

CALIFORNIA GAMBLING CONTROL COMMISSION
FINAL STATEMENT OF REASONS
INTERIM GAMBLING LICENSES
CGCC-GCA-2011-01-R

HEARING DATE:

September 28, 2011

SUBJECT MATTER OF PROPOSED REGULATIONS:

Interim Gambling Licenses

SECTIONS AFFECTED:

California Code of Regulations, Title 4, Division 18: Chapter 6, Section 12349

UPDATED INFORMATION:

The Initial Statement of Reasons, as published on July 15, 2011, is included in the file and is incorporated by reference as if fully set forth herein. The information contained therein is updated as follows:

Proposed Action:

This proposed action would establish Section 12349 in Article 2, Chapter 6, Division 18, Title 4 of the California Code of Regulations. The proposed regulations would provide as follows:

- Subsection (a) would provide definitions for the following words and terms that are unique to Section 12349:
 - (1) “Applicant” would mean a new owner of a gambling enterprise or individual in control of an ownership interest, who makes application to the Commission for an interim gambling license.
 - (2) “Interim gambling license” would mean a license issued by the Commission which permits the interim operation of a gambling enterprise following a qualifying event, during which time the Commission processes and considers an application for a regular gambling license from a new owner.
 - (3) “New owner” would mean an individual who is a trustee (other than a trustee in bankruptcy), beneficiary, successor in interest, or security interest holder for a gambling enterprise who becomes an owner of, or obtains an ownership interest in a gambling enterprise as a result of a qualifying event.

While the provisions of subsection (s) of section 19841 are not exclusive to a change in ownership, neither are they exclusive to a change in control of an ownership interest. A change of ownership is clearly included in the events contemplated by the statute.

The statute specifically refers to the death of a licensee. Death of a licensee would certainly result in a change of ownership which could involve an individual owner, a successor in interest, a security interest holder, a beneficiary, or a trustee (other than a trustee in bankruptcy). Therefore, it is necessary and appropriate to define and use the term “new owner” in the proposed regulation. The definition of that term references examples of those individuals who might be involved in a change of ownership.

- (4) “Qualifying event” would mean an event, such as those specified in Business and Professions Code Section 19841, subdivision (s), which results in a change in the ownership or in the control of the ownership interest of a gambling enterprise and prevents gambling operations from continuing because the new owner or individual in control does not hold a valid gambling license. A qualifying event would not include a planned or negotiated transaction, where a current licensee retains the authority to continue gambling operations, but the transaction requires prior Commission approval. Those excluded transactions may include a sale, the transfer of shares, incorporation or similar transactions.

The sole purpose of this proposed action is to comply with and implement the provisions of subdivision (s) of section 19841. This definition would restrict the use of an interim gambling license to only those events which threaten to shutdown gambling operations because no individual holds a gambling license. This regulation is necessary in order to prevent the interim license process from being used to circumvent or subvert other actions by the Commission, such as disciplinary action against an owner-licensee. Further, this regulation will prevent the interim license process from being used for other business/financial transactions that are planned by the licensee and require *prior* approval from the Commission.¹ The Commission currently has the discretion to issue temporary licenses should the facts and circumstances of a particular situation demonstrate sufficient cause. Proposed subsection (i) expressly provides that this regulation (Section 12349) does not preclude the issuance of temporary licenses.

- (5) “Regular gambling license” would mean a gambling license issued by the Commission pursuant to Section 12342.

The meaning of the above noted words and terms may not be consistent with the meaning of similar words or terms used in other existing regulations or may be unique to this section. Therefore, these definitions are necessary to ensure that the proposed regulations are clear, concise and easy to understand.²

¹ Business and Professions Code, sections 19801 (k), 19824 (c), 19900, 19901, 19902, 19903 and 19904

² Government Code, section 11349.1 (a); California Code of Regulations, Title 1, Section 16 (a)

- Subsection (b) would allow gambling operations to continue following a qualifying event, provided that an owner or a licensed person affiliated with the gambling enterprise assumes control of the gambling operations, the Commission is notified of the qualifying event within 10 days, and the new owner, or individual in control of the ownership interest, submits a request for an interim gambling license, as specified. This regulation would require that gambling operations cease in the event that the interim license request is denied or withdrawn and no other person has applied for or been granted an interim or regular gambling license for that gambling enterprise.

A licensed person, within the meaning of Section 12349, may include key employees, endorsed owners, security interest holders, financial interest holders, community property interest holders, trustees (other than trustees in bankruptcy), beneficiaries, and any other individual endorsed on a gambling license. In general, “licensed person” would include any individual or entity that the Commission would require to be licensed. However, in the context of subsection (b) of Section 12349, this would be limited to an individual who assumes control of gambling operations. That individual should be someone who has been subjected to a background investigation equivalent or nearly equivalent, to that of an owner-licensee and who has been approved by the Commission to perform duties that included oversight of gambling operations and compliance with the statutory and regulatory obligations of a gambling enterprise.

Pursuant to Business and Professions Code section 19841, subdivision (s), this regulation allows a cardroom to continue operating following a qualifying event, provided that someone has control of the gambling operations and that the new owner or individual in control applies for a gambling license. However, if any factor in the applicant’s background dictates that the Commission deny the interim license, gambling operations must cease if no other person holds an interim or regular gambling license that would allow continued operation. The Gambling Control Act (Act)³ and Penal Code would prohibit a gambling enterprise from conducting gambling operations if no individual associated with that enterprise holds a gambling license.⁴

- Subsection (c) would establish the application process for an interim gambling license. The process includes a requirement that the new owner or individual in control of the ownership interest submit the following to the Commission within 30 days of the qualifying event: a complete application package for a regular gambling license; a written request for an interim license; and a document that evidences the qualifying event. The 30-day application submission requirement could be extended by the Commission or the Executive Director if the new owner or individual in control of the ownership interest can demonstrate good cause, which may include factors such as a lack of knowledge of the occurrence of a qualifying event. The length of any extension would be at the discretion of the Commission or Executive Director, based on the specific facts and circumstances of each request.

As a result of this regulation, the application process for both an interim and regular gambling license would start simultaneously. This would help to prevent a duplication of

³ Business and Professions Code, Division 8, Chapter 5, section 19800 et seq.

⁴ Business and Professions Code, sections 19850 and 19855; Penal Code, section 337j (a)(1)

effort by the applicant and Commission or Bureau of Gambling Control (Bureau) staff. Except for details about the qualifying event, all of the information needed to consider an interim license application is already requested on a regular “Application for State Gambling License” form (CGCC – 030). This regulation would also help to expedite the regular license application process, as some of the work may have already been accomplished for the interim license.

By requiring that documents be produced which show that a qualifying event has occurred, this regulation will help to ensure that the interim license process is not used for transactions that are planned by the licensee and require *prior* approval from the Commission.⁵

A qualifying event, such as in the death of an owner-licensee, may include circumstances that prevent a new owner or individual in control of the ownership interest from submitting a request for an interim license within the required 30 day time period. As a result, this regulation allows the Commission or the Executive Director to extend the time limit based on individual facts and circumstances.

- Subsection (d) would specify that a request for an interim gambling license is ancillary to, and concurrent with, an application for a regular gambling license. The interim license is only meant to allow gambling operations to continue while a more permanent solution is sought for a licensing problem. This regulation will ensure that a regular license application is being processed during the term of the interim license.

This subsection would also set up various timelines for the interim license application process. It allows Commission staff 10 days to determine the completeness of a request for an interim gambling license. If the request is incomplete, this regulation allows the applicant another 10 days to send the additional documents or information. If the applicant fails to send the requested documents or information, the application would be considered abandoned. When a request is considered complete, the Commission would have 60 days to schedule and conduct a meeting to grant or deny the request for an interim license. The issuance of an interim license is a stopgap measure with some level of urgency involved. The multiple steps and multi-staff involvement of an interim license request dictates that goals be established to ensure timely processing. By listing these timelines in regulation, license applications are less apt to get bogged down during the various steps in the process.

This subsection would require that gambling operations be terminated if an application for an interim license is abandoned by the applicant and no other person has applied for or obtained an interim or regular gambling license. The Act and Penal Code prohibit gambling operations if no person holds a gambling license.⁶

This subsection would also prohibit the approval of a request for an interim gambling license if any factor is disclosed that would disqualify the applicant for a regular license. If a factor exists that requires the Commission to deny an application for a regular license, it serves no

⁵ Business and Professions Code, sections 19801 (k), 19824 (c), 19900, 19901, 19902, 19903 and 19904

⁶ Business and Professions Code, sections 19850 and 19855; Penal Code, section 337j (a)(1)

purpose to issue an interim license to that same individual. The interim gambling license is meant to bridge the gap to a regular license.

The Bureau would likely not be able to complete a full background investigation for the Commission's consideration of an interim gambling license application. While it is acknowledged that the available background information would generally be limited to the criminal background information obtained as the result of a Live Scan (fingerprint) criminal background check, the regulation does not preclude the Commission from considering other disqualifying information that may already be known or otherwise comes to their attention. The application for a regular license itself might contain information that calls attention to issues that should be investigated and evaluated before an interim gambling license is granted. The provisions of this subsection clearly permit the Commission to take into consideration all available information.

- Subsection (e) would apply three criteria to the processing of a request for an interim gambling license. First, in the unlikely event that a regular license is issued before the interim license, the request for an interim license would be deemed withdrawn. Second, if an applicant withdraws an application for a regular gambling license before the Bureau's recommendation is made, the request for an interim license would also be deemed withdrawn. Third, the denial or cancellation of a request for an interim gambling license would not affect the continued processing of the regular license application.

These rules are necessary for the orderly processing of two concurrent license applications. For example, if an application for a regular license is withdrawn, it serves no purpose in going forward with the processing of the corresponding request for an interim license.

- Subsection (f) would apply the following conditions to the issuance of an interim gambling license:
 - (1) An interim gambling license would be invalidated upon issuance or denial of the corresponding regular license.
 - (2) The term of an interim gambling license would be determined by the Commission and based in part on the time necessary to process and consider the application for a regular gambling license.
 - (3) The issuance of an interim gambling license would not obligate the Commission to grant the regular license. Issuance of a regular license would be subject to specified criteria.
 - (4) The issuance of an interim gambling license would not create a vested right to a regular gambling license or an extension of the interim license.
 - (5) The issuance of an interim gambling license would not change the qualification requirements for a regular license.
 - (6) The holder of an interim gambling license would be required to notify the Commission within 30 days of hiring a new key employee or specified contractor.
 - (7) The holder of an interim gambling license would be required to pay all the applicable annual fees associated with a regular gambling license.

- (8) The holder of an interim gambling license would be required to comply with the Act and its regulations.
- (9) The proceeds of the gambling enterprise would be required to be held in an escrow account and not disbursed until the Commission approves the ownership transfer and issues a regular gambling license to the new owner(s). The payment of taxes, operating expenses, preexisting obligations, preexisting dependent support and any other distributions approved by the Commission would be exempt from this restriction.
- (10) The Commission would be allowed to impose additional conditions upon individual applicants for an interim gambling license to address particular factual situations.

These conditions imposed on an interim gambling license are necessary in order that the license holder understands his or her obligations during the term of the license. The holder of an interim license may be new to the cardroom industry. Knowledge of the applicable provisions of the Act, and that key employees and specific service providers require licensure, is important to the success of the gambling enterprise. These conditions would ensure that the holder of an interim gambling license understands that other requirements and factors may apply to the approval of their regular gambling license.

These conditions would also ensure that the proceeds of the gambling operation are not distributed until the holder of the interim gambling license is qualified for a regular permanent license, as California law prohibits a person from receiving any compensation or reward from the conduct of a controlled game unless that person holds a gambling license.⁷ The intent is to maintain the status quo during the time it takes to fully background an individual for a regular gambling license. While that individual may hold an interim gambling license during that period, it is not known whether he or she will ultimately qualify for the regular license. Therefore, certain limitations are necessary and appropriate to safeguard the assets of the gambling enterprise.

- Subsection (g) would require the new owner of a gambling enterprise to provide the Commission with written notification within 30 days of a qualifying event if he or she intends to sell his or her ownership interest without first obtaining an interim or regular gambling license.

This subsection is meant to accommodate a new owner who might wish to sell their ownership interest rather than own and operate a gambling enterprise. Since gambling license requirements would apply to those that purchase that ownership interest, it is important that the Commission be timely advised of any intent to sell. The thirty day requirement is consistent with the requirement for submission of applications by a new owner. Commission staff would then be able to help guide the purchaser(s) through the appropriate interim or regular licensing process.

- Subsection (h) would establish a process for the cancellation of an interim gambling license by the Commission when it is determined that the license holder is not qualified to hold a

⁷ Business and Professions Code, sections 19850, 19853 (a)(1), and 19879 (a); Penal Code, section 337j, (a)(2)

gambling license. The process would include an option for the license holder to request an evidentiary hearing, pursuant to existing regulations.⁸

In cases where the Executive Director determines that a person is not qualified to hold a gambling license, this regulation would provide “due process” for the license holder.

- Subsection (i) would ensure that the interim gambling license process does not preclude the Commission from issuing temporary licenses, as authorized by Business and Professions Code section 19824, subdivision (f).

Although this new regulation would authorize the issuance of an interim gambling license, so that gambling operations may continue following specified events, it is necessary and proper that the Commission retain its existing authority and discretion to issue temporary licenses for other reasons.

REQUIRED DETERMINATIONS:

Local Mandate:

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

Business/Small Business Impact:

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

Chapter 233, Statutes of 2009 (AB 293, Mendoza) mandated the adoption of this regulation. This regulation merely establishes a process whereby interim gambling licenses may be requested by and issued to appropriate individuals in an expeditious manner in order to allow gambling operations to continue when certain events have occurred that may otherwise require the cessation of gambling operations. All that this regulation requires is that an individual, if necessary in certain circumstances, submit a written request for an interim gambling license concurrent with the submission of their application for a regular gambling license pursuant to existing requirements. As a result, this proposed action does not impose any new requirement or cost upon or require any additional action by any business. There are no new reporting or recordkeeping requirements mandated, nor are there any performance standards imposed, or technologies or equipment specified. Furthermore, no new or additional actions or procedures are mandated. The process established in this proposed action is permissive rather than mandatory in that it permits an individual to request, and the Commission to grant, an interim gambling license under specified conditions.

⁸ California Code of Regulations, Title 4, Section 12050 (b)

Consideration of Alternatives:

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

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

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

COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

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

A. 45-Day Written Comment Period

The following comments/objections/recommendations were received regarding the proposed action, in writing, during the 45-day comment period that ended on August 29, 2011:

1. Section 12349, subsection (a), paragraph (3), would define a “New owner” as a person who is a receiver, trustee, beneficiary, executor, administrator, conservator, successor in interest, or security interest holder for a gambling enterprise that becomes the owner of a gambling enterprise as a result of a qualifying event.

a. David Fried – California Gaming Association (CGA): The definition of “new owner” restricts new owners to persons such as “a receiver, trustee, beneficiary, executor, administrator, conservator...” that become “the owner of a gambling enterprise as a result of a ‘qualifying event.’” Business and Professions Code section 19841, subsection (s), specifically refers to conservators, receivers, etc., but this explicit listing in the statute is inconsistent with the change of ownership requirement in the regulation. With the appointment of a conservator or receiver, there has been no change in ownership of the gambling enterprise. The statute’s listing of receivers and conservators demonstrates that a change in ownership is not required. Rather, in each case there has been a change in control of the ownership interest.

b. Alan Titus – Artichoke Joe’s: Some of the positions included in the definition do not involve a change of ownership but a change in control over the ownership interest. This would be true of receivers, conservators, and trustees in bankruptcy.

Response (a. & b.): These comments and recommendations are accepted and the proposed regulation has been amended to accommodate them. [Modified text dated September 29, 2011; pg. 1, lines 18-21.] While the provisions of subsection (s) of section 19841 are not exclusive to a change in ownership, neither are they exclusive to a change

in control of an ownership interest. A change of ownership is clearly included in the events contemplated in the statute.

The statute specifically refers to the death of a licensee. Death of a licensee would certainly result in a change of ownership which could involve an individual owner, a successor in interest, a security interest holder, a beneficiary, or a trustee (other than a trustee in bankruptcy). Therefore, it is necessary and appropriate to define and use the term “new owner” in the proposed regulation. The proposed definition of that term has been modified to reference examples of those individuals who might be involved in a change of ownership. The references to those positions that would only involve a change in control of an ownership interest have been deleted from this definition.

2. Section 12349, subsection (a), paragraph (4), would define a “qualifying event” as an event, such as those described in subdivision (s) of Section 19841 of the Business and Professions Code (death, insolvency, foreclosure, receivership, or incapacity of an owner-licensee), that results in a change in the ownership of a gambling enterprise and prevents the gambling enterprise from conducting gambling operations because the new owner does not hold a valid gambling license. This paragraph also excludes from the definition of a “qualifying event” any planned transaction where a current licensee retains control of gambling operations until approval of the transaction and issuance of a new license by the Commission (e.g., a sale, the transfer of shares, incorporation, etc.).

a. Bureau of Gambling Control: Suggest changing “This does not include...” to “A qualifying event does not include...” [Opening phrase of the last sentence, *Specific Language of Proposed Regulations*, June 29, 2011, page 1, lines 28-31.]

Response: This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 29, 2011; pg. 1, line 28.] This is a minor grammatical change that does not alter the meaning of the originally proposed text, but may be clearer in its meaning.

b. Jade Jaeckle – Game Source, LLC: The Commission should consider providing that a “qualifying event” includes situations where the Commission has decided to revoke a Gambling License, but specifically allowed for a stay of said revocation for the purpose of allowing the original licensee to divest him or herself of their interests. In such circumstances, the original licensee may be financially unable, unwilling, or even barred from continuing daily gambling operations during the stay period.

The recommended change would be to modify the language of paragraph (4) to provide an exception, or at least provide clarity, to the language stating what a “qualifying event” does not include. Our proposal is not in direct conflict with this language since we are discussing a situation where a current licensee is unable to continue gambling operations. The Commission may wish to specifically allow for the issuance of interim licenses in planned or negotiated transactions where the licensee is on limited time and unable or unwilling to continue gambling operations.

Allowing a new owner to submit an application for an interim gambling license in this situation is consistent with the policies of the Commission and seems logical given the likely regular licensing of the new owner/applicant in the foreseeable future.

Response: This comment and recommendation is rejected. The sole purpose of this proposed action is to comply with and implement the provisions of subdivision (s) of section 19841. The situation described in this comment is neither expressly nor impliedly addressed in the statute and is not the type of event that would necessitate the issuance of an interim gambling license. In fact, these types of events/situations result from lengthy disciplinary actions and more appropriately fall under the express exclusion provision for planned transactions.

In the situation described in this comment, as well as in the case of any other planned transaction, the Commission has the discretion to issue temporary licenses should the facts and circumstances of a particular situation demonstrate sufficient cause. Proposed subsection (i) expressly provides that this regulation (Section 12349) shall not preclude the issuance of temporary licenses. Therefore, there is no need to include in this regulation the provisions recommended in this comment.

c. David Fried – CGA: Under the proposed definition, a “Qualifying Event” can only be triggered by: (1) “a change in ownership,” and (2) which “prevents the gambling enterprise from conducting gambling operations.” These two conditions are inconsistent with the statute.

First, the change of ownership condition conflicts with express language in subdivision (s) of section 19841 that refers to the need for “gambling enterprises to operate continuously.” Subdivision (s) does not condition the interim license on a change in ownership in the gambling enterprise. In fact, it rests on the need for the existing licensed enterprise that owns the card room to continue in operation in cases of, including, but not limited to, incapacity or insolvency. Therefore, by its terms, subdivision (s) applies in cases where the gambling enterprise has not been transferred but remains the license holder, but due to a qualifying event, someone must be licensed to act for the existing gambling enterprise so that the enterprise may continue in operation. Any change in control that would affect the ownership interest or the continuous operation of the gambling enterprise should be addressed in these interim licensing regulations even if it does not result in a change in ownership of the gambling establishment.

Second, the regulations condition an interim license on not only a change in ownership, but one which also “prevents the gambling enterprise from conducting gambling operations.” That is also different than what the statute provides. The statute is focused on the continuous operation of the gambling enterprise not the continuous conduct of gambling.

If the gambling enterprise is a corporation with officers elected annually by the directors or shareholders, the officers can operate the gambling enterprise and continue gambling operations even if the shareholder dies, until the officers' term of office expires. But if the new shareholders do not receive interim licenses, there is no one to hold an annual meeting, or elect directors or officers when the terms of office end. The corporation cannot long continue in continuous operation without licensed shareholders. The officers also will not be accountable to an owner during the remaining term of office.

d. Alan Titus – Artichoke Joe's: This definition includes some situations covered by the statute but not others. The change in trustees on the death of a trustee involves a change in ownership. Trusts are not entities and the succession of trusteeship constitutes a change in ownership. In the most common situation, a person will create a trust as a will substitute to avoid probate and will transfer all of his or her probate assets into trust. The person will appoint him or herself as trustee and will be the sole beneficiary of the trust during his or her life. On his or her death, a successor trustee assumes office. If the successor trustee has not previously been licensed, the death of the prior owner and assumption of position by the new trustee would be problematic under the Act.

Similarly, the proposed regulation would apply on the death of a licensee. On an interest-holder's death, he or she no longer holds the interest, but rather that interest passes to his or her estate and to the personal representative appointed by the court. This is a change in ownership.

However, the proposed regulation would not apply to situations involving a change in control over an ownership interest. These include situations where an owner is subject to conservatorship, receivership, or bankruptcy proceedings. In all of these cases, a person is appointed in court proceedings to take control over an owner's interest in a cardroom business, but title remains with the principal. Note that in all of these cases, the control of the conservator, receiver and trustee in bankruptcy is subject to limitations and to overriding control of the courts. Nevertheless, the Commission needs to license the person and the regulation should allow for interim licensing.

Response (c. & d.): These comments and recommendations regarding the change of ownership issues are accepted and the proposed regulation has been amended to accommodate them. [Modified text dated September 29, 2011; pg. 1, lines 24-26.] Please refer to the response to comments 1-a. and 1-b., above.

The comments and recommendations concerning the issue of continuous operation of a gambling enterprise as opposed to continued conduct of gambling operations are rejected. The Commission's focus and concern is the conduct of gambling operations. For the purposes of the proposed regulation, as well as subdivision (s) of section 19841, the need for an interim gambling license is directly related to the continuation of gambling operations. An interim gambling license, or even a regular gambling license, is not needed for the continuation of any other portion of a gambling enterprise's business. A gambling license is not required for the operation of a restaurant, a cocktail lounge, a gift

shop, a hotel, or any other non-gambling business function or undertaking that a gambling enterprise may be engaged in.

e. David Fried – CGA: The Commission has expressed the concern that these regulations not serve as an alternative to regular licensing for ordinary transactions or be used to subvert disciplinary proceedings. These concerns can be addressed in two alternative ways.

First, these concerns are already accommodated in part by the sentence in the draft regulation which states that the regulations are not for use for any planned or negotiated transaction where the current license holder is able to continue operations until the Commission issues a new license.

Second, we suggest that the Commission add to that sentence the restriction that pending disciplinary proceedings are not mooted or stopped by an interim license application or license.

Response: This comment and recommendation is rejected. As stated in this comment, the current language of the proposed regulation adequately addresses the non-applicability of the term “qualifying event” to regular or planned transactions. Further clarification in that regard is not necessary.

With respect to the issue of disciplinary actions, it is sufficient that the definition of a “qualifying event” limit that term to the events specified in subdivision (s) of section 19841, or similar events, to prevent the interim license process from being used to avoid or circumvent disciplinary or other action by the Commission. When there has been an event that falls within the proposed definition, it may be necessary and appropriate to consider issuing an interim license even if disciplinary action is pending. The individual circumstances of each specific instance will need to be considered to determine if an interim license should be granted and, if granted, how that might affect the Commission’s jurisdiction or any pending action. This regulation cannot and should not address those issues as there may be other provisions of law that take precedence.

See also, response to comment 2-b., above.

3. Section 12349, subsection (b), would allow gambling operations to continue following a qualifying event, provided that an owner or a licensed person affiliated with the gambling enterprise assumes control of the gambling operations, the Commission is notified of the qualifying event within 10 days, and the new owner submits a request for an interim gambling license, as specified. This regulation would require that gambling operations cease in the event that the interim license request is denied or withdrawn.

a. Bureau of Gambling Control: Because neither “owner” or “licensed person” is defined in statute or regulation for purposes of this context, we suggest using the term “owner licensee” as defined in Business and Professions Code section 19805, subdivision (ad). Similarly, we suggest that the term “key employee” as defined in Business and

Professions Code section 19805, subdivision (x), be used in lieu of “a licensed person affiliated with the gambling enterprise.”

Response: These comments and recommendations are rejected. The use in the proposed regulation of the terms “owner” and “licensed person” is appropriate, accurate and no specific definitions are required. The common meanings of these terms, when considered in the context of both the proposed regulation itself and subdivision (s) of section 19841, provide sufficient clarity. The suggested replacement terms (“owner-licensee” and “key employee”), however, are inaccurate and inappropriately limiting.

The term “owner-licensee,” as defined in section 19805, subdivision (ad), and used in section 19851, subdivision (a), does not include endorsed owners as provided in section 19851, subdivision (b). The term “owner,” as used in the proposed regulation, is intended to include both an owner-licensee and an endorsed owner, if they are individuals.

The term “key employee,” as defined in section 19805, subdivision (x), means any individual employed in the operation of a gambling enterprise in certain specified capacities. This would not include individuals who are endorsed licensees pursuant to subdivision (b) of section 19851. The term “licensed person,” as used in the proposed regulation, is intended to include both a key employee and an individual endorsed licensee.

b. David Fried – CGA: This section permits a gambling operation to continue if an owner or licensed person has control of the operation. We want to clarify who is included in a “licensed person.” Section 19805, subdivision (z), defines a license as a gambling license, key employee license or any other license issued by the Commission. Therefore, it is our understanding that a “licensed person” in this regulation means and includes an owner, key employee, or anyone else endorsed on the gambling license that is going to assume control of the gambling enterprise.

Response: This comment and recommendation is accepted. The commenter’s understanding of who is included in “licensed person” is correct. A licensed person, within the meaning of Section 12349, may include key employees, endorsed owners, security interest holders, financial interest holders, community property interest holders, trustees (other than trustees in bankruptcy), beneficiaries, and any other individual endorsed on a gambling license.

In general, “licensed person” would include any individual or entity that the Commission would require to be licensed. However, in the context of subsection (b) of Section 12349, this would be limited to an individual who assumes control of gambling operations. That individual should be someone who has been subject to a background investigation equivalent to that of an owner-licensee and who has been approved by the Commission to perform duties that included oversight of gambling operations and compliance with the statutory and regulatory obligations of a gambling enterprise. Who that might be, specifically, would most likely depend on the relationship between the individual and the

gambling enterprise. For example, a landlord who is endorsed on a gambling license as a financial interest holder would probably not assume control of gambling operations as the result of a qualifying event.

See also, response to comment 3-a., above.

c. David Fried – CGA: Paragraph (1) of subsection (d) provides that the operations will cease if a request for a license is abandoned and no one else has applied for the interim license or been granted a license. This section allows for a substitute or separate application. Subsection (b) requires that gambling operations cease if the interim application is denied or withdrawn and no other person holds an interim or regular license. There is no allowance for the possibility of a substitute application by another person. These sections should be consistent and provide that that the operations will cease if a request for a license is denied, withdrawn or abandoned and no one else has applied for the interim license or been granted a license. For example, a family trust succeeds to ownership. One of the children is the successor trustee and applies for a license. There turns out to be a problem with that application. We should allow that person to resign and for the next child to become the trustee and applicant.

Response: This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 29, 2011; pg. 2, line 11.] Subsection (b) was modified to be consistent with the similar provision in paragraph (1) of subsection (d).

4. Section 12349, subsection (c), would establish the application process for an interim gambling license. The process includes a requirement that the new owner submit the following to the Commission within 30 days of the qualifying event: a complete application package for a regular gambling license; a written request for an interim license; and a document that evidences the qualifying event. The 30-day application submission requirement could be extended by the Commission or the Executive Director if the new owner or individual in control of an ownership interest, can demonstrate good cause. The length of any extension would be at the discretion of the Commission or Executive Director, based on the specific facts and circumstances of each request.

a. Jade Jaeckle – Game Source, LLC: Subsection (b), and paragraph (1) of subsection (d), address the immediate termination of gambling operations when the Commission denies a request for an interim license, approves a request to withdraw an application, or an application is abandoned, and no other person holds a valid interim or regular license, or has applied for or been granted an interim or regular gambling license. Subsection (h) describes the procedure for cancellation of an interim gambling license. The proposed regulations as a whole do not adequately address the issue of a subsequent applicant for an interim gambling license, following the disqualification, abandonment, or denial of an application, or the cancellation of an interim license.

In the interest of maintaining gambling operations, a subsequent applicant should be allotted a reasonable amount of time to submit an application for an interim

gambling license. If for example, the intended regular licensee/interim license applicant withdraws or is found to be otherwise ineligible, immediate arrangements may need to be made in order to maintain the gambling establishment as a going concern. In such a case, a new owner/applicant may step in to control the gambling operation. However, there does not appear to be a provision allowing a subsequent owner the opportunity to submit an application for an interim license, following the denial or cancellation of another interim licensee or applicant. It would be counterintuitive to think that another individual would have already applied for an interim gambling license if there was no reason to believe that the first new owner/applicant for an interim gambling [license] would not receive such a license.

Our proposal would be that in the circumstance of a denial, cancellation or abandonment of an interim license or application, that a subsequent owner have the same deadlines and timelines to apply for an interim gambling license that would be extended under subsection (c) to an original interim license applicant. By allotting a small window of time, the Commission would prevent the termination of gambling operations as well as the potential prejudice to a subsequent license applicant.

Response: This comment and recommendation is rejected. The proposed regulation already includes provisions that address the concerns expressed in this comment and additional provisions or modifications are unnecessary. In the case of abandonment under paragraph (1) of subsection (d), the applicant would have been given at least 10 days notice in the request for additional information that precedes the abandonment determination. In the case of a denial under paragraph (2) of subsection (d), the applicant would be given at least 10 days notice of staff's recommendation that the Commission deny the application. In the case of a cancellation of an interim license under subsection (h), the interim license holder will have at least 30 days advance notice of the impending cancellation, and will have an opportunity to respond. In each of these instances, there is adequate notice provided to enable another individual to complete and submit a new application and request an interim license, or to request an extension of time pursuant to paragraph (2) of subsection (c), as modified in response to comment 4-b., below. In the case of an application withdrawal, no notice is necessary as the request would come from the applicant who can reasonably be expected to know in advance that another application will be required.

b. David Fried – CGA: With respect to the 30 day application deadline, there should be discretion for the Commission to grant exceptions for good cause *retroactively*, such as where the applicant lacked actual knowledge of the qualifying event, or even knowledge that they were an heir or beneficiary. The regulation appears to contemplate extensions of time. A slight change is needed to allow for retroactive extensions of time. For example, the beneficiary of a trust dies or the settler of a trust dies making part of the trust irrevocable. As a result, there are now new beneficiaries, which may include charities and minor children who take under a separate trust. Under Probate Code section 16061.7, subdivision (f), the trustee has 60 days to serve notice on the beneficiaries or heirs. This is delayed even further if the deceased was also the trustee.

As a result, the Commission's power to extend the 30 day application deadline should be retroactive as well.

Response: This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 29, 2011; pg. 2, lines 20 and 21.] This modification not only addresses the retroactivity issues expressed in this comment, but also makes allowance for subsequent applicants in the circumstances discussed in comment 4-a., above.

5. Section 12349, subsection (d), would specify that a request for an interim gambling license is ancillary to, and concurrent with, an application for a regular gambling license. This subsection would also set up various timelines for the interim license application process, as specified, and would require that gambling operations be terminated if an application for an interim license is abandoned by the applicant and no other person has applied for or obtained an interim or regular gambling license. Finally, this subsection would prohibit the approval of a request for an interim gambling license if any factor is disclosed that would disqualify the applicant for a regular license.

a. Bureau of Gambling Control: Subsection (d) references Section 12342 relating to processing times for regular gambling license applications. The applicable provision is contained in Section 12343.

Response: This comment and recommendation is rejected. Section 12342 is, in fact, the correct reference. Section 12343 no longer exists. Section 12343 was repealed and its provisions amended into Section 12342, effective May 13, 2010.⁹

b. Bureau of Gambling Control: The wording in subsection [(d)](2), "...if the applicant meets any of the disqualifying criteria in section 19859..." appears incongruous because "meeting criteria" tends to be used to mean "fulfilling requirements." We suggest the wording "if the applicant is disqualified for any reason set forth in section 19859."

Response: This comment and recommendation is accepted and the proposed regulation has been amended accordingly to accommodate it. [Modified text dated September 29, 2011; pg. 3, lines 3 and 4.]

c. Bureau of Gambling Control: Subsection (d), paragraph (2), and subsection (h) refer to the criteria in section 19859 of the Business and Professions Code as a basis for disqualification. While we agree that such criteria should apply, it should be recognized that under the proposed regulations the Bureau would not conduct a full background investigation and, therefore, normally would not identify and report such disqualifying information for the Commission's consideration of an interim license. The Bureau would notify the Commission of such information only as it relates to the fingerprint-based criminal history check.

⁹ See OAL File No. 2010-0301-01 S

Response: It is fully understood that the Bureau would likely not be able to complete a full background investigation for the Commission's review in consideration of an interim gambling license application. This was considered in the development of the proposed regulations. While it was, and is, acknowledged that the available background information would generally be limited to the criminal background information obtained as the result of Live Scan (fingerprint) criminal background check, the regulation should not preclude the Commission from considering other disqualifying information that may already be known or otherwise comes to their attention. The application for a regular license itself might contain information that calls attention to issues that should be investigated and evaluated before an interim gambling license is granted. The current provisions of the regulation clearly permit the Commission to take into consideration all available information and modification of the current language is not necessary. Ultimately, the Commission is still free to exercise its discretion to either approve or disapprove the issuance of the interim gambling license. Nothing in this regulation limits the Commission's discretion and the issuance of an interim gambling license is not mandated in all cases.

6. Section 12349, subsection (f), paragraph (7), would set as a condition of an interim license that the authorization of additional permanent tables would be prohibited during the term of an interim gambling license.

a. David Fried – CGA: Rather than barring the addition of new tables, we would suggest a restriction on the addition of new tables fixed by a percentage and a cap. Initially, regardless of this regulation, local table limits will restrict adding tables for most clubs. But for those that do not have their maximum number now, there may be legitimate reasons to add tables. Sometimes a club will add a table because they are trying a new game, or are under competitive pressure to add a new game that another club has added. Or, they may need a new table merely because their twice weekly poker tournament has gotten more popular. They may also have made capital investments in adding space for new tables when an unexpected qualifying event occurs. If the persons with interim permission to act as the owner licensee can operate 20 tables, why can't they operate 21? If an interim licensee, as a licensee, can have a new game approved, why wouldn't they be allowed to ask for and receive the new table for the new game? Perhaps if the Commission is not concerned with the adding of one table, but of many, we could limit the number of tables by percentage. That is, restrict the increase to the lesser of 15% of prior tables or 15 tables, and clubs with 10 or fewer tables can add up to one. So clubs with 100 tables or more cannot add more than 15 tables. A 25 table club can add no more than 3. A 14 table club could add 2. A club with 1-10 tables can add no more than 1.

Response: This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 29, 2011; pg. 3, lines 10-13.] Rather than add another set of criteria and calculations to the existing requirements and limitations for determining the number of additional tables allowed, this condition has been removed. The current process for requesting Commission approval to increase the number of tables a cardroom is authorized to operate will continue to be

applicable and any concerns the Commission may have regarding the addition of authorized tables can be properly addressed through that process.

7. Section 12349, subsection (f), paragraph (10), would set as a condition of an interim license that any proceeds from the gambling operation that would otherwise be payable to a new owner be held in escrow until the disposition of ownership interest has received Commission acknowledgement and a regular gambling license is approved. An exception would be allowed for the payment of any taxes, operating expenses, preexisting obligations or preexisting dependant support.

a. Jade Jaeckle – Game Source, LLC: We believe that additional clarification, and perhaps more generous allowances, are in order. To maintain the gambling operation, an interim licensee may need to not only pay preexisting obligations, but may also need to enter into, assume and pay for new obligations, contracts, etc. Per existing regulations, entering into certain contracts, such as contracts to provide third-party proposition player services, would of course, require Bureau approval and contract submission to the Commission.

It is worth noting and specifically allowing for the inevitable changes that a new owner/interim licensee may need to make. It is important that a general and broad discretion be given to owners in matters relating to the day-to-day operations, providing of course that all laws and regulations are complied with. Owners must be allowed to enter into new obligations that are reasonable [and] necessary to the operation of the gambling establishment.

The regulations may also need to address the issue of assumptions of contracts by the new owner. If for example, the previous provider of third party proposition player services is acceptable to the new owner, and the applicable contract is assumed, would another approval be required? If so, perhaps there should be expedited approval per Title 4, CCR, Section 12200.10A. There may be other types of contracts that would be assumed as well.

In other words, the language of subsection (f) should provide that an interim licensee holds all of the powers of a regular licensee, with the exception of the following narrow conditions... It should also provide for enough latitude that a new owner is able to operate the gambling establishment in a viable manner.

Response: This comment and recommendation is rejected. The overall purpose of the proposed regulations is to allow a gambling enterprise to continue its gambling operations after the occurrence of a qualifying event, as specified. The intent of this particular condition is to maintain the status quo during the time it takes to fully background an individual for a regular gambling license. While that individual may hold an interim gambling license during that period, it is not known whether he or she will ultimately qualify for the regular license. Therefore, certain limitations are necessary and appropriate to safeguard the assets of the gambling enterprise.

Almost all of the situations mentioned in this comment would fall within one or more of the specified exceptions. Using the example cited in this comment, an existing third-party proposition player services (TPPS) contract could be categorized as either an operating expense or a preexisting obligation. A modification of an existing TPPS contract would probably be necessary in the case of an assumption of that obligation, but that approval would be dealt with under separate provisions relating specifically to TPPS contracts.¹⁰ Other disbursements or new obligations might require separate Commission approval which would fall under the category of “any other distribution of proceeds that is approved by the Commission.”¹¹ In short, there appears to be adequate provision in the proposed regulation as written to address these concerns and no further modification is needed.

b. David Fried – CGA: We would like to clarify that the proceeds cannot be paid as “a percentage or share of the profits” to the new owner “as an owner.” If the heir was already the General Manager and received a salary, or now has to become the General Manager, salary consistent with what the club paid previously for similar positions should be permitted. Fees and salaries are expenses, rather than part of net profits. Similarly, trustees, receivers and conservators must be paid for their services or they get pretty grumpy. Section 19850 states that a state gambling license is required to receive profits, but “reasonable salaries and fees customary for the gambling enterprise or for the type of position” should be unaffected.

Response: This comment is accepted and has been considered in the adoption of the proposed action. As discussed above, the overall purpose of the proposed regulations is to allow a gambling enterprise to continue its gambling operations after the occurrence of a qualifying event, as specified. The intent of this particular condition is to maintain the status quo during the time it takes to fully background an individual for a regular gambling license. While that individual may hold an interim gambling license during that period, it is not known whether he or she will ultimately qualify for the regular license. Therefore, certain limitations are necessary and appropriate to safeguard the assets of the gambling enterprise.

Salaries would clearly be considered either an operating expense or a preexisting obligation, depending on the circumstances. Trustees, such as trustees in bankruptcy, receivers and conservators would be compensated according to the terms of their appointment. That compensation, while not necessarily subject to Commission control or approval, would likely be an allowable expense for the continued operation of the business.

8. Section 12349, subsection (f), paragraph (12), provides that, in requesting an interim gambling license, the applicant would agree to the conditions enumerated in this subsection.

¹⁰ See Title 4, CCR, Sections 12200.7 – 12200.10C

¹¹ Section 12349 (f)(10) [renumbered as paragraph (9)]

a. David Fried – CGA: This section immunizes the Commission from any claim that the Commission imposed an illegal condition on an interim license. It states that the “applicant agrees” to the conditions in the regulation when they file the application. Rather, the license should be just issued subject to the conditions as with any other Commission license.

An interim or regular license can contain conditions, and the holder has to operate under those conditions until a judge says otherwise. However, you cannot foreclose in advance when the applicant first files an application the applicant from later challenging a condition as illegal, on its face or even as applied to just their one situation. This is especially true because under paragraph (11) the Commission can impose other unspecified conditions. So this paragraph (12) forces an applicant to “agree” to accept conditions under paragraph (11) he or she won’t even know about at the time he or she files the application.

Moreover, the “applicant” might not know until many years from now that they will ever be an applicant, and have no meaningful reason to now participate in this rulemaking. Under paragraph (12), either an applicant has to accept what may be illegal conditions, or forego the license, let the establishment close and then sue the Commission over the imposition of improper conditions. But even inadvertently, the Commission may impose an interim license condition that violates the law or exceeds Commission authority. The Commission has to be responsible in that case like any other agency or government actor that exceeds its authority. The Commission cannot grant itself unlimited unchecked powers, or require an applicant to choose between closing their doors and challenging an invalid condition. This section should be deleted in its entirety.

Response: This comment and recommendation is accepted and the proposed regulation has been amended accordingly to accommodate it. [Modified text dated September 29, 2011; pg. 3, lines 18 and 19.]

9. Section 12349, subsection (g), would require the new owner of a gambling enterprise to provide the Commission with written notification if he or she intends to sell his or her ownership interest without first obtaining an interim or regular gambling license.

a. Bureau of Gambling Control: The Bureau suggests that in subsection (g) the word “immediately” be replaced with a specific number of days. This would better define the timeframe [in] which a written notification must be submitted.

Response: This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 29, 2011; pg. 3, lines 22 and 23.] The timeframe in which notification must be made pursuant to subsection (g) has been set to conform to the timeframe specified in paragraph (1) of subsection (c) for submission of the applications for interim and regular gambling licenses. While 10 days (as provided in subsection (b) for notification of the qualifying event) may not allow sufficient time for making necessary decisions, it is reasonable to expect that the initial decision could be made within 30 days.

10. Section 12349, subsection (h), would establish a process for the cancellation of an interim gambling license by the Commission when it is determined that the license holder is not qualified to hold a gambling license. The process would include an option for the license holder to request an evidentiary hearing, pursuant to existing regulations.¹²

a. **Bureau of Gambling Control**: *Please refer to Comment and Response 5-c., above.*

11. Relationship to Renewal Process.

a. **David Fried – CGA**: We are unclear on the relationship between these regulations for interim licenses and the Commission’s ordinary renewal process for licensing. Suppose a gambling enterprise is owned by three owners (as shareholders, partners, or members of a limited liability company). Under the ordinary practice, a license renewal is not processed unless all owners have submitted their renewal forms. An incomplete application is delinquent and subject to penalties. Suppose one owner dies and the other two submit their forms and fees on time. What happens in that case?

Response: This comment is accepted and has been considered in the adoption of the proposed action. In the specific scenario suggested in this comment, the two surviving owners would simply submit their renewal applications in a timely manner, as provided in Section 12345, and include a copy of the deceased owner’s death certificate. No penalties would be imposed. If either or both of the surviving owners are individuals, no interim license would be required to continue gambling operations. The standard licensing processes would be followed in distributing or transferring the deceased owner’s shares or percentage of interest to the surviving owners or a successor in interest.

There were no further comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.

B. Comments Received at the September 28, 2011 Hearing

The following public comments/objections/recommendations regarding the proposed action were received orally at the September 28, 2011 public hearing:

1. Section 12349, subsection (a), paragraph (3), as modified, would define a “New owner” as an individual who is a trustee (other than a trustee in bankruptcy), beneficiary, successor in interest, or security interest holder for a gambling enterprise who becomes an owner of, or obtains an ownership interest in a gambling enterprise as a result of a qualifying event.

a. **Alan Titus – Artichoke Joe’s**: I’m not sure whether there’s a need to limit “new owner” to an individual. It is possible that someone could have a corporate trustee as a successor trustee. Often when I draft a trust it will be for, say a couple, they will have

¹² California Code of Regulations, Title 4, Section 12050 (b)

themselves as the initial trustees, and maybe have a child as a successor. But if that child doesn't survive and there is no one else who could take over, we might just put a bank in as trustee. That is a very common thing to do, certainly on an asset such as a cardroom. An attorney might think twice about that, but I am concerned about having that be limited to an individual.

Response: This comment is accepted and has been considered in the adoption of the proposed action. The Act and the Penal Code prohibit gambling operations if no person holds a gambling license.¹³ The intent in this regulation is to address those situations where there is no individual or natural person licensed or in control of gambling operations. That is the type of situation that could cause a cardroom to have to cease gambling operations, and is the type of situation contemplated in subdivision (s) of section 19841.

In the case of an entity, there would be individuals who would also be required to be separately licensed, and who would be endorsed on the entity's gambling license.¹⁴ If an entity were to be named as a successor trustee, as may be the case in Mr. Titus' example, the entity and the individuals that make up that entity would all be required to become licensed. One of those individuals, if not already licensed, could make the request for the interim license. There is also nothing in this regulation that would preclude the issuance of an interim license to the entity and each individual within that entity. That would certainly be within the Commission's discretion.

2. Section 12349, subsection (a), paragraph (4), as modified, would define a "qualifying event" as an event, such as those specified in subdivision (s) of section 19841, which results in a change in the ownership or in the control of the ownership interest of a gambling enterprise and prevents gambling operations from continuing because the new owner or individual in control does not hold a valid gambling license. A qualifying event would not include a planned or negotiated transaction, where a current licensee retains the authority to continue gambling operations, but the transaction requires prior Commission approval. Those excluded transactions may include a sale, the transfer of shares, incorporation or similar transactions.

a. Alan Titus – Artichoke Joe's: The phrase that is being proposed, "a change in the control of the ownership interest," is problematic because if you have a conservatorship, I am not sure that a court would agree that there's been a change in control. The conservatee is still in control. The court and the conservator are acting on the conservatee's behalf. Staff seems to be looking at it as a definite change in control.

So, there are two different ways of looking at that and this language seems to go one way. I think if you do go that way there should be clarification here on the record, if possible, and certainly in the final statement of reasons, if not in text itself, that what you mean is to cover situations such as a conservatorship, or even probate of a decedent's estate. Those are no longer included under new owner, so it's not completely clear that that is

¹³ Business and Professions Code sections 19850 and 19855; Penal Code section 337j (a)(1)

¹⁴ Business and Professions Code sections 19851 and 19852

the intent. I think that is the intent and I understand from staff that is the intent; I just want to make sure we all understand that is what these words are supposed to mean.

Response: This comment and recommendation is accepted and has been considered in the adoption of the proposed action. Mr. Titus' understanding of the intent of this language is correct. As in the example given where a conservator has been appointed, it is acknowledged and understood that the conservator does not technically take control of the ownership interest of the conservatee, but acts on the conservatee's behalf due to the conservatee's incapacity or inability to act. While the conservatee may retain legal control, the individual conservator would still need to be licensed, because that would be the individual who is actually conducting gambling operations on behalf of the licensed individual who is under the conservatorship. The same interpretation would apply to other similar situations specified in subdivision (s) of section 19841. The phrase, "a change in the control of the ownership interest," is intended to address and include situations in which an individual is acting on behalf of another licensed individual; for example, conservatorships, receiverships, estate probate, etc. This record should make that clear and no further modification in the text of the regulations should be necessary.

3. Regarding the proposed action generally:

a. David Fried – CGA: I'm very pleased to see the September 13th draft of regulations. This has been, at least from my point of view, a seamless process. You came out with an initial draft. On behalf of the Association we made comments. You accepted virtually all of them which, obviously, gratifies us. And we think that the September 13th draft is a very good way to deal with what the legislation has tasked you with in this set of regulations. We think the process itself has been good and we wanted to compliment not only the Commissioners but the staff who worked on the regulations in analyzing what are some complicated issues of successorship, and figuring out how to deal with them. We support the adoption of these regulations. We know that you have a time deadline for doing it and it looks to me as if you're going to comfortably meet that.

I don't disagree with Alan Titus' comments but I think that you can figure out, either in the [final] statement of reasons or perhaps with just changing the order in the regulations of how to address this.

Response: This expression of support was accepted and considered in the adoption of the proposed action. Mr. Titus' comments are addressed in comments 1-a. and 2-a., immediately above.

4. Regarding the issuance of interim gambling licenses generally:

a. Bureau of Gambling Control: This regulation essentially provides that a person can assume the operations, control and ownership of a gambling establishment with virtually no determination of their qualifications outside of a criminal history background check. It is setting, what the Bureau considers to be, a fairly dangerous precedent. It raises the risk of unqualified people entering into this industry and being allowed to operate for an

indeterminate period without proper vetting by the Department of Justice and an official determination by the Commission as to their qualifications.

The Bureau has expressed this concern with the Commission staff. The response was essentially that the Commission certainly isn't precluded from considering other disqualifying information that may come to its attention as a result of the submission of the application and any follow up action that may be taken by the state. Under this regulation it would not be a practice of the Bureau to initiate an investigation nor to further examine any of the information that was submitted in the application. So essentially what that means is that the Commission would be asked to make what we consider to be an uninformed decision about this person's background.

The Bureau does recognize and appreciate the interest in expediting this process to ensure that somebody can resume the operation. However, the appropriate safeguards should be instituted into this process to ensure that people are properly vetted before they become entrenched in this industry.

Response: This comment and recommendation is rejected. First, this regulation is very narrowly focused on only those situations identified in subdivision (s) of section 19841. In addition, that subdivision specifies that this process that the Commission has been directed to implement is supposed to ensure that an affected cardroom "*may operate continuously*" when certain events occur. There has been only one occasion in the past that Commission staff can recall in which subdivision (s) or this regulation would have been applicable. While there certainly could be more occasions in the future, there are likely to be very few, if any.

This regulation would allow gambling operations to continue following a qualifying event, provided that an owner or a licensed person affiliated with the gambling enterprise assumes control of the gambling operations. A licensed person, within the meaning of Section 12349, may include key employees, endorsed owners, security interest holders, financial interest holders, community property interest holders, trustees (other than trustees in bankruptcy), beneficiaries, and any other individual endorsed on a gambling license. In the context of subsection (b) of Section 12349, "licensed person" would be limited to an individual who assumes control of gambling operations. That individual should be someone who has been subjected to a background investigation equivalent or nearly equivalent, to that of an owner-licensee and who has been approved by the Commission to perform duties that included oversight of gambling operations and compliance with the statutory and regulatory obligations of a gambling enterprise.

As discussed in written comment 5-c., above (pg. 16), it is understood that the Bureau would probably not complete a full background investigation for the Commission's review in consideration of an interim gambling license application. While the available background information would generally be limited to the criminal history background information, the regulation does not preclude the Commission from considering other information that may already be known or otherwise comes to their attention. The application for a regular license itself, which must be accompanied by the Bureau's

supplemental background form, might contain information that calls attention to issues that should be investigated and evaluated before an interim gambling license is granted. The current provisions of the regulation clearly permit the Commission to take into consideration all available information. It must also be emphasized again that this regulation in no way limits the Commission's discretion to approve or deny the issuance of an interim gambling license.

This regulation has nothing to do with the initiation of a background investigation in connection with the application for a *regular* gambling license. To say that "... *it would not be a practice of the Bureau to initiate an investigation nor to further examine any of the information that was submitted in the application,*" ignores the fact that it is the Bureau's statutory duty to initiate its background investigation upon receipt of the completed application and the supplemental information.¹⁵ A completed application for a regular gambling license must be submitted along with the request for an interim gambling license. That application will include all of the information, documentation and deposits required for the Bureau to commence its background investigation. Furthermore, if the Bureau identifies any areas of concern upon initial review of the application information, those concerns can and should be brought to the attention of the Commission as quickly as possible. If, in the opinion of the Bureau, those concerns are serious enough, the Bureau could also expedite its background investigation.

b. Bureau of Gambling Control: The Commission in conjunction with the Bureau in the past has instituted some procedures by which an individual may be allowed to be licensed on a temporary basis subsequent to a limited scope investigation conducted by the Bureau. Some consideration may be given to that process so that there is something more than simply a criminal history check that would be looked at.

In the past there have been a number of occasions where we have been requested by Commission staff to conduct an investigation for the purpose of determining whether somebody is suitable for a temporary license. It still carries a certain amount of risks because it is not a full investigation, but the Bureau, in a number of cases, has submitted to the Commission what was believed to be fairly comprehensive information that strongly suggested that an individual was disqualified. There have been some cases where the Bureau has submitted a report on a limited scale and the Commission, as a result, has approved a temporary license and the subsequent full investigation developed additional facts that ultimately led to a recommendation of denial. So that risk is there. The only point being made here is that there could be some middle ground. Something more than a simple criminal history check but something less than a full blown background investigation. Something possibly more in line with that which has been allowed in the context of temporary licensure.

Response: This comment and recommendation is accepted and has been considered in the adoption of the proposed action. As discussed immediately above in comment 4-a., this regulation does not preclude the Commission from considering other information that may already be known or otherwise comes to their attention. The Commission always

¹⁵ Business and Professions Code section 19826(a); Title 4, CCR, Section 12342(b)(3)

has the option of requesting information from the Bureau in connection with a request for an interim license, just as in the case of a request for a temporary license. There is nothing in this regulation that would preclude or discourage the Commission or the Bureau from employing the same internal procedure often used in connection with requests for temporary licenses. However, that is an internal procedure used in the processing of applications and need not be specifically addressed in regulation.

Please also refer to the responses to comment 4-a., immediately above.

There were no further oral comments, objections or recommendations received during the public comment portion of the September 28, 2011 hearing regarding the proposed action. There were no written comments, objections or recommendations received at the September 28, 2011 hearing regarding the proposed action.

C. 15-Day Change Written Comment Period

The following comments/objections/recommendations regarding the proposed action were received, in writing, during the 15-day comment period commencing September 29 and ending October 14, 2011:

There were no written comments, objections or recommendations received within the 15-day public comment period regarding the modified text of the proposed action.

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