

COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS

REMOTE CALLER BINGO CGCC-GCA-2009-02-C

45-DAY COMMENT PERIOD ENDING AUGUST 2, 2010

The following comments/objections/recommendations were received from David Fried, representing LIF Capitol Group LLC and Pacific Gaming LLC, regarding the proposed action, in writing, during the 45-day public comment period that closed August 2, 2010:

1. DEFINITION OF “BINGO EQUIPMENT” § 12480(b)(3) defines “bingo equipment” as including “... *any card-minding device; the point of sale system for card-minding devices; all network and telecommunications equipment used to communicate from the calling station to card-minding devices; the calling station and all related equipment; the main flashboard and all related equipment, the balls, the verifier, and the game pacer used in the playing of remote caller bingo games.*”

Comment/Recommendation:

The definition of “bingo equipment” does not distinguish between generic computer equipment that can be purchased off the shelf at a store, and custom equipment. This causes a host of problems and does not serve any regulatory purpose.

Under (b)(3), bingo equipment includes:

- The point of sale system (which is software that resides on computers you can buy off the shelf at any store)
- All network and communications equipment (also generic equipment)
- The calling station and all related equipment (some of which can be on a standard generic computer)
- The verifier (again, software running on a standard generic computer)
- Game Pacer (which also can be on a standard generic Computer)

Under §12488, “any equipment used in the conduct of remote caller bingo must be approved by the Commission in advance.” This section excludes card minding devices (subsection (a)) but includes **all of** the above related equipment which may be supplied with card minding devices. But card minding companies do not manufacture this “off the shelf” equipment. Subsection (d)(2)(B) does exclude audio/video equipment that is “commercially available.” *But why not extend this to all “commercially available” electronic or computer equipment?*

We suggest that the definition except general purpose computer and electronic equipment:

“Bingo Equipment” does not include computer, electronic, network or telecommunications equipment made for general commercial use.

Staff Response:

We recommend this comment/recommendation be rejected as not being germane to the proposed regulatory action. While the proposed action does include several amendments to Section 12480, the definition of “bingo equipment” is not included in those amendments, and is not related to the subject of the proposed action. The purpose and intent of this proposed action is very narrowly focused on certain amendments that were found to be necessary to provide clarity, consistency, and technical clean-up due to recent statutory changes. These amendments relate, primarily, to the licensing of employees and volunteers of nonprofit organizations and employees of companies providing services to organizations. In addition, the Commission is proposing to establish a clear distinction between the interim license type for manufacturers and distributors of bingo card-minding devices (CMDs) and those businesses that only provide remote caller bingo (RCB) equipment, and administrative, managerial and staffing services (i.e., vendors) to nonprofit organizations to assist them in conducting RCB games.

However, it should also be mentioned that this definition will be addressed in another rulemaking concerning card-minding devices and manufacturers/distributors. That rulemaking is currently being developed and should be made available for informal public review and discussion very soon.

2. DEFINITION OF A “GAME” § 12480(b)(11) defines “game” as *“beginning when the first ball or number symbol is called and ends when all succeeding balls or number symbols are returned to the cage or blower and the machine has been cleared.”* It also provides that “[a] game may have two or more parts with different winning patterns for each part.”

Comment/Recommendation:

This definition defines a bingo game as ending when bingo balls are returned to a cage or blower and the blower is cleared. There are three separate problems with this definition.

- A. A game ends when the game-ending winning pattern is achieved and verified. That is when the game stops, and the winner is paid. If there is a delay in returning the balls to the blower until after announcements or an intermission, neither would mean that the game is still going on.
- B. The bingo statutes refer to matching a “number or symbol.” (§326.5 (o)). The regulation should use the same words rather than narrowing how bingo may be played by referring to a “ball or number symbol.” The statute is not limited to numeric symbols. Non-numeric symbols like gemstones or animal shapes are allowed.
- C. This section would require plastic bingo balls for all bingo games. But for non-remote caller bingo games under Penal Code §326.5, video displays and electronic bingo balls are permitted.

For remote caller games under Section 326.3, plastic balls are required: "... randomly drawn plastic balls are announced."

However, this requirement is not applicable to non linked games. California Penal Code Section §326.5(o), which applies to bingo games other than remote caller games, instead states:

"Electronic or video displays shall not be used in connection with the game of bingo, except in connection with the caller's drawing of numbers or symbols, and the public display of that drawing."

We suggest that this definition be changed:

~~"Game" is defined as beginning when the first ball or number or symbol is called and ends when a game-ending winning pattern is achieved and verified. all succeeding balls and number symbols are returned to the cage or blower and the machine has been cleared.~~

Staff Response:

We recommend this comment/recommendation be rejected as not being germane to the proposed regulatory action. While the proposed action does include several amendments to Section 12480, the definition of "game" is not included in those amendments, and is not directly related to the subject of the proposed action. As stated above, the purpose and intent of this proposed action is very narrowly focused on certain amendments that were found to be necessary to provide clarity, consistency, and technical clean-up due to recent statutory changes. [Please refer to comment/recommendation 1, above, for further detail.]

It is also noted that staff does not disagree with Mr. Fried's comments concerning the definition of "game." However, that definition will also be addressed in another rulemaking concerning card-minding devices and manufacturers/distributors. In fact, staff is proposing an amended definition of "game" that is almost identical to the one Mr. Fried suggests. That is already being developed as part of the rulemaking mentioned under comment/recommendation 1.

3. DEFINITION OF "MANUFACTURER" § 12480(b)(18), renumbered (17), currently defines "manufacturer as any person that directly or indirectly performs any of certain specified functions and differentiates between manufactures and distributors of remote caller bingo equipment, supplies and services and manufacturers and distributors of bingo card-minding devices.

Comment/Recommendation:

There are persons, companies or related companies that both manufacture and distribute. They should not have to get duplicative licenses. There is no purpose for duplication.

We suggest that you either add a definition for a "Manufacturer & Distributor", or a section stating that a joint license may be issued. This would apply to any company that does both

manufacturing and distribution, and include two related or affiliated companies, such as a subsidiary or company with the same management and ownership.

“(18) ‘Manufacturer/Distributor’ means any person, entity, affiliated companies or companies related by management and ownership that perform the functions of a Manufacturer and Distributor.”

For example, in our case, LIF [Capitol Group, LLC] manufactures card minders and sells them only to Pacific [Gaming, LLC]. Pacific distributes only card minders from LIF. The two companies have the same owners (a trust and one individual). But last year, LIF and Pacific ended up filling out **10** sets of forms and paid 10 license fees in all when there are only **3** persons with an interest in the business.

Recognizing that there are people or companies that serve as a “Manufacturer and Distributor” will cut the license fees and paperwork in half. There is no regulatory purpose served by duplication.

We are a small business with less than 20 total employees. We already suffer from duplication by having each state license us, background us and collect fees to the tune of \$60,230 last year for **18** separate government licenses. The cost for the added duplication in this case will be a minimum of \$2,500 a year, plus time, for a total cost of \$4,000 per year in unnecessary expense.

Staff Response:

We recommend this comment/recommendation be rejected as not being germane to the proposed regulatory action. While the proposed action does include minor technical amendments in the definition of “manufacturer,” those amendments are limited exclusively to subparagraph (A) of paragraph (17), which relates to manufacturers of RCB equipment and supplies, not CMDs. Those amendments specifically relate to the distinction being drawn between manufacturers/distributors of CMDs and RCB equipment and supplies and “vendors” of remote caller bingo services. As stated above, the purpose and intent of this proposed action is very narrowly focused on certain amendments that were found to be necessary to provide clarity, consistency, and technical clean-up due to recent statutory changes. [Please refer to comment/recommendation 1, above, for further detail.] The Commission is proposing to establish a clear distinction between the interim license type for manufacturers and distributors of bingo CMDs and those businesses that only provide RCB equipment, and administrative, managerial and staffing services (i.e., vendors) to nonprofit organizations to assist them in conducting RCB games.

It is also noted that the definition of “manufacturer,” will be addressed in another rulemaking concerning card-minding devices and manufacturers/distributors. That is already being developed as part of the rulemaking mentioned under comment/recommendation 1.

4. DEFINITION OF “VENDOR” § 12480(b)(41), renumbered (39), currently defines “vendor” as either “*a manufacturer, as defined in paragraph (18), or a distributor, as defined in*

paragraph (7).” This proposed action will change the definition of “vendor” to mean “a person that directly or indirectly provides equipment, supplies, or services to an authorized organization for use in remote caller bingo games, including management companies that have a written agreement with an organization to assist with or conduct remote caller bingo games.”

Comment/Recommendation:

The definition of vendor sweeps too broadly. It includes anyone that directly or indirectly supplies “equipment, supplies or services” used in a remoter caller game.

The definition should not include the following generic supplies and general services:

- Someone that sells folding tables or chairs
- National Cash Register Company, who supplies the cash registers purchased for the games
- Office Depot if they supply dry erase markers for laminated bingo paper
- PGE, which supplies electricity and lights

We suggest:

“Vendor ... a person that directly or indirectly provides equipment, supplies or services specifically for, or made or adapted for, use in remote caller bingo games ...”

Staff Response:

We recommend this comment/recommendation be rejected. It is clearly not the intent of this proposed action to sweep incidental suppliers into the net of licensure. While a very extreme interpretation of this definition might lead to a conclusion that sellers/renters of folding tables and chairs, NCR, Office Depot, and utility companies should be licensed as vendors, that is not a reasonable or logical interpretation or conclusion. Furthermore, all of the products and services Mr. Fried identifies relate primarily to traditional bingo which the Commission does not regulate. None of those items are directly or specifically related to the transmission of a live traditional bingo game to remote locations and that is the important distinction. The intent of this proposed action is to establish a clear distinction between the interim license type for manufacturers and distributors of bingo CMDs and those businesses that only provide RCB equipment, and administrative, managerial and staffing services (i.e., vendors) to nonprofit organizations to assist them in conducting RCB games.

5. RENEWAL IF INTERIM LICENSES § 12492(g) and (h) specify the requirements for renewal of interim manufacturer, distributor or vendor licenses by owner licensees [(g)] and endorsed owners [(h)].

Comment/Recommendation:

- a. Form 610 – Initial and Renewal Applications – should be revised for renewal applications. There is no reason to require a renewal application to contain or attach all the same information as an initial application.

For example, section 2 of the application asks for the business entity and entity owner to attach its Articles of Incorporation, By Laws, Partnership Agreement, trust, etc...
Section 3 asks for repetitive information about the formation of the entity.

For both sections 2 and 3, an applicant renewing their license should be able to check a box stating that these documents have not changed since they were last submitted. You should not have to recopy and resubmit the same documents and information year after year if there is no change.

- b. Are these two subsections (g) and (h) duplicative or is there a difference between them?

Staff Response:

- a. We recommend this comment/recommendation be rejected. While staff does not necessarily disagree with Mr. Fried's comment and recommendation, a change is not necessarily required at this time. This is still an interim license process and there is another rulemaking proposal being developed to establish a regular license process. This issue can and will be addressed in that proposed action.

In actual practice, staff will not be requiring renewal applicants to submit duplicative documentation where no change has taken place since the previous license issuance or renewal. (It should be noted that none of the interim licenses have reached their first renewal.) Licensees that are due for renewal could easily be notified that documentation need not be submitted again if no changes have occurred and a statement to that effect accompanies the renewal application.

- b. Subsections (g) and (h) are not duplicative; the difference is that subsection (g) applies to owner-licensees and subsection (h) applies to endorsed owners.

6. AUDITS § 12508(d) provides that “[t]he records kept by organizations and vendors, pursuant to paragraph (1) of subsection (c), shall be audited by an independent California certified public accountant at least annually, and copies of the reports shall be provided to the Commission within 120 days after the close of the organization's and vendor's fiscal years.”

Comment/Recommendation:

This section requires every bingo vendor to have an annual audit by a CPA without regard to the vendor's size or sales. However, many bingo vendors may be individuals or small businesses, such as someone that supplies ink markers for marking bingo paper, or someone that sells tables and chairs. They may have \$25,000 a month in gross sales with a net profit of \$5,000 a month. But an audit could cost \$20,000 - \$50,000. That does not seem fair or justified.

There needs to be a threshold before an audit is required. We suggest the same thresholds be used as in cardroom regulations (§ 12403):

Group I card rooms – those with \$10 million or more in gross revenue, have an audit.

Group II card rooms – those with \$2-\$10 million a year in gross revenue have an accountant’s “review” annually in accord with accounting standards.

Those Group III card rooms with more than \$500,000 a year in revenue have to produce financial statements “compiled” by an accountant.

Those card rooms with less than \$500,000 a year in revenue have to prepare financial statements.

There is no reason to subject bingo vendors to a different standard.

Staff Response:

We recommend this comment/recommendation be rejected. The audit requirement does not necessarily apply to all “vendors.” The record keeping requirement in paragraph (1) of subsection (c), relates specifically to “*records of income received and expenses disbursed in connection with the operation, conduct, promotion, supervision, and any other related activity of remote caller bingo games.*” That would not include those manufacturers, distributors or vendors that are not involved in the actual operation of RCB games. This requirement applies specifically to vendors that provide administrative, managerial and staffing services to nonprofit organizations to assist them in the actual conduct of RCB games. Since these vendors, through written agreements with organizations, perform the functions of the organizations in the conducting of RCB games, their records must be subject to the same recordkeeping and audit requirements as those organizations they represent. The vendor, after all, is essentially an agent or employee of the organizations, and the records in question are the records of the organizations’ RCB games.

Furthermore, Penal Code section 326.3(w)(1) mandates that audits be performed. No distinction is made between organizations or vendors based on gross annual revenue or any other criterion. There is no basis or authority, expressed or implied, that would permit the Commission to make a distinction in regulation that would lessen the requirement of section 326.3(w)(1).

7. NOTICE OF PROPOSED REGULATORY ACTION; FISCAL IMPACT STATEMENTS

Comment/Recommendation:

We disagree with the fiscal impact statements about impact on business, impact on jobs, cost impacts on private persons or businesses and effects on small business.

For the reasons stated in the above comments, 1, 3-[6], there are cost and regulatory impacts that are unjustified and unconscionable, especially on small business persons. There are potentially unnecessary costs of \$80,000 annually on our business, and hundreds of thousands of dollars or more in costs collectively on all the affected businesses.

Staff Response:

We recommend this comment/recommendation be rejected for the following reasons:

First, comments 1 and 3 are not germane to this proposed action and are, therefore, not subject to any fiscal impact consideration.

Second, comment 4 misinterprets the effect of the proposed action. The amendments do not require the licensure of any of the companies Mr. Fried identifies and no additional licensure requirements are imposed on anyone not required to be licensed currently. All this does is establish a clear distinction between the interim license type for manufacturers and distributors of bingo CMDs and those businesses that only provide RCB equipment, and administrative, managerial and staffing services (i.e., vendors) to nonprofit organizations to assist them in conducting RCB games.

Third, comment 5 assumes a requirement that, in practice, will not be imposed. As discussed above, steps will be taken to address the issues of submission of duplicative documents and information where no change has occurred. Therefore, the proposed action does not carry with it any fiscal impact in this regard.

Finally, any costs or fiscal impact associated with audits is the result of the statutory mandate imposed in section 326.3 of the Penal Code. The proposed action does not impose any additional fiscal impact as the audit requirement and the records to be audited are the same records associated with RCB games that are addressed in section 326.3(w). They are the records of the organizations, whether maintained by the organizations or a vendor on behalf of the organization.

8. NOTICE OF PROPOSED REGULATORY ACTION; CONSIDERATION OF ALTERNATIVES

Comment/Recommendation:

This letter includes a number of less costly and reasonably effective alternatives to the proposed regulations.

Staff Response:

We recommend this comment/recommendation be rejected. The alternatives suggested in Mr. Fried's above comments have been considered. For all of the foregoing reasons, staff recommends those alternatives be rejected.

No additional written comments were received during the 45-day written comment period which ended August 2, 2010.