oversee the game.

c. David Fried – Oaks Card Club: These provisions should not apply to Tier II cardrooms, as they only have 6- 10 tables total.

d. Mark Kelegian – Crystal Casino: Would require an unprecedented amount of additional employees to supervise the play of games. No need for the distinction between poker and California game tables if the total number is eight or less

²² Business and Profession Code, sections 19801, subdivisions (g) and (h), and 19841, subsections (b) and (o).

²³ Business and Profession Code, section 19805, subdivision (x).

Proposed Response (b. – d. above): These comments were accepted in part and paragraphs (b)(2) and (b)(3) were consolidated into one paragraph which requires one employee for every eight tables, with no distinction between the types of games. As a result, paragraph (b)(3) was deleted.

18. Section 12392(a) requires cardrooms to implement house rules, written in English, which ensure the fair and honest play of controlled games.

a. Alan Titus – Artichoke Joe’s: It should not be required that all house rules be in *writing*.

b. David Fried – Oaks Card Club: Only those house rules required under subsection (d) should be made available upon request.

Proposed Response (a. & b. above): These comments were rejected. House rules should always be in writing, so they can be provided to patrons. Otherwise, cardrooms could just make them up on the spot. Further, all of a cardrooms house rules should be made available to patrons upon request, as there would be no other source from which to obtain them.

c. Alan Titus – Artichoke Joe’s: Cardrooms should not be held to the absolute standard on *ensuring* fair and honest play. They can adopt house rules designed to *achieve* and *promote* fair and honest play.

d. Industry in general: Some cities require house rules to be posted, which could be unreasonable if this regulation gets too detailed.

Proposed Response (c. & d. above): These comments were accepted in part and the regulation amended to require that house rules *promote* the fair and honest of controlled games. The total content of Section 12392 was also reduced and simplified.

19. Section 12392(b) requires that the house rules address player etiquette and general rules so as to ensure the orderly conduct and control of controlled games.

a. Alan Titus – Artichoke Joe’s: Cardrooms should not be held to the absolute standard on *ensuring* the orderly conduct and control of games.

Proposed Response: This comment was accepted and the regulation amended to require that house rules *promote* the orderly conduct of controlled games.

20. Section 12392(c) requires that house rules discourage players from speaking, during the play of a hand, in languages different from that which is customarily spoken in that gambling establishment, unless all persons at the gambling table and the key employee on duty understand and agree to the use of another language.

a. Alan Titus – Artichoke Joe’s: The floor person should be included in the list of those that agree, since he is overseeing the games.

b. David Fried – Oaks Card Club: Should read: "... requires players to speak in a common language during the play of a hand." If this change is made, the second part of the sentence is not needed.

Proposed Response (a. & b. above): These comments were accepted in part and the regulation amended to require that house rules discourage players from speaking, during the play of a hand, in a language that is not understood by all persons at the gaming table, including all players, the dealer, and the employees responsible for supervising and monitoring that gaming table.