

PROGRAM FOR RESPONSIBLE GAMBLING

CGCC-GCA-2015-01-R

COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS

I. 45-DAY WRITTEN COMMENT PERIOD

The following written comments/objections/recommendations were received regarding the text of the proposed action during the 45-day written comment period that commenced March 6, 2015 and ended April 20, 2015:

A. COMMENTS MADE IN GENERAL TO THE PROPOSAL.

1. The following comments were received about the proposal, in general:

- a. **Tucker Hoog**: Mr. Hoog inquired about the effectiveness of the current self-exclusion and self-restrictions programs. Mr. Hoog proposed that California has over a million “problem and pathological” gamblers but only a few thousand people signed up on the various lists.

Recommended Response: This comment was considered but was not incorporated. While the program may be utilized to assist problem or pathological gamblers, the program is not intended to be limited to just those groups. The program is provided to assist patrons with maintaining responsible gambling practices, as they individually require. Any participation shows that the program is effective, as individuals are seeking whatever assistance they feel they require. It is currently unknown how many total individuals participate in the overall program. While the Bureau maintains the list of self-excluded persons, and therefore its usage is known; each gambling enterprise maintains its own confidential list of self-restricted persons.

- b. **Brian Altizer, Napa Valley Casino and Charles Bates, Bay 101**: Mr. Altizer and Mr. Bates commented that the proposed regulations would do nothing but burden the gambling enterprise, limit a supervisor’s ability to oversee gaming operations and fail to achieve the goal of assisting problem gamblers with their recovery.

Recommended Response: This comment was considered but was not incorporated. Currently the list of self-excluded persons and the lists of self-restricted persons are only verified when an individual has received a significant prize or jackpot, even if that individual has been present and participating in gambling activities for a significant portion of time. While an individual is ultimately responsible for complying with their voluntary agreement for self-restriction or self-exclusion, the gambling enterprise has a role to play by performing tasks to limit or restrict a person’s access. The proposed regulations, to various degrees depending on the option, provide clarity to the levels of participation required by the gambling enterprise.

- c. **Monica Dreher, Lake Bowl Cardroom, Alan Titus, Artichoke Joe's and Charles Bates, Bay 101**: Ms. Dreher and Mr. Bates expressed concerns that for the problem gambling program to be effective it would need to be applied to every gaming establishment, including Tribal gaming establishments. And that without such a universal program, a patron could just ban themselves from a gambling enterprise and then go to a Tribal facility without issue. The regulations are discriminatory towards gambling establishments.

Recommended Response: This comment was considered but was not incorporated. The Commission does not have the statutory authority under the Gambling Control Act to apply its Program for Responsible Gambling to Tribal casinos. Tribal gaming is regulated through compacts between the State and each specific Tribe. Many of those agreements do include provisions related to a responsible gambling program. If an individual were to take advantage of a Tribal program they would not be precluded from gambling at a gambling enterprise. These regulations are not discriminatory, but simply part of a larger landscape of responsible gambling programs.

- d. **Michael Vasey, 101 Casino, Casino 580, Cordova Restaurant and Casino, Lotus Casino and Lodi Casino**: Mr. Vasey expressed concern that as problem and pathological gambling is now being recognized as a medical condition, there may be implications on a gambling enterprise's ability to verify a patron's status on the list of self-excluded persons, specifically as a violation of the Health Insurance Portability and Accountability Act (HIPAA).

Recommended Response: This comment is not germane to the proposed regulations. The name of the program is actually "Program for Responsible Gambling," and the effect of the regulations is disconnected from the specific diagnosis of any medical or psychological condition. The intent of the program is to provide a voluntary tool for those who wish to be restricted or excluded from participating in aspects of controlled gaming. The use of this tool does not require any medical review or diagnosis as a problem or pathological gambler. Therefore, an individual's status on either the list of self-excluded persons or a list of self-restricted persons is not an issue with regards to HIPAA, even if the individual has, in fact, been separately diagnosed with a medical condition.

- e. **Nathan DaValle, Bureau of Gambling Control (Bureau)**: Mr. DaValle commented that depending on the final regulations, there could be a minimal to significant fiscal impact due to changes to the Bureau's Exclusion Management System. An outside contractor originally built the system at significant expense. The system was built to existing regulations and would have to be revised for any revisions.

Recommended Response: The Bureau provided specific fiscal impact information related to the updating of its Exclusion Management System for the Economic and Fiscal Impact Statement (STD 399). The Bureau has indicated one-time costs for the

Hawkins Data Center which provides operational services to the Department of Justice. This information has been included and will be considered.

B. AMEND SECTION 12461. POSTING REFERRAL INFORMATION.

This section provides guidelines that a gambling enterprise must follow for posting problem gambling messages and information in the establishment, on any website and include with any advertising material. The section is revised to include requirements for third-party providers of proposition player services (TPPPS) and gambling businesses when advertising or on any websites.

1. The following comments were received about the section, in general [pg. 2, line 1]:

- a. **Nathan DaValle, Bureau:** Mr. DaValle recommended the following addition to the section:

(d) All responsible gambling messages, links to the Office of Problem and Pathological Gambling (or its successors), and the telephone number provided in subsections (a), (b) and (c) shall be as prominently placed and in a font size equal to, at a minimum, any equivalent information that refers to the gambling establishment location or phone number with the largest font size. The text of the responsible gambling message shall be of a contrasting color to its background.

Mr. DaValle expressed concern that without minimum advertising standards the problem gambling messages are lost in the material. Mr. DaValle noted that the proposed provision is less stringent than other required disclaimer and notice-type information, such as for tobacco or alcohol products. Mr. DaValle noted that requiring the industry to self-regulate on the issue has resulted in inconsistent posting of the requirement information.

Recommended Response: This comment was considered but was not incorporated. As mentioned in the comment, this suggestion was previously considered by the Commission during informal public discussions related to this proposal. This suggestion is included as item 4 of Consideration of Alternatives in the Initial Statement of Reasons (pages 16 and 17). Specifically, the Commission made the decision that there is a need for a more expansive advertising regulation that would be outside the scope of this regulation and that this comment may be considered in a future regulatory package related to the content of advertising.

2. Subsection (a) [pg. 2, line 2] specifies that a gambling establishment must post at patron entrances, exits and in conspicuous places in or near gambling areas, accessible written

materials concerning the nature and symptoms of problem gambling and the 1-800-GAMBLER referral service.

- a. **Tucker Hoog**: Mr. Hoog questioned why this information is required to be posted solely at exits and entrances of gambling establishments. Mr. Hoog commented that this requirement is different than other businesses, and that alcohol, tobacco and medications have warnings on their products. Mr. Hoog questions why the posting requirements are different for the gambling industry.

Recommended Response: This comment was considered but was not incorporated. Mr. Hoog's analogy of warnings on alcohol, tobacco and medications being outside the package, to be seen prior to its opening, is apt and applicable to the current and proposed regulations. Currently, regulations require that gambling messages be posted at the entrances, exits and locations where cash or credit is available to patrons. This is similar to requirements related to the purchasing of alcohol, tobacco and medications, where information is provided at the time of purchase (entrance to gambling enterprise) and on the actual product (where cash or credit is available). However, warnings are not present on the actual cigarette, and are likewise not required to be posted at the table.

3. Option 2 for subsection (c) [pg. 2, line 20] specifies that a gambling establishment, TPPPS, or gambling business must include a responsible gambling message and telephone number or link to the Office of Problem and Pathological Gambling (OPPG) website, or both, on any advertising material.

- a. **Charles Bates, Bay 101**: Mr. Bates commented that this is the preferred option, and suggested the following addition:

(c) Any advertising material produced by or on behalf of any gambling enterprise, TPPPS or gambling business, shall contain a responsible gambling message and shall refer to the telephone number listed in subsection (a) above or the web site listed in subsection (b), above, or both. [This requirement does not apply to promotional items in which size or space limitations do not allow the message to be legibly displayed; e.g., pens, key chains, hats, drinking glasses, coffee mugs, etc.](#)

Recommended Response: This comment was accepted, in part. Mr. Bates has proposed an alternative that is a combination of Options 2 and 3. The proposed option does not include the specific methods of advertising, and does not exclude "pass through" digital advertising. This "pass through" language is intended to provide flexibility to advertising options.

Some digital media, such as Google search engine and Twitter, provide only a limited amount of space. Twitter, for example, only allows 140 characters in a single post. If the message was required to include both a gambling message and either the phone number or website address that would severely limit the function of the advertisement. A short sample gambling message with phone number is “Gambling Problem? Call 1-800-GAMBLER.” This short message represents 36 of 140 allowable characters, or just over 25 percent. With the remaining space, the advertisement would have to fit the actual intended message, and any desired link.

The following revision is proposed:

(c) Any advertising material produced by or on behalf of any gambling enterprise, TPPPS or gambling business, shall contain a responsible gambling message and shall refer to the telephone number listed in subsection (a) above or the web site listed in subsection (b), above, or both. This requirement does not apply to:

(1) Promotional items in which size or space limitations do not allow the message to be legibly displayed; e.g., pens, key chains, hats, drinking glasses, coffee mugs, etc.; or,

(2) Digital material that is intended to only provide a “pass through” link to a website that complies with subsection (b).

4. Option 3 for subsection (c) [pg. 2, line 27] specifies that a gambling establishment, TPPPS, or gambling business must include a responsible gambling message and telephone number or link to the OPGG website on any advertising material. The regulation exempts “pass through” digital material, if the destination website includes the appropriate message, and promotional items with limited space such as key chains, hats or drinking glasses.

- a. **Alan Titus, Artichoke Joe’s**: Mr. Titus stated that this is their preferred option.

Recommended Response: Mr. Titus’ support for Option 3 is accepted and will be considered by the Commission.

C. AMEND SECTION 12462. TRAINING REQUIREMENTS.

This section provides guidelines for both frequency and content of employee training, broken down by gambling employee job description.

1. The following comments were made on Section 12462 in general [pg. 3, line 12]:

- a. **Tucker Hoog**: Mr. Hoog expressed concern that the provisions of the regulation only require providing a patron with problem gambling prevention information and “letting the player take it from there.” Mr. Hoog indicated that employees ultimately have no responsibility for the service they provide. Mr. Hoog questioned why gambling enterprises do not have to show concern for the well-being of their customers and presents the analogy that a bartender is prohibited from providing additional alcohol to an intoxicated individual and a pharmacy technician cannot give out medications that may interact. Mr. Hoog suggested that gambling enterprise employees should be held to a similar standard.

Recommended Response: This comment was considered but was not incorporated. Mr. Hoog has presented examples that do not equate to his proposed standards. Business and Professions Code section 25602 provides that any individual who provides alcohol to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor. This requirement is not specific or limited to bartenders or establishments that sell alcohol. Additionally, conditions like a physical intoxication or scientific knowledge of drug interactions are readily observable or determinable conditions. Problem gambling as a mental condition is not as easily observed. The Office of Problem and Pathological Gambling provides a self-assessment¹ which provides 20 questions to help determine if an individual has a gambling problem. These questions relate to personal issues, such as if your home life has become unhappy due to gambling or if household bill money was used to gamble. An outside observer, unfamiliar with the specifics of a patron’s personal life, is unable to make these determinations.

- b. **Alan Titus, Artichoke Joe’s**: Mr. Titus recommended the following revision:

(a) Each licensee shall have procedures for providing new employee orientations and annual training concerning problem gambling for all employees who interact with gambling patrons in gambling areas. A licensee may develop an internal training program, may use a third-party training program, or may use a training program developed and provided by the OPPG. ~~At a minimum, orientations and training shall include the following employee groups:~~

~~(1) Any employee described in subsection (a), including but not limited to, food and beverage providers, with duties not related to the operation of a controlled game;~~

~~(2) Any employee described in subsection (a) with duties that include~~

¹ <http://problemgambling.securespsites.com/ccpgwebsite/for-gamblers/gambler-self-assessment.aspx>

~~a function related to the operation of a controlled game; and,~~

~~(3) Any key employee described in subsection (a).~~

(b)(1) New employee orientations shall be completed with 60 days of the issuance of a license or work permit, or the employee's start date, whichever is later.

(2) Annual training must be provided to each employee following the calendar year in which a new employee orientation was provided. Annual training may be completed in segments provided that the entire requirement is met during each calendar year.

(3) Each licensee shall designate personnel responsible for maintaining the program, coordinating training, and documenting employee completion. The program shall be reviewed at least once a year to ensure that the information provided is current. Copies of employee completion documentation shall be kept on file for a minimum of five years and shall include the date of the training, the topics covered and signatures of the employee receiving the training and the employee responsible for coordinating training.

(c) ~~The training programs for new employee orientation and annual training shall, a~~At a minimum, the following employee groups shall have the training specified~~consist of:~~

(1) Employees who interact with gambling patrons in gambling areas, but do not have duties related to the operation of the games, such as food and beverage providers, shall be trained~~Information~~ concerning the nature and symptoms of problem gambling behavior.;

(2) Employees who interact with gambling patrons in gambling areas and who have any duties related to the operation of a controlled game shall have the training specified in paragraph (1) of this subsection (c) and training on ~~H~~ow to assist patrons in obtaining information about problem gambling programs.;

(3) Key employees shall have the training specified in paragraph (2) of this subsection (c) and training on the following:~~Information on the self-~~

~~restriction and self-exclusion programs;~~

(A) Information on the self-restriction and self-exclusion programs;

~~(B)(4) Information about any help and prevention services offered by the State Department of Public Health, OPPG; and;~~

~~(C)(5) Information about any problem gambling programs or services available in and around the location of the gambling establishment.~~

~~(d)(1) New employee orientations and annual training for the employee group identified in paragraph (1) of subsection (a) shall include, at a minimum, the information specified in paragraph (1) of subsection (c).~~

~~(2) New employee orientations and annual training for the employee group identified in paragraph (2) of subsection (a) shall include, at a minimum, the information specified in paragraphs (1) and (2) of subsection (c).~~

~~(3) New employee orientations and annual training for the employee group identified in paragraph (3) of subsection (a) shall include, at a minimum, all of the information specified in subsection (c).~~

~~(e) This section shall not be construed to require employees to identify problem gamblers.~~

Recommended Response: This comment was accepted, in part, with the following proposed changes. The proposed changes differ from the comment's suggestion in paragraphs (2) and (3) of subsection (c).

(a) Each licensee shall have procedures for providing new employee orientations and annual training concerning problem gambling for all employees who interact with gambling patrons in gambling areas. A licensee may develop an internal training program, may use a third-party training program, or may use a training program developed and provided by the OPPG. ~~At a minimum, orientations and training shall include the following employee groups:~~

~~(1) Any employee described in subsection (a), including but not limited to, food and beverage providers, with duties not related to the~~

~~operation of a controlled game;~~

~~(2) Any employee described in subsection (a) with duties that include a function related to the operation of a controlled game; and,~~

~~(3) Any key employee described in subsection (a).~~

(b)(1) New employee orientations shall be completed within 60 days of the issuance of a license or work permit, or the employee's start date, whichever is later.

(2) Annual training must be provided to each employee following the calendar year in which a new employee orientation was provided. Annual training may be completed in segments provided that the entire requirement is met during each calendar year.

(3) Each licensee shall designate personnel responsible for maintaining the program, coordinating training, and documenting employee completion. The program shall be reviewed at least once a year to ensure that the information provided is current. Copies of employee completion documentation shall be kept on file for a minimum of five years and shall include the date of the training, the topics covered and signatures of the employee receiving the training and the employee responsible for coordinating training.

(c) ~~The training programs for new employee orientation and annual training shall, a~~At a minimum, the following employee groups shall have training, as specified~~consist of:~~

(1) Employees who interact with gambling patrons in gambling areas, but do not have duties related to the operation of the games, such as food and beverage providers, shall receive training~~Information~~ concerning the nature and symptoms of problem gambling behavior.;

(2) Employees who interact with gambling patrons in gambling areas and who have any duties related to the operation of a controlled game shall receive the training specified in paragraph (1) and training on ~~H~~how to assist patrons in obtaining information about problem gambling programs.;

(3) Key employees shall receive the training specified in paragraph (2) and on the following:~~Information on the self-restriction and self-exclusion programs;~~

(A) Information on the self-restriction and self-exclusion programs;

(B)~~(4)~~ Information about any help and prevention services offered by the State Department of Public Health, OPPG; and,

(C)~~(5)~~ Information about any problem gambling programs or services available in and around the location of the gambling establishment.

~~(d)(1) New employee orientations and annual training for the employee group identified in paragraph (1) of subsection (a) shall include, at a minimum, the information specified in paragraph (1) of subsection (c).~~

~~(2) New employee orientations and annual training for the employee group identified in paragraph (2) of subsection (a) shall include, at a minimum, the information specified in paragraphs (1) and (2) of subsection (c).~~

~~(3) New employee orientations and annual training for the employee group identified in paragraph (3) of subsection (a) shall include, at a minimum, all of the information specified in subsection (c).~~

~~(e)~~ This section shall not be construed to require employees to identify problem gamblers.

2. Subsection (a) [pg. 3, line 13] requires that employees who have interactions with patrons in gambling areas must receive new employee orientation and annual training related to problem gambling. The required training can be conducted through internal training programs, a program purchased from a third-party training provider, or a program provided by the OPPG. Three groups are identified: (1) employees whose tasks are unrelated to the operation of a controlled game, such as food and beverage servers; (2) employees whose work functions include the operation of a controlled game; and, (3) key employees.

- a. **Brian Altizer, Napa Valley Casino:** Mr. Altizer expressed concern that requiring food and beverage servers to receive problem gambling training will not assist in the goals of addressing problem gambling. Mr. Altizer commented that these employees have minimal contact with patrons and that the front line employees are those who are already required to receive training. Food and beverage servers are too busy to observe any signs of problem gambling.

Recommended Response: This comment was considered but was not incorporated. While it is true that the contact between a food and beverage server may be brief, that does not mean that the contact may not be valuable. Providing every employee having contact with patrons with basic knowledge of the issues related to problem and pathological gambling provides a better chance that any potential issues will be noticed. The level of training and presumed responsibility required of food and beverage servers is only to be knowledgeable of basic signs and symptoms, so that once observed, the information can be communicated to employees with more substantial training.

It has been observed in many of the comments that specific proposed provisions require time and effort by key employees, those whose responsibilities also include observation of the controlled games for compliance purposes. By expanding the number of employees with basic knowledge of the signs of problem and pathological gambling, the burden of observation is spread further; and, therefore reduces the focused burden from other categories of employees.

3. Paragraph (3) of subsection (b) [pg. 4, line 2] requires that each gambling establishment must have a designated individual responsible for maintaining the program, coordinating training and documenting employee completion. Additionally, this paragraph establishes the standards for maintaining training records.
 - a. **James Smith, Hustler Casino and Robert Jacobson, California Council on Problem Gambling:** Mr. Smith and Mr. Jacobson suggested the following revision:

(3) Each licensee shall designate personnel responsible for maintaining the program, coordinating training, and documenting employee completion. The program shall be reviewed at least once a year to ensure that the information provided is current. ~~Records~~~~Copies~~ of employee completion documentation shall be kept ~~on file~~ for a minimum of five years and shall include the date of the training, the topics covered and an electronic or hardcopy of Certificate of Completion naming both~~signatures~~ ~~of~~ the employee receiving the training and the employee responsible for coordinating training.

Recommended Response: This comment is accepted, in part, and the following revision is proposed:

(3) Each licensee shall designate personnel responsible for maintaining the program, coordinating training, and documenting employee

completion. The program shall be reviewed at least once a year to ensure that the information provided is current. ~~Records~~~~Copies~~ of employee completion documentation shall be maintained in accordance with Section 12003, ~~kept on file for a minimum of five years~~ and shall include the date of the training, the topics covered, ~~the name and signatures~~ of the employee receiving the training, and the name of the employee responsible for coordinating training. Training records may include, but need not be limited to, sign in sheets and training certificates.

D. AMEND SECTION 12463. SELF-RESTRICTION PROGRAM.

This section provides a requirement that licensees implement policies and procedures related to the implementation of a Self-Restriction program and maintaining a list of self-restricted persons.

1. The following comments were received about the section, in general [pg. 5, line 1]:

- a. **Nathan DaValle, Bureau:** Mr. DaValle recommended that a provision be added that would require a gambling enterprise to conduct regular or routine review of its list of self-restricted persons. Mr. DaValle recommended that this review be conducted at least quarterly.

Recommended Response: This comment was accepted, in part. Mr. DaValle is correct that neither the current provisions, nor the proposed revisions address or require any specific review period of either the list of self-restricted persons or the list of self-excluded persons. In the case of the list of self-excluded persons, this proposal includes guidelines for a gambling enterprise to create policies and procedures related to verifying a patron's identify and status. This requirement takes the place of the proposal, but has not been proposed to be applied to the list of self-restricted persons. In consideration of this comment, the Commission may consider two possible alternatives to the proposal:

1. Apply the elected option from Options 8 through 11 to the Self-Restriction Program in addition to the Self-Exclusion Program.
 2. If Option 14 is elected, apply an elected option from Options 8 through 11 to the proposed revisions to the Self-Restriction Program as part of the option's modification of the program to provide a higher level of specificity.
2. Subparagraph (B) of paragraph (4) of subsection (a), both options, [pg. 5, line 24] requires that the policies and procedures of the gambling enterprise's Self-Restriction Program contain a provision for either notification of the Bureau (current regulation and Option 4) or maintenance of records (Option 5) when an individual is removed from a gambling establishment for violating their self-restriction agreement.

- a. **Alan Titus, Artichoke Joe's**: Mr. Titus noted that the policies and procedures requirement does not specifically limit the reporting of violations related to the program. Additionally, Mr. Titus noted that the preference of Artichoke Joe's is to have Option 5, Part A approved by the Commission.

Recommended Response: This comment was accepted, in part. The proposed revision to clarify the requirements of the policy is accepted. The following revisions are proposed:

OPTION 4, PART A

(B) Notification to the Bureau of any incidents of removal where the police or security are called to remove from the premises a person on the list of self-restricted persons~~from the premises~~; and,

OPTION 5, PART A

(B) Maintenance of records of any incidents of the removal from the premises of a person on the list of self-restricted persons, accessible by Bureau staff or law enforcement personnel pursuant to an investigation; and,

Mr. Titus' support for Option 5 is accepted and will be considered by the Commission.

- b. **Charles Bates, Bay 101**: Mr. Bates commented that the requirement to report or maintain records of incidents of removal is duplicative and unnecessary; and, therefore should be repealed in lieu of either option. Mr. Bates pointed out that if an individual refuses to leave it is a case of trespass and is therefore a criminal act that is already required to be reported to the Bureau [in accordance with Section 12395(a)(3)].

Recommended Response: This comment was considered but was not incorporated. While Mr. Bates may be correct in his statement that any refusal to leave is a crime (trespass) and should therefore be reported to the Bureau, this regulation provides specificity and clarity on the subject. It may not be commonly understood that a situation involving the removal of a patron without any report to the police is something otherwise warranting reporting to the Bureau. Additionally, this requirement applies specificity to the Program for Responsible Gambling instead of just general incident reporting under Section 12395, and includes situations not just where police were required, but also when security was utilized.

- c. **Nathan DaValle, Bureau**: Mr. DaValle commented that notification to the Bureau of violations to the Self-Restriction program is important to the Bureau's efforts to ensure compliance with responsible gambling regulations.

Recommended Response: This comment was considered but was not incorporated. Even if the reporting requirements were removed (Option 5, Part A), the Bureau would still have the authority to request copies of the gambling enterprise's records to verify compliance.

3. Subparagraph (C) of paragraph (4) of subsection (a), both options, [pg. 6, line 2] requires that the policies and procedures of the gambling enterprise's Self-Restriction Program contain a provision for either the remittance of any money or prizes won (current regulation and Option 6) or remittance of any jackpots or prizes won and any additional chips in the patron's possession (Option 7) for deposit into the Gambling Addiction Program Fund.

- a. **Alan Titus, Artichoke Joe's**: Mr. Titus expressed the opinion that neither the current regulation nor either of the proposed options are appropriate. The regulation and proposed options deputize the gambling enterprise personnel to seize a patron's money and chips without due process. Mr. Titus noted that a person in violation of their self-restriction has committed no crime and is responding to the effects of a disease. It is inappropriate for the State to treat the person as a criminal by declaring forfeiture. Mr. Titus expressed concern that the current regulation and both of the proposed options also violate a person's Eight Amendment protection from excessive fines.

Recommended Response: This comment was considered but was not incorporated. When an individual places him or herself on the list of self-excluded persons, they are agreeing and authorizing the gambling enterprise to perform these functions. While this agreement does not authorize illegal activity, such as a physical altercation, it does empower the gambling enterprise's employees to deny prizes and jackpots. For the list of self-restricted persons, should the gambling enterprise have adopted the optionally provided Commission form, this empowerment is likewise provided. If the gambling enterprise has provided its own form and has not included such empowerment, then Mr. Titus' comment has merit and the gambling enterprise may be limited in its ability to enforce the regulations. It should be noted that the forfeiture requirement is currently in effect, and to date, the Commission is not aware of any incidents that have involved the need for a gambling enterprise to exercise force or cause any injury to a patron or employee in connection with this regulation.

- b. **Charles Bates, Bay 101**: Mr. Bates commented that for Option 6, while prizes may be less difficult to determine, any determination related to money won places a burden on the gambling enterprise that is time consuming and costly. Mr. Bates recommended the following revisions:

(C) Forfeiture [pursuant to their Agreement of Restriction](#) of [all chips](#)

on the table and in the immediate possession and control of the~~any money~~
~~or prizes won by a self-~~restricted person and the remittance of the
combined value for deposit into the Gambling Addiction Program Fund
for problem gambling prevention and treatment services through the State
Department of Public Health, Office of Problem and Pathological
Gambling;

Additionally, Mr. Bates commented that Option 7 is unreasonable, untenable and fraught with opportunity for dispute, and embarrassment both to the gambling enterprise and the patron. Mr. Bates suggested that this option should not be considered further.

Recommended Response: This comment is accepted, in part. Mr. Bates, in his comment, discusses that often identifying prizes and jackpots less difficult to determine, and so the following revisions are proposed:

(C) Pursuant to the Declaration contained in the Self-Retraction Request form, CGCC-037 (Rev. 02/15), or equivalent section if the gambling enterprise does not utilize the Commission's form, Fforfeiture of all chips on the table, under control or in the immediate possession of ~~the~~any money or prizes won by a self-restricted person, or from any prize or jackpot won. ~~and the remittance of t~~The combined value shall be remitted for deposit into the Gambling Addiction Program Fund for problem gambling prevention and treatment services through the State Department of Public Health, Office of Problem and Pathological Gambling;

If elected, similar language could be included for Option 7, Part B making reference to the list of self-excluded persons and associated forms.

- c. **Nathan DaValle, Bureau**: Mr. DaValle commented that Option 7 represents an efficient deterrent and reasonably ensures compliance by patrons.

Recommended Response: Mr. DaValle's support for Option 7 is accepted and will be considered by the Commission.

4. Paragraph (5) of Subsection (a) [pg. 6, line 18] specifies that a gambling enterprise must include in their policies and procedures, related to their maintenance of their list of self-

restricted persons, an allowance that a patron may exclude or limit their access to check cashing or the issuing of credit.

- a. **Tucker Hoog**: Mr. Hoog observed that this provision does not cover other ways for a patron to receive money, such as from an automated teller machine (ATM).

Recommended Response: This comment was considered but was not incorporated. The imposition of limitations on a patron's ATM withdrawal is impractical. It would require an employee to monitor the usage of the ATM, including monitoring each specific transaction. This would be an inappropriate requirement. Subsection (a) of section 12461 additionally requires that program information be posted at ATMs, as that is a location where cash is available.

E. AMEND SECTION 12464. SELF-EXCLUSION PROGRAM.

This section requires that licensees implement policies and procedures related to the implementation of the Self-Exclusion program and the list of self-excluded persons.

1. The following comments were received about the section, in general [pg. 7, line 1]:

- a. **Nathan DaValle, Bureau**: Mr. DaValle recommended that a provision be added that would require a gambling enterprise to conduct regular or routine review of the list of self-excluded persons. Mr. DaValle recommended that this review be conducted at least quarterly, but that it could be done more frequently if the slideshow option of the Exclusion Management System was utilized.

Recommended Response: The response to this comment is addressed in a similar comment made by Mr. DaValle related to the Self-Restriction Program (see comment I.D.1.a).

2. Paragraph (3) of subsection (a) [pg. 7, line 31] requires that the policies and procedures of the gambling enterprise's Self-Exclusion Program contain a provision for either notification of the Bureau when security or police are required for removal (current regulation and Option 4) or for any incident of removal (Option 5).

- a. **Alan Titus, Artichoke Joe's**: Mr. Titus repeated his suggested revision from the similar options in Section 12463 (see comment I.D.2.a). Additionally, Mr. Titus noted that, practically speaking, a patron is not removed without at least security being present and therefore the two options are functionally the same.

Recommended Response: This comment was considered but was not incorporated. Mr. Titus' statement that a patron is never removed from Artichoke Joe's without at least security participating does not mean security is always involved in all removals in all gambling establishments. Additionally, this paragraph does not require the same change as the similar provision in Section 12463. This paragraph already includes a reference to thwarting self-excluded patrons from entering a gambling establishment and notifying the Bureau of their removal.

3. Paragraph (4) of subsection (a) [pg. 7, line 31] requires that a gambling enterprise create policies and procedures for the verification of a patron's identification, including verifying they are not on the list of self-excluded persons.

- a. **Brian Altizer, Napa Valley Casino**: Mr. Altizer expressed concern that requiring a gambling enterprise to verify a patron's status against the list of self-excluded persons or list of self-restricted persons would slow down and hinder cardroom operations. Mr. Altizer noted that realistically a patron's ID is normally verified only if they appear to be under 30 years of age. However, this check is not conducive to verification of the lists as the lists cannot be kept in public view. This verification would require the employee doing the check to be off the floor and not watching the gaming operations.

Mr. Altizer further commented that verification by a cashier for cash advance transactions is also problematic. Individual patrons may be before the cashier multiple times during the course of their patronage. Would the cashier be required to conduct this verification daily, weekly? Would failing to conduct verification for a patron known to the employee be a violation?

Mr. Altizer recommended that a patron's status be checked if they are paid any prizes that require a W2-G or for transactions that require a Cash Transaction Report [Title 31].

Recommended Response: This comment was considered but was not incorporated. The proposed options provide minimum standards that a gambling enterprise must use to design and implement policies and procedures. When designing those policies and procedures, the gambling enterprise is able to determine the answers to many of these questions, such as if an individual must be checked more than once, or how to identify that an individual has already been verified. Additionally, for cases where it is inconvenient or unwise to provide access to the confidential lists, the procedures could call for passing on an individual's name to someone better able to verify a patron's status. The critical issue is to establish policies and procedures to prevent individuals who are self-excluded from participating in gambling activities from which they are barred.

- b. **Monica Dreher, Lake Bowl Cardroom**: Ms. Dreher expressed concern that the proposed options would require the gambling establishment to check every patron's ID against the list of self-excluded persons multiple times a night. Ms. Dreher noted that potentially only 1% of patrons may be on the list of self-excluded persons and so the proposed regulation would create a lot of work and patron frustration. Additionally, the maintenance of an individual's status is ultimately their responsibility, and the proposal would instead place the burden on innocent patrons.

Recommended Response: This comment was considered but was not incorporated. The proposed options provide minimum standards that a gambling enterprise must

use to design and implement policies and procedures. When designing those policies and procedures, the gambling enterprise is able to determine the solutions to such concerns.

Additionally, Ms. Dreher is correct that the maintenance of an individual's status is ultimately their own responsibility. However, current provisions already contemplate an active participation by the gambling enterprise. For example, paragraph (3) of subsection (a) of Section 12364 already requires gambling enterprises to establish "policies and procedures designed to thwart self-excluded patrons... from entering the gambling area..." Assistance by the gambling enterprise is already in effect.

- c. **Michael Vasey, 101 Casino, Casino 580, Cordova Restaurant and Casino, Lotus Casino and Lodi Casino**: Mr. Vasey noted agreement with the proposed goal of preventing individuals from violating their exclusion instead of only catching a violation after several hours of play. Mr. Vasey expressed concern that the proposed options are impractical, would require additional employees, and would create delays.

Additionally, Mr. Vasey expressed concern that the confidentiality of the list could be compromised as additional employees would require access. This expansion of individuals with access to the list of self-excluded persons may deter a patron from participating for fear that their identity would be compromised.

Mr. Vasey suggested that this proposal may become unnecessary as gambling enterprises institute player's cards.

Recommended Response: This comment was considered but was not incorporated. The proposed options provide minimum standards that a gambling enterprise must use to design and implement policies and procedures. When designing those policies and procedures, the gambling enterprise is able to determine the solutions to such concerns.

Concerns about the confidentiality of the list and the personnel required to verify the list are addressed in the response to another comment (see comment I.E.3.a).

Mr. Vasey may be correct that in cases where a player's card is utilized, it could be possible for that to function as a tool for verification of a patron's identity. The minimum requirements for the regulations do not specify how the identification or list checking must be managed.

- d. **Alan Titus, Artichoke Joe's**: Mr. Titus provided comments related to each of the four options.

Option 8. Mr. Titus expressed concern that this option would cause a significant invasion of patron privacy. Mr. Titus observed that the portion of patrons that could be violating an exclusion or restriction would be very small and so this provision would have

only a small benefit. Additionally, the proposed standard is inconsistent with comparable industries, e.g., racetracks, lottery tickets, Nevada casinos and Tribal casinos.

Option 9. Mr. Titus commented that this option would be workable if verification of the list of self-excluded persons was limited to those transactions that take place at a cage. Verification on the floor is only rarely done currently, and it is done to comply with the requirements of the Bank Secrecy Act. Any additional requirement that affects transactions on the gaming floor would remove personnel responsible for watching and verifying the play of the games. Mr. Titus stated that with a limitation to just transactions at a cage, jackpot prizes, and tournament wins Artichoke Joe's would support this option.

Option 10. Mr. Titus expressed concern similar to Option 9, and again stated that should the affected transactions be limited to just those conducted at a cage, Artichoke Joe's would be in support of Option 9.

Option 11. Mr. Titus expressed concern that the requirement that verification be conducted "in conjunction with a controlled game or gaming activity" was unclear.

Recommended Response: The following responses are provided:

Option 8. This comment was considered but was not incorporated. The gambling enterprise would be required to consider the confidentiality of the list of self-excluded persons when designing the required policies and procedures. Allowing employees of the gambling enterprise access to the list in conjunction with verification of individual's status would not be considered a violation of that confidentiality. Additionally, according to the OPG, the Horse Racing Board and Lottery Commission do not currently have regulations related to the list of self-excluded persons or similar provisions. Nevada does not have a Self-Exclusion Program comparable to current or proposed Self-Exclusion Program provisions. The system in Nevada would be more akin to the Self-Restriction Program, but differs in many respects. Several Indian Tribes, pursuant to their Tribal State Gaming Compacts, are required to establish procedures or programs for self-exclusion, involuntary exclusion, and/or self-restriction. In addition, any procedures or programs are limited to the casino's location.

Option 9. Mr. Titus's support for Option 9 is accepted and will be considered by the Commission.

Option 10. This comment was considered but was not incorporated. It is understood that different gambling enterprises may currently have policies that vary with regards to the verification of identity and the list of self-excluded

persons. The proposed regulations offer options to provide minimum standards of consistency for this process. The regulations are not designed to restrict a gambling enterprise's actions, but allow the gambling enterprise to design its own policies and procedures to meet the required minimum standards. There is no requirement that the same individual responsible for monitoring the play of the games would also be the person required to verify a patron's status, only that the status be verified.

Option 11. This comment was considered but was not incorporated. There are many reasons that an individual might have their identity verified. For example, when a credit card is used for a purchase, when purchasing alcohol, when withdrawing money from a player account, etc. Many of these reasons, such as the examples of just using a credit card or purchasing alcohol are not "in conjunction with a controlled game or gaming activity." However, incidents related to the activities required to gamble, such as receiving chips, redeeming chips or just for age verification to play are directly related to the controlled game.

- e. **Nathan DaValle, Bureau:** Mr. DaValle commented that the Bureau would prefer Option 10 as the Bureau believes that it is a reasonable measure for gambling enterprises to implement to ensure that patrons are not also on the list of self-excluded persons. Mr. DaValle also suggested that similar language be added to Section 12463 to require verification of the list of self-restricted persons.

Recommended Response: Mr. DaValle's support for Option 10 is accepted and will be considered by the Commission.

- 4. Paragraph (5) of subsection (a), both options, [pg. 8, line 17] require that the policies and procedures of the gambling enterprise's Self-Exclusion Program contain a provision for either the remittance of any money or prizes won (current regulation and Option 6) or remittance of any money or prizes won and any additional chips in the patron's possession (Option 7) for deposit into the Gambling Addiction Program Fund.

- a. **Alan Titus, Artichoke Joe's:** Mr. Titus repeated his comments related to Section 12463 (see comment I.D.3.a).

Recommended Response: The response to this comment is the same as the response to comment I.D.3.a.

- b. **Charles Bates, Bay 101:** Mr. Bates repeated his comments related to Section 12463 (see comment I.D.3.b).

Recommended Response: The response to this comment is the same as the response to comment I.D.3.b.

- c. **Nathan DaValle, Bureau**: Mr. DaValle repeated his comments related to Section 12463 (see comment I.D.3.c).

Recommended Response: The response to this comment is the same as the response to comment I.D.3.c.

F. ADOPT SECTION 12465. REMOVAL FROM THE LIST OF SELF-EXCLUDED PERSONS.

Section 12465 includes two options to change the lifetime self-exclusion term from irrevocable to instead allow removal under specific conditions and a one year “cool down” period.

1. Options 12 and 13 [pg. 9, line 12] would provide options for altering the self-exclusion time periods available for selection. Option 12 would leave in place the one-year and five-year terms and change the lifetime term to a minimum of five years with removal allowed by making a request and serving an additional one-year waiting period. Option 13 would repeal all existing time frames and replace them with a single term of no minimum time but only requiring a one year wait period after removal is requested.
- a. **Alan Titus, Artichoke Joe’s**: Mr. Titus expressed concern that the proposed wait period is excessive and recommended a 90-day wait period. Mr. Titus also suggested that directly soliciting comments from individuals on the list of self-excluded persons would be beneficial and in keeping with Government Code section 11346.45. Finally, Mr. Titus suggested that instead of continuing to use the term “lifetime,” a more appropriate term such as “without a set term” may be appropriate.

Recommended Response: This comment was considered but was not incorporated. The waiting period needs to be of sufficient time to cause the self-exclusion period to have weight and provide the opportunity for separation from the activity. The OPPG has previously advised that any exclusion or wait period should not be less than one year. As part of the regulatory process, the Commission has held two public workshops, for which any party that has indicated interest has been properly notified. This notification includes gambling entities, but also members of the public, the OPPG and members of the OPPG advisory group. Finally, as the restriction/exclusion lists are supposed to be confidential, it may be inappropriate to contact the individuals directly.

- b. **Charles Bates, Bay 101**: Mr. Bates commented that between options 12 and 13, Bay 101 would prefer option 12.

Recommended Response: Mr. Bates’ support for Option 12 is accepted and will be considered by the Commission.

- c. **Nathan DaValle, Bureau**: Mr. DaValle noted that references to the Withdrawal of Self-Exclusion Removal Request form does not specify that the form is intended to be submitted after a Self-Exclusion Removal Request form and before the actual removal. Mr. DaValle also expressed concern that the allowance of a removal

request form, and the associated activities would create a significant increase in workload to the Bureau without any funding mechanism to provide defrayment of the associated costs.

Mr. DaValle also expressed concern that the Self-Exclusion Removal Request form does not require any type of verification. The Self-Exclusion Request form requires a notary or key employee to verify the identity of an individual, but the Self-Exclusion Removal Request form does not.

Recommended Response: This comment was considered but was not incorporated. Mr. DaValle is correct in describing the difference in the pre-exclusion and post-exclusion forms. Excluding oneself from an entire industry is a big commitment, and verification ensures that it is only the individual who is able to exclude him or herself. Other individuals may have an interest in adding someone to the exclusion list, and so verification is necessary. There is less concern for someone inappropriately requesting that another person be removed from the list of self-excluded persons, so the verification was not included.

Additionally, while the Bureau did provide three years of cost estimates associated with these options, it did not provide any specific cost information related to the noted concern. When the Commission adopts the final regulations, if the noted costs are not included in the previously provided cost estimates, the Bureau will have to provide the additional or updated specific fiscal impact information so that the STD. 399 can be updated for submission to the Department of Finance.

2. Option 14 [pg. 10, line 13] would repeal the statewide Self-Exclusion Program and instead apply more specific requirements to the Self-Restriction Program.
 - a. **Alan Titus, Artichoke Joe's**: Mr. Titus commented that Artichoke Joe's would prefer the approval of this option. Mr. Titus noted that players tend to patronize their local cardrooms and with over 2,000 names on the list of self-excluded persons, it is impractical to expect anyone to recognize more than a handful of excluded players. The size of California makes the list ineffective to enforce.

Recommended Response: Mr. Titus's support for Option 14 is accepted and will be considered by the Commission.

- b. **Charles Bates, Bay 101**: Mr. Bates commented that Bay 101 would prefer this option over the other two. Mr. Bates suggested that a statewide program is a contractual relationship between the patron and the state, while the list of self-restricted persons is an agreement between the patron and a local entity. The state only has tangential interest in a patron and their exclusion, while the gambling enterprise has personal relationships and the information necessary to evaluate the unique issues related to each incident. Mr. Bates commented that the statewide program places an unreasonable bureaucratic and administrative burden on the gambling enterprise.

Recommended Response: Mr. Bates' support for Option 14 is accepted and will be considered by the Commission.

- c. **Nathan DaValle, Bureau:** Mr. DaValle commented that the Bureau believes Self-Exclusion Program helps the individuals who participate and is against the repealing of the program.

Recommended Response: Mr. DaValle's comment is accepted and will be considered by the Commission.

G. AMEND SECTION 12466. RESPONSIBLE GAMBLING PROGRAM REVIEW

Section 12466 provides for the review and verification of the gambling enterprise's Self-Restriction and Self-Exclusions policies and procedures to ensure that they are consistent with the requirements of the regulations. Additionally, this section includes requirements for maintenance of the list of self-excluded persons and the list of self-restricted persons, including guidance for confidentiality.

1. Paragraph (1) of subsection (a) [pg. 10, line 22] specifies that the Bureau may request a gambling enterprise's policies and procedures for review and that if it finds them deficient, may issue a notice identifying the deficiencies and specify a time for them to be corrected.

- a. **Alan Titus, Artichoke Joe's:** Mr. Titus recommended the following revision:

(a)(1) The Bureau may require that any licensee [provide to the Bureau copies of the licensee's policies and procedures constituting its Program for Responsible Gambling](#)~~make available for review or submit any of the elements of its program described in this article for review~~. If the Bureau makes a determination that the licensee's program does not adequately address the standards as set forth in this article, then the Bureau may issue a notice identifying the deficiencies and specifying a time certain within which those deficiencies shall be cured.

Recommended Response: This comment is accepted, in part. In order to clarify that those advertisements subject to Section 12461 are included in the Bureau's authority to request information the following revision is proposed:

(a)(1) The Bureau may require that any licensee [provide to the Bureau copies of the licensee's policies and procedures constituting its Program for Responsible Gambling, which shall address all of the requirements of](#)

~~this article make available for review or submit any of the elements of its program described in this article for review.~~ If the Bureau makes a determination that the licensee's program does not adequately address the standards as set forth in this article, then the Bureau may issue a notice identifying the deficiencies and specifying a time certain within which those deficiencies shall be cured.

2. Paragraph (2) of subsection (a) [pg. 10, line 30] specifies that in addition to the Bureau, both the Commission and the OPPG may request and review a gambling enterprise's policies and procedures.

- a. **Alan Titus, Artichoke Joe's and Charles Bates, Bay 101**: Mr. Titus and Mr. Bates expressed concerns that allowing the OPPG and the Commission to request and review gambling enterprises' programs is duplicative and unnecessary and contrary to the Governor's Reorganization Plan [No. 2 of 2012] to streamline state government.

Additionally, Mr. Bates expressed concern that with multiple agencies able to request information, it opens the door to a gambling enterprise receiving multiple requests to perform the same task. Instead the Commission and OPPG should request through the Bureau instead of having three agencies make the same request. Mr. Bates also expressed concern that allowing staff to make a request was too broad and that it should be limited to authorized staff. Mr. Bates recommended the removal of this provision.

Recommended Response: This comment was considered but was not incorporated. The OPPG has a different interest in reviewing problem gambling programs than the Bureau. While the Bureau is interested in verifying regulatory compliance, the OPPG has an interest in specific aspects of how problem gambling programs are being implemented in California. By authorizing the OPPG to directly work with the gambling enterprises, the process is free of the additional step of OPPG coordinating requests through the Bureau. Additionally, there is no difference between using the term staff versus authorized staff. Practically speaking, a staff member of any agency will not make requests of gambling enterprises unless they have been authorized to do so.

The Commission likewise has a different interest in reviewing problem gambling programs than either the Bureau or OPPG. As the regulatory agency, the Commission may require information related to the Program for Responsible Gambling for the construction of policy. As the Commission seeks information about its own regulation, the process should not be burdened with an intermediary third party entity.

3. Subsection (b) [pg. 10, line 33] specifies that the failure by a gambling establishment to correct any deficiencies identified by the bureau shall constitute a grounds for disciplinary action.
 - a. **Alan Titus, Artichoke Joe's**: Mr. Titus expressed concern that the failure of a gambling enterprise to establish the required policies and procedures is a ground for discipline. Mr. Titus objected to the idea that any discipline can be based on Bureau allegations alone and not independently reviewed by the Commission.

Recommended Response: This comment was considered but was not incorporated. The use of the term “grounds for disciplinary action” is a commonly used term to indicate the possible consequences of a licensee’s actions or inactions. The process established by Chapter 10 involves the Bureau filing a formal administrative accusation with the Commission, which is then considered at an Administrative Procedures Act hearing. After the conclusion of that hearing, it is the Commission that determines discipline based on the testimony and evidence presented. This provision does not grant the Bureau the authority to independently impose any sanctions or punishments based solely on their allegations.