

CALIFORNIA GAMBLING CONTROL COMMISSION  
**FINAL STATEMENT OF REASONS**  
CGCC-GCA-2015-01-R

**HEARING DATE:** December 9, 2015

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Program for Responsible Gambling

**SECTIONS AFFECTED:** California Code of Regulations, Title 4, Division 18:  
**Sections 12460, 12461, 12462, 12463, 12464, 12465, and 12466**

**UPDATED INFORMATION:**

The Initial Statement of Reasons, as published on March 6, 2015, is included in the file and is hereby incorporated by reference as if fully set forth herein. The information contained therein is updated as follows:

**PROPOSED ACTION:**

This proposed action will make changes in Division 18, Title 4 of the California Code of Regulations. The proposed changes are as follows:

The proposed changes in Chapter 7 are as follows:

Amend Section 12460. Article Definitions.

This proposed action provides non-substantive, editorial revisions to the definitions in Section 12460.

Subsection (a) is modified to remove the reference to “irrevocability.” Proposed Section 12465 will now address the irrevocability, or revocability, or any removal request, and the continued inclusion in the definition is repetitive and unnecessary. The definition is also revised to remove operative text as the relevant regulation section already includes these provisions and they are unnecessary in the definition. Additionally, the reference to games is changed to controlled games. The term game is undefined. The purpose is to allow a patron to exclude him or herself from gambling. Therefore, for the purposes of clarity, the use of “controlled games,” as defined in Business and Professions Code section 19805, subdivision (g), is utilized.

Finally, two non-substantive, editorial corrections are proposed. The first provides consistent reference to the list of self-excluded persons and not a “Self-Exclusion list.” The second is an editorial correction to clarify that the list of self-excluded persons applies to all controlled

games or gaming activities or privileges at all gambling establishments. These revisions keep the definition consistent with other proposed changes to the regulation and provide clarity.

Subsection (b) is revised to clarify that self-restriction only applies to a single gambling establishment. This is a non-substantive, editorial correction that moves the references to an individual gambling enterprise from each paragraph to the subsection. The definition is also revised to remove operative text as the relevant regulation section already includes these provisions and they are unnecessary in the definition. Additionally, the subsection and paragraphs have a non-substantive, editorial correction for consistency that modifies references from “exclusion” to “restriction” as the limitations are related to self-restriction and not self-exclusion. These revisions keep the definition consistent with other proposed changes to the regulation and provide clarity.

Paragraph (1) of subsection (b) is modified to change the reference to games to controlled games. The term game is undefined. The purpose is to allow a patron to restrict him or herself from gambling. Therefore, for the purposes of clarity, the use of “controlled games,” as defined in Business and Professions Code section 19805, subdivision (g), is utilized.

Paragraph (2) of subsection (b) is modified to change the reference to games to controlled games. The term game is undefined. The purpose is to allow a patron to restrict him or herself from gambling in a specific controlled game or gaming activity. Therefore, for the purposes of clarity, the use of “controlled games,” as defined in Business and Professions Code section 19805, subdivision (g), is utilized. In addition, the reference to gambling establishment is changed to gambling enterprise. The gambling establishment is a physical location and the gambling enterprise is the entity that is operative and makes procedural decisions. An additional non-substantive, editorial change is made to remove unnecessary language.

Paragraph (3) of subsection (b) is modified to clarify that the restriction is on the availability of credit or check cashing. This is a non-substantive, editorial revision that does not alter the purpose or effect of the regulation.

Paragraph (4) of subsection (b) is modified to provide that the restriction from marketing or promotional activities applies to both those conducted by the gambling enterprise, and those conducted on its behalf. This revision is required as otherwise the definition would be inconsistent with proposed revisions to Section 12461. In addition, when removing individuals from their marketing lists, the gambling enterprise must utilize all of the information in their possession to ensure removal. This is necessary as some people have more than one email address, so when excluding they may provide a different email address than previously provided but their identity on the list could still be removed by using other information like name and physical address.

Amend Section 12461. Posting Referral Information.

This proposed action expands the requirements for posting problem gambling messages to include third-party providers of proposition player services (TPPPS) and gambling

businesses. Additionally, the proposed action clarifies what advertising materials are required to include a problem gambling message. Finally, the proposal includes non-substantive, editorial changes.

Subsection (a) is revised to remove outdated timeline requirements. This is a non-substantive, editorial change with no regulatory effect.

Subsection (b) specifies that any website operated by a gambling enterprise must contain a responsible gambling message and a link to the Office of Problem Gambling (OPG). This subsection is revised to provide that a website operated by or on the behalf of a gambling enterprise, TPPPS or gambling business must contain the required message. This provision corrects the reference from gambling establishment to gambling enterprise. A gambling establishment is a building or location, while a gambling enterprise is the operative entity. TPPPS and gambling businesses are added to this requirement as they are licensed or registered gambling related operations.

Subsection (c) specifies that any advertising material must contain the responsible gambling message. This subsection is revised to provide that advertising material produced by, or on the behalf of any gambling enterprise, TPPPS or gambling business must include the required message. TPPPS and gambling businesses are added to this requirement as they are licensed or registered gambling related operations and it would be inconsistent to exempt them from advertising standards if advertising for a controlled game or gaming activity. This proposal requires that the advertising material must contain either a reference to the 1-800-GAMBLER number or a link to <http://www.problemgambling.ca.gov>, or both. Additionally, the proposed action clarifies which advertising materials are required to follow this provision. The list of television, radio, outdoor display, flyer, mail or digital encompasses those mediums with sufficient space to include the required message where it is not a burden on the advertisement.

Paragraph (1) specifically exempts digital materials where space is limited and the advertisement includes a link where a viewer would then be electronically directed to a website that does include the required message. This revision acknowledges the practical limitations in including the message on digital advertisements, such as Twitter or Google Ads where a limitation of characters would necessitate the gambling message taking up the majority of the available space. Additionally, these advertisements have the intended goal of moving the consumer to a website where the problem gambling message will be provided.

Paragraph (2) exempts promotional materials of a limited size. This revision acknowledges the practical limitations in including the message on items of limited space, such as promotional pens or hats, while still requiring that those materials used for broader delivery still include the message.

Amend Section 12462. Training Requirements.

This proposed action modifies and clarifies the minimum requirements for the policies and procedures related to problem gambling training for gambling enterprise employees. This section is expanded to provide requirements related to any employee that has direct

interaction with gambling patrons in the gambling areas, including food and beverage servers. The requirements provide for a scaled instruction minimum, where individuals in lower level positions are required to have less instruction.

Subsection (a) provides that a licensee shall establish and implement procedures related to new employee orientations and annual trainings for those employees who have contact with gambling patrons in gambling areas. Food and beverage servers are no longer exempt from the training requirement. This provision is revised to provide that the licensee need not establish the training program but may instead either use a third-party program or one developed and provided by the OPG. This provides the licensee with flexibility in providing training. Additional, non-substantive, editorial changes are made to the language, including the removal of the no longer relevant compliance date.

Current subsection (b) provides that new employee orientations and annual trainings must be documented and kept in the employee's personnel file for a minimum of five years. This subsection is repealed and its various provisions moved to a paragraph within either subsection (b) or subsection (c). The provision requiring that the training documentation be provided as part of the licensee's application for renewal is repealed. Section 12466 already allows the Bureau to request and review a gambling enterprise's program and an additional requirement for submittal is repetitive and unnecessary.

New paragraph (1) of subsection (b) provides that new employee orientations must be completed within 60 days of either the issuance of an employee's license or work permit or the date the employee begins work, whichever is later. This provision directs the gambling enterprise to provide a new employee orientation within the first 60 days of the employee's ability to participate in the conduct of the operation offering a controlled game. The timeframe provides that training be prompt to maximize the employee's effectiveness in assisting patrons, and provides the gambling enterprise with flexibility in offering the training so that the gambling enterprise can efficiently comply with this provision.

New paragraph (2) of subsection (b) provides that annual training must be provided to an employee during a calendar year where a new employee orientation was not provided. Additionally, the training can be completed in segments as long as the entire program is completed in the same year. This proposal provides the gambling enterprise with maximum flexibility, while ensuring that every employee continues to be provided with the information and training necessary to assist patrons who may have a gambling problem or who may wish to participate in an available program.

New paragraph (3) of subsection (b) maintains many of the provisions moved from current subsection (b), including that an employee must be designated as being responsible for maintaining, coordinating and documenting the required training. The provision requiring the maintenance of training records is revised from being required to be included in the employee's personnel file to only being required to be maintained on file by the gambling enterprise. This provides the gambling enterprise with maximum flexibility, while maintaining the documents for review by the Bureau or another entity. Additionally, a new provision is proposed that would require that the training program be reviewed at least once a

year to ensure that the information is correct. This ensures that employees are knowledgeable of information that will actually be of use to a patron needing assistance.

Subsection (c) requires that the training program include a minimum set of information. This subsection is rewritten, but the change is a non-substantive, editorial revision.

Paragraph (1) provides that employees, and the supervisors of those employees, whose duties include interacting with gambling patrons in gambling areas but who do not participate in the operation of a controlled game are required to be trained on the nature and symptoms on problem gambling behavior. While these employees do have contact with patrons, it is often brief and unrelated to actual participation in a controlled game. It is only necessary that these employees be able to recognize the signs of problem gambling so that they can contact another employee in a better position to provide assistance to the patron. Therefore, only the training concerning the nature and symptoms of problem gambling is necessary.

Paragraph (2) provides that employees, and the supervisors of those employees, whose duties include interacting with gambling patrons in gambling areas and whose duties do include participation in the operation of a controlled game must be trained in both the nature and symptoms on problem gambling behavior and in how to assist the patrons in obtaining information about problem gambling behavior. While these employees do have contact with patrons, they are generally not authorized to act as the point of contact for the submittal of forms related to the list of self-restricted persons nor the list of self-excluded persons. They should therefore only be required to identify when a patron may be exhibiting problem gambling behavior and to assist them in getting more information, if desired.

Paragraph (3) provides that key employees must be trained in the nature and symptoms on problem gambling behavior, how to assist the patrons in obtaining information about problem gambling behavior, available treatment options and prevention programs offered by OPG. Key employees can act as the signatory on problem gambling forms, and should therefore have an understanding not only of the symptoms but also on how the programs work. Finally, as the ultimate point of contact with a patron signing up for either the list of self-restricted persons or the list of self-excluded persons, the key employee should have knowledge of the services and programs that are available to the patron.

Current subsection (d) requires the gambling enterprise to designate an employee as being responsible for maintaining the program. This provision is now incorporated in paragraph (3) of subsection (b).

Current subsection (e) is renumbered to subsection (d). This is a non-substantive revision without regulatory effect.

Amend Section 12463. Self-Restriction Program.

This proposed action expands on the training requirements, providing additional specificity based upon the level of interaction with patrons. This action also includes non-substantive, editorial changes.

Subsection (a) provides that a licensee shall establish and implement a program that allows patrons to restrict their access to specific aspects of the gambling operation, or from the gambling establishment completely. As the program should have already been established, the subsection is revised to remove no longer relevant compliance date requirements. This is a non-substantive, editorial change.

Paragraph (2) of subsection (a) provides that the gambling enterprise must develop and provide a form for the patron to participate in the self-restriction program. Additionally, a form is provided that may be used, if the gambling enterprise does not wish to create its own. The name of the form is changed and the revision date of the form updated. This is a non-substantive, editorial change.

Additionally, the provided form is updated to be consistent with other changes in the regulations.

Paragraph (3) of subsection (a) provides that the list of self-restricted persons must be protected as confidential and may only be shared with Bureau or law enforcement personnel as part of an investigation. The provision allowing the list of self-restricted persons to be shared with a Commission-approved entity assisting in a problem gambling program is removed. This provision is not needed as the Commission does not approve or participate in any problem gambling programs. A non-substantive, editorial change is also made to clarify that law enforcement personnel would be conducting the investigation and could therefore require the restriction information.

Paragraph (4) of subsection (a) provides that a patron may exclude him or herself from certain controlled games or gaming activities. References to exclusion are changed to restriction. This change is necessary to make this provision consistent with other changes being made related to the Self-Restriction Program, and to provide clarity regarding the distinction between this program and the Self-Exclusion Program by using appropriate terminology.

- Subparagraph (A) is modified to change references to exclusion to restriction. This change is necessary to make this provision consistent with other changes being made related to the Self-Restriction Program, and to provide clarity regarding the distinction between this program and the Self-Exclusion Program by using appropriate terminology.
- Subparagraph (B) provides a requirement that a gambling enterprise must notify the Bureau of any incidents where a patron is removed and either security or the police were required to assist. This provision is modified to provide that a gambling enterprise need not contact the Bureau when a patron is removed, but must instead keep a record of the removal. The records of these removals would be accessible by the Bureau or another law enforcement agency pursuant to an investigation. The Self-Restriction Program is designed to be an internal program within the gambling enterprise. Unlike the Self-Exclusion Program, the Bureau is not involved in the maintenance of the program. Therefore, the Bureau's interest is limited to only its compliance and oversight responsibilities over the gambling enterprises. By

maintaining records, the gambling enterprise's compliance can be verified without the Bureau having unnecessary involvement in the internal program of the gambling enterprise.

- Subparagraph (C) provides that when discovered, a patron forfeits any money or prizes won or any losses recovered and that any such funds must be deposited into the Gambling Addiction Program Fund. This provision is modified to change the references to exclusion to restriction. This change is necessary to make this provision consistent with other changes being made related to the Self-Restriction Program, and to provide clarity regarding the distinction between this program and the Self-Exclusion Program by using appropriate terminology. Additionally, the provision is modified to replace the requirement that a patron who is found in violation must forfeit any money, including money related to losses recovered with the forfeiture of any unredeemed jackpots. Gambling enterprises have expressed a concern that determining the value of a patron's losses is cumbersome and impractical, if not impossible. In order to determine the value, someone would be required to review the surveillance recordings for the entire time the patron was playing, and factor in every use of their chips including tipping dealers and purchasing food items. The requirement is replaced with the forfeiture of any unredeemed jackpots or prizes won. This allows for a streamlined restriction that the gambling enterprise can practically enforce by simply verifying before issuing these awards without having to go back and verify the entire play of the patron.

Paragraphs (5) and (6) of subsection (a) provide that a patron may exclude themselves from check cashing, credit and marketing. References to exclusion are changed to restriction. These changes are necessary to make this provision consistent with other changes being made related to the Self-Restriction Program, and to provide clarity regarding the distinction between this program and the Self-Exclusion Program by using appropriate terminology. Additionally, the provisions are modified to incorporate paragraph (7) as that paragraph overlaps with these provisions and its removal eliminates the duplication.

Paragraph (7) of subsection (a) provides that a patron may be removed from access to check-cashing, credit or other marketing opportunities. This provision is repealed and incorporated in paragraphs (5) and (6).

Subsection (b) is revised to provide a non-substantive correction for consistency in the name of the Self-Restriction Request form.

#### Amend Section 12464. Self-Exclusion Program.

This proposed action provides revisions to the required policies and procedures each gambling enterprise must develop to implement the Self-Exclusion program. Additionally, non-substantive, editorial changes are made to the section.

Subsection (a) provides that a licensee shall establish and implement the State program that allows patrons to exclude themselves from all gambling establishments. As the program has

already been established the subsection is revised to remove the no longer relevant compliance date. This is a non-substantive, editorial change.

The name of the form is revised. This is a non-substantive, editorial change. The form is also updated to be consistent with other changes in the regulations.

Paragraph (1) of subsection (a) requires that the gambling enterprise establish policies for both providing forms to patrons and submitting the completed forms to the Bureau. This section is modified to revise the name of the form. This is a non-substantive, editorial change.

Paragraph (2) of subsection (a) requires that the gambling enterprise establish policies for protecting the confidentiality of the list of self-excluded persons. This provision explicitly allows the gambling enterprise to provide information to the Bureau, but as the Bureau not only maintains the list but provides it to the gambling enterprise, this is unnecessary. The removal of this unnecessary language is a non-substantive, editorial change without regulatory effect.

Additionally, the provision allowing the list of self-excluded persons to be shared with a Commission-approved entity assisting in a Problem Gambling program is removed. This provision is not needed as the Commission does not approve or participate in any Problem Gambling programs.

Paragraph (3) of subsection (a) requires that the gambling enterprise establish policies designed to thwart violations and notify the Bureau when the removal of a violator requires the use of security or police. Additionally, the provision is amended to provide that a gambling enterprise need not contact the Bureau when a patron is removed, but must instead keep a record of the removal. The records of these removals would be accessible by the Bureau or another law enforcement agency pursuant to an investigation. This makes the reporting requirements of the Self-Exclusion Program consistent with the Self-Restriction Program. By maintaining records, the gambling enterprise's compliance can be verified without the Bureau having unnecessary involvement in the internal program of the gambling enterprise.

New paragraph (4) is added to subsection (a). Under current practice, patrons in violation of their self-exclusion are most often caught at a later stage in their violation. This means that they have managed to penetrate the gambling enterprise, exchange money for chips and participate in a controlled game. The proposed amendment requires that when otherwise verifying a patron's identity due to cashing a check, awarding a jackpot or prize, extending credit, or when purchasing or redeeming chips, the patron's name must also be checked against the list of self-excluded persons. This is necessary to ensure that the policies and procedures of the gambling enterprise consider the verification of patron identifies and to establish minimum requirements for when the gambling enterprise must check the list of self-excluded persons.

Paragraph (5) provides that when discovered, a patron forfeits any money or prizes won or any losses recovered and that any such funds must be remitted to the OPG for deposit into the Gambling Addiction Program Fund. The provision is modified to replace the requirement that a patron who is found in violation forfeit any money, including any money related to losses recovered with the forfeiture of any unredeemed jackpots. Gambling enterprises have expressed a concern that determining the value of a patron's losses is cumbersome and impractical, if not impossible. In order to determine the value, someone would be required to review the surveillance recordings for the entire time the patron was playing, and factor in every use of their chips including tipping dealers and purchasing food items. The requirement is replaced with the forfeiture of any unredeemed jackpots or prizes won. This allows for a streamlined restriction that the gambling enterprise can enforce by verifying before issuing these awards without having to go back and verify the entire play of the patron.

Paragraphs (6) and (7) provide that the policies and procedures of the gambling enterprise must include provisions for the removal of the patron from every form of marketing, along with check-cashing and credit. The requirement to be excluded from marketing opportunities is moved from paragraph (7) to paragraph (6). This is a non-substantive, editorial change without regulatory effect but provides for better consistency as it places all marketing requirements in paragraph (6).

Paragraph (8) provides that a gambling enterprise must provide any submitted Self-Exclusion Request to the Bureau within 10 business days. The gambling enterprise acts as a primary contact point for enrolling into the Self-Exclusion program. However, the gambling enterprise is not able to directly add an individual to the list of self-excluded persons, an action that can only be conducted by the Bureau. Currently, there is no specific requirement that the gambling enterprise provide the submitted forms to the Bureau under any specific timeline. The effects of this are that once an individual has requested exclusion, that request may not actually be affected in a timely manner. This provision eliminates that lapse. The timeline of 10 business days allows the exclusion request to be timely instituted but also allows the gambling enterprise flexibility to group requests together to limit the mailing costs associated with the process.

Subsection (b) provides that the gambling enterprise is not required to provide the services of a notary public. This section is modified to correct the name of the form. This is a non-substantive, editorial change.

Adopt Section 12465. Removal from the List of Self-Excluded Persons.

This section specifies how the self-exclusion terms work, and how removal after the identified term is conducted. Currently, regulations do not explicitly specify any removal function, just that requests are irrevocable for the specific time period. As such, at the conclusion of the one or five-year periods, individuals are automatically removed. Patrons who requested lifetime cannot be removed.

The amendment maintains the current one-year exclusion period but repeals the five-year exclusion period. The lifetime exclusion period is modified from actually being the term of the patron's life to being a minimum of a one-year period but with no automatic end date. At any time after the year has elapsed, the patron is able to request removal from the list of self-excluded persons. Accompanying these changes are revisions to the Self-Exclusion Request form and the addition a new form: Self-Exclusion Removal Request, CGCC-038 (New 02/15).

Subsection (a) provides that for a lifetime self-exclusion term, a request for removal could be submitted after one year from the effective date of the exclusion. By removing the permanence of the lifetime request, individuals who make a decision at one point are not forced to live with it for their entire lives if circumstances change. This new time frame, and the removal of an irrevocable lifetime exclusion is necessary to correct for faults in the current program. There have been reports that individuals have been signed up for the lifetime self-exclusion program who may not be the intended participants. The opening up of the lifetime exclusion would allow individuals who are not, or are no longer, at risk gamblers to remove themselves while still allowing individuals to maintain a permanent self-exclusion. Additionally, the provision provides that after a removal request is provided to the Bureau, the Bureau shall make the request effective on the first business day of the second whole month following the postmark on the request. This provides the Bureau with time to process each request, but also provides the gambling enterprise with a single period each month that they will need to modify their exclusion lists for removals. This balances both the desired flexibility of the participants without putting a burden on the Bureau or gambling enterprises.

Subsection (b) provides clarification to the Bureau on how a patron is removed from the list of self-excluded persons for terms other than lifetime. As previously stated, the current practice is only implicit in the regulation. This provision is necessary to provide clarity.

Subsection (c) provides that that Bureau shall send a notice to the individual as confirmation of removal from the list of self-excluded persons. While not currently in regulation, the Bureau is already providing these notification letters so the effect of this provision is non-substantive.

#### Amend Section 12466. Responsible Gambling Program Review.

The proposed action moves the authority to issue notices of deficiency from the Executive Director to the Bureau. Additionally, the OPG is authorized to request and review a gambling enterprise's policies and procedures related to the list of self-restricted persons and the list of self-excluded persons. Finally, non-substantive, editorial changes are made to this section.

The existing subsection (a) authorizes both the Executive Director and the Bureau to request and review the elements of a gambling enterprise's policies and procedures related to the list of self-restricted persons and the list of self-excluded persons. The Executive Director could then issue a notice identifying deficiencies and specifying a term within which they must be corrected. Judicial review of the notice would be subject to the limitations of Business and

Professions Code section 19804. This subsection would become paragraph (1) of subsection (a) and is modified to authorize the Bureau to issue the notice detailing deficiencies.

Following implementation of the Governor's Reorganization Plan No. 2 of 2012 (GRP No. 2) the Bureau has been given the exclusive responsibility of investigating issues and reporting to the Commission. Therefore, it is not necessary or appropriate for the Executive Director to issue the notice of deficiency. Additionally, since the Executive Director no longer issues a notice, and the Commission is available to review the Bureau's notice, the provision identifying judicial review is no longer necessary and is proposed to be removed.

A new paragraph (2) is added to subsection (a). This provision maintains the Commission's access to review the elements of a gambling enterprise's policies and procedures related to the list of self-restricted persons and the list of self-excluded persons. Additionally, the OPG is authorized to request and review the policies and procedures. This is necessary as the OPG is the agency with the expertise to best review a program for effectiveness. Additionally, this enhances the required coordination between agencies.

Subsection (b) provides that failing to establish the required programs, or to correct an identified deficiency is an unsuitable method of operation. This provision has been amended to specify that failure to resolve failings related to the program shall be constitute a ground for disciplinary action. This provides specificity and clarity to the provision, by providing a direct reference to the Commission's disciplinary regulations within Chapter 10.

**UNDERLYING DATA:**

In addition to the information discussed in the Initial Statement of Reasons, the Commission also considered the following information: None.

**REQUIRED DETERMINATIONS:**

**LOCAL MANDATE:**

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

**BUSINESS IMPACT:**

The Commission has made a determination that the adoption of these regulations would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

For the most part, this proposed action only modifies requirements already in place. These regulations increase in the number of employees requiring problem gambling training and so some additional cost would be associated with paying those employees to attend instruction; however, that instruction is already being provided under current regulations and any additional cost would be insignificant.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS:**

### **IMPACT ON JOBS/NEW BUSINESSES:**

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California.

These regulations are designed to provide guidance to the gambling enterprise, patrons who wish to be either excluded or restricted, and to the Bureau as the entity that maintains the list of self-excluded persons and the entity with the responsibility of gambling enterprise compliance review. These regulations modify and clarify existing requirements, and should not alter current practices significantly enough to affect the gambling enterprise's decision to employ individuals. Therefore, it has been determined that the proposed action will not have an impact on the creation or elimination of jobs.

### **BENEFITS OF PROPOSED REGULATION:**

This proposed action will have the benefit of providing the gambling patron with a broader level of flexibility in their personal decision to participate, exclude, or restrict their participation in controlled gambling and related gambling activities. Additionally, the proposed action provides clarification and additional specificity to inform the gambling enterprise on what minimum level it must participate and provide policies and procedures to assist the patron in their decisions related to the Self-Exclusion and Self-Restriction Programs. The proposed action also expands the requirement that a gambling message be included in advertising by or on behalf of gambling enterprises, providers of third-party proposition player services and gambling businesses. Finally, the proposed action expands which gambling enterprise employees are required to participate in problem gambling training to include food service employees. All of these changes provide greater transparency and openness in business and government and protect the health, safety and welfare of the public, particularly those individuals affected by problem gambling.

## **CONSIDERATION OF ALTERNATIVES:**

No reasonable alternative to the regulations that was considered by, or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed, is as effective and less burdensome to affected private persons than the proposed action, or is more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

- (1) Limited Term Exclusions Require Withdrawal Request: This option would maximize flexibility to the program by allowing individuals who have requested a one-year or five-year term to remain on the list of self-excluded persons after the term has ended instead of requiring them to submit an additional request to remain on the list. Concern was expressed that the requirement to request removal places a burden on the individuals and

could cause confusion should they attempt to enter an establishment believing that their term has elapsed without further action.

- (2) First Self-Exclusion Request Cannot be Lifetime: This option would prevent an individual from requesting a lifetime self-exclusion the first time. This option would allow a permanent lifetime term to be maintained and would still allow flexibility to the individual considering restriction. Concern was expressed by problem gambling experts that maintaining the ability for an individual to make a lifetime declaration was more important than having an actual irrevocable lifetime option. The proposed options maintain a lifetime option, but just remove the irrevocability of it and replace it with a “cool down” period.
- (3) Medical Verification Requested with Withdrawal Request: This option would require that in addition to a withdrawal request, an individual must have information from a licensed, certified gambling addiction counselor recommending their release and showing that they had participated in problem gambling therapy sessions. This provision would place the Commission potentially in the position of determining a therapist’s credibility, and that is not something the Commission is qualified to do. Additionally, there is no requirement that an individual have any medical condition when adding themselves to the list of self-excluded persons, so it is inappropriate to assume such when allowing removal.
- (4) Provide Advertising Design Guidelines: This option would have specific design provisions related to font size, location and readability applied to the inclusion of the problem gambling message in advertising materials. This was not considered as part of this proposed action but was rejected as there is a need for a more expansive advertising regulation that would be outside the scope of this regulation. Therefore, this option may be considered in a future regulatory package related to the content of advertising.
- (5) Require Bureau Notification for Any Violation: This option would have required gambling enterprises to track and report any violation of an exclusion or restriction. Current regulation only requires that incidents of removal when security or police are required to assist be reported to the Bureau. This alternative was rejected because requiring paperwork every time an individual unsuccessfully attempts to enter a facility would impose a burdensome reporting requirement on the gambling enterprise and impose a burdensome monitoring requirement on the Bureau.
- (6) Require More Stringent Identification Verification: This option would have required the gambling enterprise to verify the identity of a patron and check the list of self-excluded persons at an increased frequency. This could have included verification upon entry to the gambling floor, any time identification was verified and not just when related to a gambling activity (such as verification for alcohol purchase or age verification), or anytime chips or other items of monetary value are exchanged. These options would have had the benefit of further limiting a participant’s ability to violate their exclusion, as their excluded status would be discovered at an earlier point in their violation. Concern was expressed by gambling enterprise representatives that this would place an excessive

burden on the employees of the gambling enterprise; including, directing staff away from monitoring the game play of the controlled games. In addition, excluded individuals are not highly represented in the gaming population and these requirements would have the broad effect of forcing extraneous identification policies mostly on individuals who are not on the list of self-excluded persons.

- (7) Replace Current Exclusion Periods with a Single List: This option would repeal the current program of one-year, five-year and lifetime term and replace it with a single self-exclusion list where every request is for an indeterminate amount of time. A patron could sign up for the program, and could then request to be removed at any point. There would then be a one-year waiting or “cool down” before removal. Concern was expressed by problem gambling experts that this restructure would reduce some of the therapeutic value of the program. Part of the value in a Lifetime exclusion term is the declaration that gambling should not be part of the individual’s life. Additionally, to require every individual to request removal creates an additional burden on both the participant and the Bureau.
- (8) Repeal the Self-Exclusion Program: This option would repeal the Self-Exclusion Program leaving the Self-Restriction Program. This allows gambling enterprises the ability to clearly focus on those individuals most likely to attempt to patronage their establishment and not have to worry about the 2,000 individuals currently on the list. Concern was expressed that this would drastically reduce the effectiveness of the program, while placing an additional burden on the individual who would then be required to submit requests for multiple, different Self-Restriction Programs.

## **COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:**

### **I. 45-DAY WRITTEN COMMENT PERIOD<sup>1</sup>**

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.

**Response:** This comment was rejected. 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

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<sup>1</sup> All page and line numbers in this section refer to the Proposed Text dated 1/16/2015.

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.

**Response:** This comment was rejected. 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.

**Response:** This comment was rejected. 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 by the Tribal Gaming Agency pursuant to Tribal-State Gaming Compacts (Compacts) between the State and each specific Tribe. Many of the Compacts include requirements to address problem gambling. 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).

**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.

**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 also 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 was 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 included 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.

**Response:** This comment was rejected. 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 exists 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.

**Response:** This comment was rejected. 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 Gambling (OPG) 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.

**Response:** This comment was rejected. 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.

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 OPG 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.

**Response:** Mr. Titus’ support for Option 3 was accepted and 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.

**Response:** This comment was rejected. 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-assessment<sup>2</sup> 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 OPG. ~~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 with 60 days of

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<sup>2</sup> <http://problemgambling.securespsites.com/ccpgwebsite/for-gamblers/gambler-self-assessment.aspx>

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 Hhow 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, OPG; 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.

**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 OPG. ~~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, 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, OPG; 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 (e).~~

~~(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 (e).~~

~~(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 (e).~~

~~(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 OPG. 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.

**Response:** This comment was rejected. 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.

**Response:** This comment was 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.

**Response:** This comment was rejected. 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 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.

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.

**Response:** This comment was accepted, in part. Mr. Titus' support for Option 5 was accepted and considered by the Commission. The remainder of the comment was considered but was not incorporated. This requirement is included under the Self-Restriction Program; therefore, the requested changes are already inherently incorporated.

- 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)].

**Response:** This comment was rejected. 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.

**Response:** This comment was rejected. 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 Eighth Amendment protection from excessive fines.

**Response:** This comment was rejected. When an individual places himself 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.

**Response:** This comment was rejected. The reference to “money won” versus “prizes won,” is designed to cover situations where an individual has winnings that are easily identifiable, such as through a jackpot or special offering. The usage of “money won” provides for a broader understanding than a limited term such as “jackpot.” Additionally, the reference back to the “agreement of restriction” is redundant to paragraph (2) of subsection (a) of Section 12463 that requires the development of a written form.

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

**Response:** Mr. DaValle’s support for Option 7 was accepted and 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).

**Response:** This comment was rejected. 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.

**Response:** The response to this comment was 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.

**Response:** This comment was rejected. 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].

**Response:** This comment was rejected. 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.

**Response:** This comment was rejected. 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.

**Response:** This comment was rejected. 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.

**Response:** The following responses are provided:

Option 8. This comment was rejected. 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 Compacts, are required to establish comprehensive problem gambling programs that include, but are not limited to, programs for self-exclusion. In addition, any programs are limited to the casino's location.

Option 9. Mr. Titus's support for Option 9 was accepted and considered by the Commission.

Option 10. This comment was rejected. 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 rejected. 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.

**Response:** Mr. DaValle’s support for Option 10 was accepted and 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).

**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).

**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).

**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.

**Response:** This comment was rejected. 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 OPG and members of the OPG 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.

**Response:** Mr. Bates' support for Option 12 was accepted and 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.

**Response:** This comment was rejected. 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.

The Self-Exclusion Removal Request form was not adopted by the Commission; therefore, no associated costs were considered.

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.

**Response:** Mr. Titus's support for Option 14 was accepted and 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.

**Response:** Mr. Bates' support for Option 14 was accepted and 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.

**Response:** Mr. DaValle's comment was accepted and 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.

**Response:** This comment was 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 OPG 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 OPG 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 OPG 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.

**Response:** This comment was rejected. The OPG has a different interest in reviewing problem gambling programs than the Bureau. While the Bureau is interested in verifying regulatory compliance, the OPG has an interest in specific aspects of how problem gambling programs are being implemented in California. By authorizing the OPG to directly work with the gambling enterprises, the process is free of the additional step of OPG 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 OPG. 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.

**Response:** This comment was rejected. 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.

## **II. WRITTEN AND ORAL COMMENTS PROVIDED AT JULY 29 REGULATION HEARING<sup>3</sup>**

The following written and oral comments/objections/recommendations were received regarding the text of the proposed action during the July 29, 2015 regulation hearing:

### **A. COMMENTS MADE IN GENERAL TO THE PROPOSAL.**

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

- a. **Terri Sue Canale-Dalman, Chief of the Office of Problem Gambling (OPG):** Ms. Canale-Dalman commented that as of July 1, 2015 the Office of Problem and Pathological Gambling has been renamed the Office of Problem Gambling.

**Response:** This comment was accepted and corresponding non-substantive changes to the proposed regulations have been included.

- b. **Sherry Treppa, Chairperson of the Habematolel Pomo of Upper Lake:** Ms. Treppa commented that many tribes are interested in possibly participating in the Self-Exclusion Program. Ms. Treppa also expressed a concern that should these regulations require Tribal participation then this regulation process may not be appropriate.

**Response:** This comment was accepted. The proposed regulations place no requirement on any Tribe or Tribal casino.

### **B. AMEND SECTION 12460. ARTICLE DEFINITIONS.**

This proposed action provides non-substantive, editorial, revisions to the definitions in Section 12460.

1. Paragraph (4) of subsection (b) [pg. 1, line 27] provides that part of “self-restriction” is a restriction from all marketing or promotional activities conducted by or on the behalf of the gambling establishment.
- a. **David Fried, California Grand Casino and the Oaks Card Club:** Mr. Fried expressed a concern that requirement was too broad, noting that a gambling enterprise is unable to exclude specific individuals from general marketing. Additionally, Mr. Fried commented that a gambling enterprise’s ability to exclude an individual is dependent on the receipt of complete and accurate information and that incomplete information will impact a gambling enterprise’s ability to fully effectuate the restriction. Mr. Fried proposed the following revision:

(4) Be restricted from all direct marketing or promotional activities conducted by or on behalf of the particular gambling establishment where the patron name for direct marketing matches the name of the exclusion.

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<sup>3</sup> All page and line numbers in this section refer to the Proposed Text dated 1/16/2015.

**Response:** This comment was accepted in part. The following revision is proposed:

(4) Be restricted from all direct marketing or promotional activities conducted by or on behalf of the particular gambling ~~enterprise~~establishment where any of the patron information for direct marketing matches the information of the exclusion.

**C. 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 included with any advertising material. The section is revised to include requirements for TPPPS and gambling businesses when advertising or on any websites.

1. 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 OPG 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. **David Fried, California Grand Casino and the Oaks Card Club:** Mr. Fried expressed his support for this option, but suggested that the space limitation must consider both digital and radio. Mr. Fried proposed the following revision:

(c) 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 provision applies to any advertisement that will be distributed by television, radio, outdoor display, flyer, mail or digitally. This provision does not apply to:

(1) Any digital ~~marketing material~~ with limited characters or space that ~~is intended to only~~ provides a “pass through” link to a website that complies with subsection (b).

(2) Any promotional item in which size or space limitations do not allow the responsible gambling message to be reasonably and legibly displayed or promotional apparel, such as; pens, key chains, hats, t-shirts,

[jackets](#), drinking glasses, coffee mugs, etc.

**Response:** This comment was accepted, in part. The Commissioners considered this comment and accepted changes in (c)(1) but did not accepted changes to (c)(2). The intent of these regulations is to provide concession to limited space in order to not exclude a business from participating in specific marketing opportunities.

(c) 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 provision applies to any advertisement that will be distributed by television, radio, outdoor display, flyer, mail or digitally. This provision does not apply to:

(1) Any digital material [with limited characters or space](#) that ~~is intended to only~~ provides a “pass through” link to a website that complies with subsection (b).

(2) Any promotional item in which size or space limitations do not allow the responsible gambling message to be legibly displayed, such as; pens, key chains, hats, drinking glasses, coffee mugs, etc.

- b. **Terri Sue Canale-Dalman, Chief of the OPG:** Ms. Canale-Dalman commented OPG would prefer this option.

**Response:** Ms. Canale-Dalman’s support for Option 3 was accepted and considered by the Commission.

- c. **Joy Harn, Bicycle Casino:** Ms. Harn commented the Bicycle Casino would prefer this option.

**Response:** Ms. Harn support for Option 3 was accepted and considered by the Commission.

**D. 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. 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 OPG. 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. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried expressed a concern that any employee may interact with a patron while crossing the floor or off duty and suggested the following clarification:

(a) Each licensee shall have procedures for providing new employee orientations and annual training concerning problem gambling for all employees whose duties include interacting 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 Office of Problem and Pathological Gambling. 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).

**Response:** This comment was accepted in conjunction with the acceptance of another comment. The specific revision is incorporated in a revised subsection (c) to this section, see response to comment II.D.1.b

- b. **Robert Jacobson, California Council on Problem Gambling**: Mr. Jacobson suggested that Mr. Fried's suggestion should be accompanied by a requirement that individuals who supervise employees with the prerequisite duties also be required to receive training.

**Response:** This comment was accepted and incorporated in conjunction with other proposed changes into a revised subsection (c) to this section:

- (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, and supervisors of employees, whose duties include interacting 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, and supervisors of employees, whose duties include interacting with gambling patrons in gambling areas and who have duties related to the operation of a controlled game shall receive the training specified in paragraph (1) and training on how to assist patrons in obtaining information about problem gambling programs.;

2. Paragraph (4) of subsection (c) [pg 4, line 16] requires that information related to the help and prevention services of the OPG be included in training.

a. **Terri Sue Canale-Dalman, Chief of the OPG:** Ms. Canale-Dalman recommended the following revision:

(4) Information about any treatment options~~help~~ and prevention program~~services~~ offered by the State Department of Public Health, Office of Problem and Pathological Gambling; and,

**Response:** This comment was accepted and incorporated into the proposed text.

3. Paragraph (5) of subsection (c) [pg. 4, line 16] requires that the gambling enterprise include in its training information related to other problem gambling services available in the area around the gambling establishment.

a. **David Fried, California Grand Casino and the Oaks Card Club:** Mr. Fried expressed a concern that requiring a gambling enterprise to be responsible for investigating or knowing about local problem gambling services and then providing training on those services is unreasonable due to the scope of the availability of services. Mr. Fried suggested that it was better to simply limit a gambling enterprise's requirements to notification of OPG which already is available to provide this information.

**Response:** This comment was accepted, in part. While the requirement that a gambling enterprise provide this information is removed, a suggestion that a

gambling enterprise may provide this information is maintained. While not a requirement, it is important that when designing their policies, gambling enterprises consider including local information as this will increase an individual with an issue choosing to seek assistance.

**E. 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. 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. **David Fried, California Grand Casino and the Oaks Card Club:** Mr. Fried expressed a concern that requiring reports when law enforcement was not required does not provide for clarity on what situations require reporting. Mr. Fried also expressed concern that having a broader definition requires an employee to be pulled off other duties to write the report more frequently. Mr. Fried further expressed a concern that with the Bureau's staffing issues that the reports may not actually be reviewed; therefore, questioned their value. Additionally, Mr. Fried questioned the value of the reports as a self-excluded individual is not prohibited from participating in activities at a Tribal casino.

**Response:** This comment was accepted, in part and the following revision proposed:

(B) Maintenance of records of any incidents of removal [where law enforcement is called to remove a person from the premises. The records shall be](#) accessible by Bureau staff or law enforcement personnel pursuant to an investigation; and,

The balance of Mr. Fried's comment was rejected. It is critical that the gambling enterprise maintain records of compliance so that upon its initiative the Bureau is able to conduct an audit. Finally, Mr. Fried's comment about a self-excluded individual does not prohibit them from participating at a Tribal casino is addressed in response to comment I.A.1.c.

- b. **Joy Harn, Bicycle Casino:** Ms. Harn commented the Bicycle Casino would prefer Option 5.

**Response:** Ms. Harn support for Option 5 was accepted and considered by the Commission.

2. 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. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried commented that the regulation must provide a due process administrative remedy to any person that alleges an error or violation of a legal right.

**Response:** This comment is similar to comment I.D.3.a, please see that comment for the response.

- b. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried expressed a concern that this requirement may escalate a situation. Mr. Fried suggested that the language be changed to requiring the gambling enterprise to remind an individual they are on the list of self-excluded persons and request that they turn over their chips. Mr. Fried also noted that prizes and jackpots are easy as they just need not be provided.

**Response:** This comment was rejected. The provision requires the gambling enterprise to develop policies and procedures for the forfeiture of any money or prizes won. This does not require the gambling enterprise to physically confront or in any way conduct any inappropriate activity towards the patron. In developing the policies and procedures, the determination that forfeiture is requested could be considered an implementation of the requirement.

- c. **Alan Titus and Mike Robson, Artichoke Joe's**: Mr. Titus expressed a concern that his objections were not adequately addressed in the proposed responses to 15-day written comments. Mr. Titus clarified that he was raising a policy objection; specifically, that individuals with gambling addiction have a disease and the regulations should treat them that way and not like they have committed a crime.

Secondly, Mr. Titus said he raised a legal objection, arguing that civil law disfavors penalties and limits liquid damages and that the Fifth and Eighth Amendments to the U.S. Constitution limit the state's authority to impose forfeitures. Mr. Titus notes the following issues:

1. A Self-Restriction Request form used by a gambling enterprise may not contain consent for the required forfeiture.
2. The State has no authority to mandate that self-excluded players forfeit monies to the State.
3. A State's authority to impose forfeiture is limited by the Constitution which requires due process and prohibits excessive fines.

4. The form is not a legal agreement, and even if it was the law disfavors contractual forfeitures and limits liquidated damages.
5. A party subject to forfeiture will be relieved from such forfeiture by making full compensation to the other party. As neither the cardroom nor the State has suffered a loss there is no basis for the forfeiture.
6. Employees of a gambling enterprise are not police and have no business physically seizing property of a player.

**Response:** This comment was considered but not incorporated. Mr. Titus' concern related to individuals having a disease was previously addressed in response to comment I.A.1.d. Additionally, there has been no finding that the forfeiture provision, which currently exists without legal challenge, is illegal. Forfeiture provisions exist in other contexts (e.g. a person under the age of 21 gambling and winning) without enforceability issues. The forfeiture provision was promulgated by the Commission and approved by the Office of Administrative Law. The fact that the law generally disfavors forfeitures is not persuasive that a forfeiture provision in the self-restriction program is improper. This program is voluntary and the forfeiture of money or prizes won acts as a deterrent and penalty to the person who is gambling in violation of his or her self-restriction. The ability to keep all money or prizes won would reduce the efficacy of the program. The Commission is not required to offer recourse to the player who disagrees with this provision after signing up for the program.

Neither the Fifth nor Eighth Amendment prohibitions of “deprivation of property without due process of law” or “excessive fines” is applicable to the forfeiture provision. By voluntarily signing up for the self-restriction program, the individual is subject to all of the provisions included therein, including the forfeiture provision. There is no deprivation of property without due process of law—the forfeiture provision exists in law. Forfeiture of money or prizes won is not considered a “fine.”

The proposed regulation requires that licensees implement a self-restriction program that contains a forfeiture provision. There is nothing requiring the licensee to provoke an incident and physically remove money or chips from the player. The remote possibility of a confrontation is not a sufficient reason to remove the forfeiture provision.

- d. **Alan Titus, Artichoke Joe's**: Mr. Titus commented on comment and response of I.D.3.b. Mr. Titus expressed a concern that the proposed language is unclear.

**Response:** This comment was accepted. At the time Mr. Titus made this comment there was a proposal that included a revision to the text. This revision was not selected by the Commission and therefore in later versions the proposed revision was removed.

- e. **Terri Sue Canale-Dalman, Chief of the OPG**: Ms. Canale-Dalman commented OPG would prefer Option 7.

**Response:** Ms. Canale-Dalman's support for Option 7 was accepted and considered by the Commission.

- f. **Charles Bates, Bay 101 and Joe Willson, Artichoke Joe's:** Mr. Bates commented that requiring the forfeiture of money raises the opportunity for a confrontation at the club and embarrasses everyone.

**Response:** This comment was accepted and was considered when selecting an option.

- g. **Joy Harn, Bicycle Casino:** Ms. Harn commented that confiscating chips provides nothing positive and likely will not provide any help to a recovering individual. Limiting the policy to just making an excluded person ineligible to receive prizes and jackpots makes sense, but requiring the forfeiture of other chips is embarrassing and wrong.

**Response:** This comment was accepted and was considered when selecting an option.

3. Paragraphs (5) and (6) 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, the issuing of credit and direct marketing.

- a. **David Fried, California Grand Casino and the Oaks Card Club:** Mr. Fried commented that the ability for the patron to elect complete or partial restriction should be up to the gambling enterprise. Mr. Fried noted that depending on the gambling enterprise's capabilities they may not be able to partially restrict a patron's participation and that therefore the regulation should provide the gambling enterprise the option to offer partial restriction.

**Response:** This comment was accepted and the following revision proposed:

(5) Policies and procedures that allow a patron to ~~limit or completely~~ restrict their access to check cashing or the issuance of credit during the term of restriction; and,

(6) Policies and procedures that allow a patron to ~~limit or completely~~ restrict themselves from customer lists maintained by the licensee for direct mail marketing, telephone marketing, and other direct marketing regarding gaming opportunities or promotions at the gambling establishment during the term of restriction.

**F. 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. Self-Exclusion Request form, CGCC-037 (Rev. 02/15) in subsection (a) [pg. 7, line 2] provides an optional form for a gambling enterprise to utilize as part of their Self-Restriction Program.

- a. **Alan Titus, Artichoke Joe's**: Mr. Titus repeats his comments summarized in II.E.2.c.

**Response:** This comment is similar to comment II.E.2.c, please see that comment for the response.

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. **Joy Harn, Bicycle Casino**: Ms. Harn commented that a gambling enterprise may request security assistance for removal even when there is not practical reason security would be required and therefore requiring notification to the Bureau does not serve any purpose. Notification should be limited to just when law enforcement is requested.

**Response:** This comment was accepted and the following revision adopted:

(3) Policies and procedures designed to thwart self-excluded patrons, as noticed by the Bureau, from entering the gambling area during the term of exclusion, with the exception of access for the sole purpose of carrying out the duties of employment, including removal procedures for patrons who attempt entry after requesting to be excluded and notification to the Bureau of any incidents of removal; where law enforcement is~~the police or security are~~ called to remove a person from the premises;

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. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried provided comments related to each of the four options.

- Option 8. Mr. Fried expressed a concern that this option was impractical as chips were sold at the table and identification could not be practically checked at the table.
- Option 9. Mr. Fried commented that this option was acceptable.
- Option 10. Mr. Fried expressed a concern that this option was impractical as identification could be checked by anyone on the floor or serving beverages just because someone appeared underage. Those individuals do not have instant access to the database and it takes significant time to check the binders every time there is a floor interaction. The risk of this option is that it may discourage the checking identification to make sure an individual isn't underage.
- Option 11. Mr. Fried expressed a concern that this option was impractical as identification could be checked by anyone on the floor or serving beverages just because someone appeared underage. Those individuals do not have instant access to the database and it takes significant time to check the binders every time there is a floor interaction. The risk of this option is that it may discourage the checking identification to make sure an individual isn't underage.

**Response:** The following responses are provided:

- Option 8. This comment was accepted and this option was not selected.
- Option 9. This comment was accepted and the following revision adopted:

(4) Policies and procedures for verifying~~the verification of~~ a patron's identity and checking the list of self-excluded persons before cashing a check, awarding a jackpot or prize, extending credit and selling or redeeming chips, tokens or any other item of a monetary value if the patron's identity would otherwise be verified;

Option 10. This comment was accepted and this option was not selected.

Option 11. This comment was accepted and this option was not selected.

- b. **Alan Titus and Mike Robson, Artichoke Joe's:** Mr. Titus and Mr. Robson repeat the comment and expressed concern that in summarizing and responding to comment of I.E.3.d, the response focused only on the privacy of the individuals on the list of self-excluded persons and not on other patrons.

**Response:** This comment was accepted, in part. When considering this and other comments, the Commission selected Option 9 which requires the verification of a

patron's identity for the purposes of the list of self-excluded persons only under specific conditions and only when the gambling enterprise would otherwise be verifying identify.

- c. **Terri Sue Canale-Dalman, Chief of the OPG:** Ms. Canale-Dalman commented OPG would prefer Option 9.

**Response:** Ms. Canale-Dalman's support for Option 9 was accepted and considered by the Commission.

- d. **Charles Bates, Bay 101:** Mr. Bates commented that for whatever timeframe provided automatic removals shall be included. The patron has indicated the set period they wish to be excluded for and after that it should be concluded without requiring another form.

**Response:** This comment was accepted.

- e. **Joe Willson, Artichoke Joe's:** Mr. Willson expressed a concern that a lot of people don't want their identification cards out. Patrons don't like having their identification checked.

**Response:** This comment was accepted and considered when selecting the option.

- f. **Joy Harn, Bicycle Casino:** Ms. Harn commented the Bicycle Casino would prefer Option 9.

**Response:** Ms. Harn support for Option 9 was accepted and 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 repeats his comments summarized in II.E.2.c.

**Response:** This comment is similar to comment II.E.2.c, please see that comment for the response.

- b. **Terri Sue Canale-Dalman, Chief of the OPG:** Ms. Canale-Dalman commented OPG would prefer Option 7.

**Response:** Ms. Canale-Dalman's support for Option 7 was accepted and considered by the Commission.

**G. 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. **David Fried, California Grand Casino and the Oaks Card Club:** Mr. Fried notes that should someone want one-year exclusion this would require an individual to submit both their request for exclusion and their request for removal on the same day. Mr. Fried also notes his support of the suggested alternative proposed by Ms. Canale-Dalman, summarized as comment II.G.1.b.

**Response:** This comment requires no response as it is a factual description of the option.

b. **Terri Sue Canale-Dalman, Chief of the OPG:** Ms. Canale-Dalman commented that Option 12 would involve a lot of tracking for the Bureau and still continues to allow automatic removal from the list. Ms. Canale-Dalman commented that she believes individuals should be kept on the list until they request off, even after their requested term ends.

Ms. Canale-Dalman commented that the reasons for Option 13 seem incorrect as only a small fraction of individuals on the exclusion list are saying that it isn’t working for them. Ms. Canale-Dalman noted that based on conversations with providers, self-exclusion is a tool that works. Ms. Canale-Dalman noted that the OPG and Bureau are currently working with some Tribes to include their facilities in the Self-Exclusion Program and that failing to offer a lifetime exclusion period may mean that some Tribes are unwilling to participate.

Ms. Canale-Dalman proposes an alternative option:

- Eliminate the five-year term.
- Patrons would have an initial one-year of lifetime option.
- The one-year term would require a request for removal after one year with no cooldown period.
- The lifetime request would be revocable after one year with no cooldown period.

**Response:** This comment was accepted, in part. Ms. Canale-Dalman has suggested what amounts to a single self-exclusion list of one-year with a required request for removal. The program benefits from providing real options to applicants. Therefore, the proposed process includes the removal of the five-year term and a dual one-year scheme for both the one-year term and the lifetime term; however, it maintains the automatic removal for those who have requested one-year exclusion. Additionally, while not intended as a cooldown period, a delay in removal from the lifetime exclusion list is incorporated in the revised text, but this is intended to reflect the needs of the Bureau by providing time for them to process requests.

- c. **Jarhett Blonien:** Mr. Blonien commented that he has frequently received comments related to individuals desiring removal from the list of self-excluded persons. Mr. Blonien notes that the agreement is similar to a contract and how does the State continue to enforce the contract when the other party does not want to continue? Mr. Blonien suggests that someone on the list of self-excluded persons should be able to remove themselves at any point.

**Response:** This comment was rejected. Mr. Blonien's suggestions would effectively void the program and in the process would cause the regulations to fail to meet their necessity of providing a path through which an individual can choose to exclude themselves. Additionally, Mr. Blonien's comparison of the program to that of a contract with the State is incorrect. The State is not a party to any agreement but provides a program that facilitates an individual's request to be excluded from a gambling establishment. Part of the purpose of the proposed changes is to allow for the removal of individuals from the program, if they so desire, but to do so in a way that keeps the program valid and effective.

- d. **Robert Jacobson, California Council on Problem Gambling:** Mr. Jacobson proposed an alternative option:

- The lifetime request would be considered "up to lifetime and referred to as lifetime."
- For removal from the lifetime list there would be a minimum of 31 up to 60 days before removal is effected by having the removal effective on the first day of the month of the second complete month following the request for removal.
- Require anyone on the list to be required to participate in at least one free intake session through California Gambling Education and Treatment Services (CalGETS).

**Response:** This comment was accepted, in part. The proposed removal period of the first of the month of the second full month following the request for removal coincided well with the Bureau's expected processing timelines and was included in the proposed revisions. The usage of the "up to lifetime and referred to as lifetime" was not included as it could be confusing. The proposed lifetime request is a lifetime request unless acted upon by the participant and lifetime is an appropriate title. The

proposed requiring of participation in a CalGETS session was not included. The response to comment I.A.1.d describes how and why the Program for Responsible Gambling is not a problem gambling program and as it is not, the requirement to participate in a medical diagnostic meeting is inappropriate.

- e. **Nathan DaValle, Bureau**: Mr. DaValle commented that automatic removal makes it more simplistic for the Bureau to process and that a submitted request does require more tracking even if it's not a large burden. Mr. DaValle requested that a gambling enterprise be required to submit any Self-Exclusion Request forms to the Bureau within a specific timeframe.

**Response:** This comment was accepted and the following revision adopted:

(a)...

[\(8\) Policies and procedures for mailing any patron-submitted Self-Exclusion Request form to the Bureau within 10 business days.](#)

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. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried expressed concern that this option only shifts where an individual will play.

**Response:** This comment is similar to comment I.A.1.c, please see that comment for the response.

- b. **Charles Bates, Bay 101**: Mr. Bates expressed support for this option. Mr. Bates commented that the program is too large to manage.

**Response:** Mr. Bates' support for the option was accepted and considered when the option was considered.

#### **H. 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. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried suggests that rather than using the disciplinary process should the Bureau find an error in a gambling establishment's program, that instead it should be resolved at a non-disciplinary hearing before the Commission. This allows the Commission to guide the parties on the Commission's interpretation of the regulation and possibly avoid a disciplinary process that may be unsuited to solving this situation.

**Response:** This comment was rejected. The proposed procedure of the Bureau providing a notice to the gambling enterprise is consistent with other provisions related to non-compliance by the gambling enterprise. This process does not necessitate a disciplinary hearing as the gambling enterprise will be provided with sufficient time to cure the noted deficiencies. If the gambling enterprise disagrees that a deficiency exists, the Commission is already available to hear a gambling enterprise's comments.

### **III. 15-DAY WRITTEN COMMENT PERIOD<sup>4</sup>**

The following written comments/objections/recommendations were received regarding the text of the proposed action during the 15-day written comment period that commenced August 14, 2015 and ended August 28, 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 commented that the only thing the self-exclusion list did was to shift the responsibility for selling a dangerous product from the gambling enterprise to the patron. Mr. Hoog repeats his comments of I.A.1.a, I.B.2.a, I.C.1.a and I.D.4.a.

Additionally Mr. Hoog responded to a comment summarized as II.A.1.b. by stating that a casino couldn't operate without problem gamblers as they make up 70% of a casino's patrons.

**Response:** These comments are not germane to the modification of the language of the proposed action and no response is required; however, those comments that have been previously made were responded to in the appropriate section.

#### **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 included with any advertising material. The section is revised to include requirements for TPPPS and gambling businesses when advertising or on any websites.

1. The following comments were received about the section, in general [pg. 2, line 4]:

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<sup>4</sup> All page and line numbers in this section refer to the Modified Text dated 8/14/2015.

- a. **Nathan DaValle, Bureau**: Mr. DaValle repeats his comments provided in I.B.1.a.

**Response:** While these comments are not germane to the modification of the language of the proposed action and no response is required, it was responded to in the response for I.B.1.a.

2. Subsection (c) [pg. 2, line 16] specifies that a gambling establishment, TPPPS, or gambling business must include a responsible gambling message and telephone number or link to the OPG website on any advertising material. The regulation exempts “pass through” digital material with limited characters or space, if the destination website includes the appropriate message, and promotional items with limited space such as key chains, hats or drinking glasses.

- a. **Nathan DaValle, Bureau**: Mr. DaValle expresses a concern that the proposed amended text broadens the types of digital material which would not be subject to the requirement to include a responsible gambling message. Mr. DaValle suggests that if the intent is to exempt webpage banner ads, more specific minimum and maximum dimensions should be provided, otherwise a broader social media selection will be exempted. Mr. DaValle suggests that permitting an advertisement the size of a business card as an exception just because it includes a “pass through” link does not make sense.

**Response:** This comment was rejected. The proposed regulation considers advertising and the delivering of the problem gambling message on a whole scale, of which a digital advertisement is just one step. For example, an individual receives a digital add via Twitter. Twitter is limited to 140 characters and requiring a problem gambling message could ruin the purpose of the advertisement. However, if that message contains a link to a website, the viewer (if engaged by the advertisement) will be provided the problem gambling message once the link is selected. The digital material with limited characters or space is only allowed if it provides a link, which contains the responsible gambling message. In Mr. DaValle’s example, the banner ad is only allowed if there is a link to a website that complies with subsection (b).

**C. 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 repeats his comments provided in I.D.1.a.

**Response:** While these comments are not germane to the modification of the language of the proposed action and no response is required, it was responded to in the response for I.D.1.a.

2. Subparagraph (B) of paragraph (4) of subsection (a) [pg. 5, line 23] requires that the policies and procedures of the gambling enterprise's Self-Restriction Program contain a provision for the maintenance of records when law enforcement is required to remove an individual from a gambling establishment for violating their self-restriction agreement.
  - a. **Nathan DaValle, Bureau:** Mr. DaValle requests that removal by security be added back to the proposed regulation text as this assists the Bureau and local law enforcement when investigating additional, future, or on-going incidents involving self-restricted patrons and consideration of individuals that should be placed on the statewide involuntary exclusion list.

**Response:** This comment was considered but was not incorporated. In requiring the tracking of removals from a gambling establishment, the Commission is interested in tracking extreme situations and not those where someone may simply enter a gambling establishment to inquire about their exclusion status. Security personnel are often used any time an individual is required to be removed, as this provides the gambling enterprise with assurance that the required individual has actually left. These situations do not rise to the level of tracking. Additionally, the Bureau has provided investigation types where this information may be needed. These provisions are unrelated to problem gambling and the use of information related to the Self-Restricted or Self-Exclusion Programs is inappropriate. Specifically the Bureau has referenced:

Business and Professions Code section 19801, subdivision (i)

This provision refers to the State's police powers and the requirement that all persons having a significant involvement in gambling operations and all manufacturers, sellers and distributors of gambling equipment must be licensed. This provision is unrelated to these proposed regulations and information related to this program is not necessary or relevant to the licensing of manufacturers, sellers and distributors of gambling equipment.

Business and Professions Code section 19845

This provision provides that a licensee may remove any person from the premises of the gambling establishment who meets specific criteria. This provision is not relevant to the list of self-restricted persons or the list of self-excluded persons whose provisions require specific individuals be removed from the gambling establishment along with other requirements.

Section 12362

This provision creates the Statewide Involuntary Exclusion list, a list of individuals reported by a licensee or governmental official to the Commission for permanent exclusion from gambling establishments. This process is completely unrelated to the Self-Restricted or Self-Exclusion Programs which focus on the individual requesting voluntary status and not the individual being involuntary excluded.

3. Subparagraph (C) of paragraph (4) of subsection (a) [pg. 5, line 27] 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 for deposit into the Gambling Addiction Program Fund.
  - a. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried commented that in providing their direction, the Commission did not intend for a gambling enterprise to continue to be required to confiscate money and proposes the following revision:

(5) Policies and procedures for the forfeiture of any ~~jackpots~~money or prizes won by an excluded 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 Gambling;

**Response:** This comment was accepted and the following revision adopted:

(5) Policies and procedures for the forfeiture of any unredeemed ~~jackpots~~money or prizes won by an excluded 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 Gambling;

**D. 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. 6, line 16]:
  - a. **Nathan DaValle, Bureau**: Mr. DaValle repeats his comments provided in I.E.1.a.

**Response:** While these comments are not germane to the modification of the language of the proposed action and no response is required, it was responded to in the response for I.E.1.a.
2. Paragraph (3) of subsection (a) [pg. 6, line 28] requires that the policies and procedures of the gambling enterprise's Self-Exclusion Program contain a provision for notification of the Bureau when law enforcement is required for the removal of a patron.

- a. **Nathan DaValle, Bureau**: Mr. DaValle repeats his comment of III.C.2.a.

**Response:** The response to this comment was addressed in the response to comment III.C.2.a.

3. Paragraph (5) of subsection (a), both options, [pg. 7, line 7] require that the policies and procedures of the gambling enterprise's Self-Exclusion Program contain a provision for the remittance of any money or prizes won for deposit into the Gambling Addiction Program Fund.

- a. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried repeats his comment of III.C.3.a.

**Response:** The response to this comment was addressed in the response to comment III.C.3.a.

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

Section 12465 provides for the removal of an individual from the list of self-excluded persons. If the individual requested a one-year term, removal is automatically effected at the conclusion of the term. If the individual requested a lifetime term, then removal can be requested at any time after a one-year period has elapsed with removal being effected on the first day of the second month following the request.

1. The following comments were received about the section, in general [pg. 7, line 24]:

- a. **David Fried, California Grand Casino and the Oaks Card Club**: Mr. Fried notes that the program may have a problem related to individuals on the lifetime exclusion list who may die while on the list. Mr. Fried suggests a provision requiring the Bureau to periodically check the social security death index and remove deceased individuals.

Not less than every two years, the Bureau shall check the Social Security Death Index and remove deceased persons from the list of self-excluded persons.

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

- b. **Nathan DaValle, Bureau**: Mr. DaValle notes that under the proposed regulation two exclusion terms are included, one-year and lifetime and that the current five-year exclusion term is repealed. Mr. DaValle requests clarification for the 670 current enrollees that have requested a five-year term.

**Response:** This comment was accepted; however, no change in the proposed regulation is required. At this time each of those 670 individuals has requested a

valid exclusion with a known end period. Regardless that a five-year term is no longer available, those individuals' requests are not invalidated. Section 12465(b) allows for the excluded persons to be automatically removed upon the conclusion of the requested term.

- c. **Nathan DaValle, Bureau**: Mr. DaValle notes that there is no restriction to the number of times an individual can enroll in a lifetime exclusion, request disenrollment and then reenroll and that this effect could have a significant impact on both the Bureau and the gambling industry. Mr. DaValle requests that a maximum number of times be included in the regulations.

**Response:** This comment was rejected. First, the purpose of the program is to provide flexibility to its users so that they can harness exclusion for whatever purpose or assistance they may require. Secondly, current regulations provide for two terms (one-year and five-year) that already allow a patron to enroll, be removed and then reenroll without any limit. This process requires more work for the Bureau than the proposed lifetime term removal as the Bureau is forced to process every individual for removal and not just those that request off. When estimating volume of applicant participation in the new program, the Bureau may wish to look at historical reenrollments of individuals on the current one-year and five-year programs.

- d. **Tucker Hoog**: Mr. Hoog observed that individuals who requested lifetime exclusion did so on their own accord and that they were not forced to and therefore they should not be able to undo their request.

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

#### **IV. 15-DAY WRITTEN COMMENT PERIOD<sup>5</sup>**

The following written comments/objections/recommendations were received regarding the text of the proposed action during the 15-day written comment period that commenced October 7, 2015 and ended October 21, 2015:

##### **A. COMMENTS MADE IN GENERAL TO THE PROPOSAL.**

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

- a. **Kevin McBarron**: Mr. McBarron expressed a concern that the list of self-excluded persons has inadvertently created a policy that encourages higher risk gambling. Mr. McBarron commented that by self-excluding from cardrooms, a gambler must then travel farther to a Tribal facility. This could cause a player to feel the need to participate at an increased rate to compensate for the additional effort required to play.

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<sup>5</sup> All page and line numbers in this section refer to the Modified Text dated 10/06/2015.

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

**B. AMEND SECTION 12460. ARTICLE DEFINITIONS.**

This proposed action provides non-substantive, editorial, revisions to the definitions in Section 12460.

1. Paragraph (4) of subsection (b) [pg. 1, line 27] provides that part of “self-restriction” is a restriction from all marketing or promotional activities conducted by or on the behalf of the gambling enterprise.

a. **Robert Jacobson, California Council on Problem Gambling:** Mr. Jacobson suggested the following revision:

(4) Be restricted from all direct marketing or promotional activities conducted by or on behalf of the particular gambling enterprise where any of the patron’s information for direct marketing matches the information on the ~~restriction~~exclusion.

**Response:** This comment was accepted. As this is a non-substantive change, without regulatory effect, an additional 15-day change is unnecessary.

**C. 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 included with any advertising material. The section is revised to include requirements for TPPPS and gambling businesses when advertising or on any websites.

1. Paragraph (1) of subsection (c) [pg. 2, line 22] exempts digital material with limited characters or space, if the destination website includes the appropriate problem gambling message, along with promotional items with limited space such as key chains, hats or drinking glasses.

a. **Robert Jacobson, California Council on Problem Gambling:** Mr. Jacobson expressed concern that the provision is too broad and proposed the following revision:

(1) Any digital material with ~~limited characters or~~ space limitations such that two separate, brief messages cannot be displayed distinctly or legibly (i.e. to display both a brief marketing and responsible gambling

[message](#)), that provides a link to a website that complies with subsection (b).

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

**D. 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. Paragraph (3) of subsection (b) [pg. 3, line 23] requires that the licensee designate personnel responsible for maintaining and coordinating the responsible gambling training program. Records related to the program shall be maintained and shall include specific information.

a. **Robert Jacobson, California Council on Problem Gambling:** Mr. Jacobson suggested the following revision:

(5) Each licensee shall designate personnel responsible for maintaining the program, coordinating training, and ~~recording~~ ~~documenting~~ employee completion.

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

**E. 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. Subparagraph (C) of paragraph (4) of subsection (a) [pg. 6, line 1] requires that the policies and procedures of the gambling enterprise's Self-Restriction Program contain a provision for either the remittance of any unredeemed jackpots or prizes won for deposit into the Gambling Addiction Program Fund.

a. **Nathan DaValle, Bureau:** Mr. DaValle expressed concern about the standard of "unredeemed jackpot." Mr. DaValle noted that this term is defined in Bureau regulation and is limited to gaming activities and does not reflect the winnings amassed by a patron during the play of a game. Mr. DaValle commented that the purpose of the confiscation of money is intended to act as a deterrent to an individual from violating the terms of their restriction.

Mr. DaValle suggested the use of “chip” or “chips” as this provides a defined term that does not require the cardroom to identify how a specific chip came into a player’s possession. Mr. DaValle suggested that this would resolve the industry’s concern of determining what is a “winning.”

(5) Policies and procedures for the forfeiture of any ~~chips~~~~unredeemed~~  
~~jackpots~~ or prizes won by an excluded 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 Gambling;

**Response:** This comment was rejected. While Mr. DaValle’s proposed language does attempt to resolve the concern expressed by the Commission that determining winnings or recovered losses was overly burdensome on a cardroom, it does not resolve the concern expressed by the Commission that a cardroom should not be responsible for confiscating items currently in the possession of a self-restricted or self-excluded individual.

2. Paragraph (5) of subsection (a) [pg. 6, line 5] requires that the policies and procedures of the gambling enterprise’s Self-Restriction Program contain a provision for a patron to restrict their access to check cashing or the issuance of credit.
  - a. **Nathan DaValle, Bureau**: Mr. DaValle expressed that this provision is limiting and suggests the following revision:

(5) Policies and procedures that allow a patron to restrict his or her access to check cashing or the issuance of credit during the term of restriction, ~~or both~~; and,

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

**F. 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. Paragraph (5) of subsection (a), both options, [pg. 7, line 13] require that the policies and procedures of the gambling enterprise’s Self-Exclusion Program contain a provision for the remittance of any unredeemed jackpots or prizes won for deposit into the Gambling Addiction Program Fund.
  - a. **Nathan DaValle, Bureau**: Mr. DaValle repeated his comment of IV.E.1.a.

**Response:** The response to this comment was addressed in the response to comment IV.E.1.a.

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

Section 12465 provides for the removal of an individual from the list of self-excluded persons. If the individual requested a one-year term, removal is automatically effected at the conclusion of the term. If the individual requested a lifetime term, then removal can be requested at any time after a one-year period has elapsed with removal being effected on the first day of the second month following the request.

1. The following comments were received about the section, in general [pg. 8, line 2]:

- a. **David Fried, California Grand Casino and the Oaks Card Club:** Mr. Fried repeated his comment of III.E.1.a.

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

- b. **Kevin McBarron:** Mr. McBarron requested that the regulation be revised to allow participants to amend or end their exclusion requests as they desire.

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

2. Subsection (c) [pg. 8, line 16] provides that upon removal from the list of self-excluded persons, the Bureau shall send a confirmation notice to the requestor.

- a. **Robert Jacobson, California Council on Problem Gambling:** Mr. Jacobson commented that the provision of a notice could act as a trigger for some problem gamblers and should therefore not be provided. Instead Mr. Jacobson proposes the following revision:

(c) Excluded persons who are automatically removed from the list will not be notified by the Bureau, though the Bureau will disclose the removal date or status upon request. Upon removal, †The Bureau shall send a notice to ~~the~~ excluded persons who have requested removal from the lifetime exclusion as confirmation of their removal from the self-exclusion list.

**Response:** This comment is not germane to the modification of the language of the proposed action and no response is required.

**V. COMMENTS RECEIVED OUTSIDE OF ANY COMMENT PERIOD**

The following written comments/objections/recommendations were received outside of any public comment period and need not be responded to:

**A. 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 included with any advertising material. The section is revised to include requirements for TPPPS and gambling businesses when advertising or on any websites.

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

- a. **Robert Jacobson, California Council on Problem Gambling:** Mr. Jacobson noted that the California Council on Problem Gambling supports Option 3 and 2, in that order, but does not object to Option 1.

**B. 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. The following comments were received about the section, in general:

- a. **Robert Jacobson, California Council on Problem Gambling:** Mr. Jacobson repeated his suggested Option described in comment II.G.1.d. Additionally, the California Council on Problem Gambling does not support Options 12 or 13 and strongly opposes Option 14.