

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION
CGCC-GCA-2020-03-E

FINDING OF EMERGENCY
REGULATIONS FOR
EMERGENCY-BASED REMOTE COUNTS FOR GAMBLING ESTABLISHMENTS

The California Gambling Control Commission (Commission) finds the adoption of regulations on an emergency basis allowing gambling enterprises subject to a state of emergency or other order and that state of emergency or other order is associated with a virus and requires physical distancing, to reduce the number of employees required to be physically present in the count room is necessary for the immediate preservation of the public health, safety, and general welfare. The proposed regulations utilize the guidelines issued by the California Department of Public Health (CDPH), Department of Industrial Relations (DIR), and the Governor's Office.

SECTION 48 STATEMENT

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

EMERGENCY FACTS

California is presently under a declared State of Emergency as part of the State's response to address the Coronavirus Disease 2019 (COVID-19) global outbreak. On March 19, 2020, Governor Newsom signed Executive Order (EO) N-33-20, issuing a stay-at-home order to protect the health and well-being of all Californians and to establish consistency across the State in order to slow the spread of COVID-19. As a result, since March 2020 California gambling establishments and other businesses that provide nonessential services to the public have been required to cease nonessential operations and close their doors to the public multiple times. The most recent CDPH Order, issued on July 13, 2020, required all gambling establishments to close indoor operations until further notice.

State of Emergency Proclamation

On March 4, 2020, a State of Emergency was declared in California in response to a global outbreak of respiratory illness due to a novel coronavirus known as COVID-19. The virus has rapidly spread to more than 75 countries including the United States within a short time. Various state and federal agencies have been working in collaboration to monitor and plan for the potential spread of COVID-19 to the United States since December 2019. In response to the outbreak, by early March 2020 the US Centers for Disease Control and Prevention (CDC) activated the Emergency Response System, CDPH activated the Medical and Health Coordination Center, and the California Office of Emergency Services activated the State

Operations Center to provide support and guidance to health facilities and the public. As of March 4, 2020, there were 94,000 confirmed cases of COVID-19 and 3,000 deaths worldwide. At that time, 129 of the confirmed cases were in the US, including 53 in California, with infections expected to increase pending the availability of more testing. Based on how rapidly the virus had spread in other countries, the state of emergency proclamation found that the number of persons requiring medical care may exceed locally available resources and it is necessary for state and local health departments to use all available preventative measures to combat the spread of COVID-19. As of August 13, 2020, there have been 5,176,018 confirmed cases of Covid-19 and 165,148 deaths in the United States; 595,000 confirmed cases and 10,808 deaths within the State of California alone.

The state of emergency orders all state agencies to perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as CDPH and the Emergency Medical Services Authority. Additionally, all residents of the state have been ordered to heed the advice of emergency officials in order to protect their safety. This state of emergency continues to remain in effect until further notice.

Executive Order N-33-20

On March 19, 2020, Governor Newsom signed EO N-33-20 to protect the public health of Californians consistently across the state by disrupting the spread of COVID-19 and mitigating its impact. The EO remains in effect until further notice. The EO finds that COVID-19 has rapidly spread throughout California, necessitating more stringent guidance from federal, state, and local public health officials. The EO directs all residents immediately heed to CDPH's current State public health directives to stay home, except as needed to maintain continuity of operations of the federal essential critical infrastructure sectors and additional sectors as the State Public Health Officer may designate as critical to protect health and well-being of all Californians.

California Department of Public Health – Essential Critical Infrastructure Workers List

The State Public Health Officer released a list of designated “Essential Critical Infrastructure Workers” on March 22, 2020, in an effort to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. The list identifies specific essential workers in the following essential critical infrastructure sectors:

- Healthcare / Public Health Sector
- Emergency Services Sector
- Food and Agriculture Sector
- Energy Sector
- Water and Wastewater Sector
- Transportation and Logistics Sector
- Communications and Information Technology Sector
- Other Community-based Government Operations and Essential Functions Sector
- Critical Manufacturing Sector
- Hazardous Materials Sector
- Financial Services Sector
- Chemical Sector

- Defense Industrial Base Sector

Gambling enterprise employees are not identified as essential workers under any of the critical infrastructure sectors.

California's Six Indicators to be Used for Modifying Stay-at-Home and Other Orders During a Pandemic

On April 14, 2020, Governor Newsom unveiled the following six key indicators that will guide California's thinking for when and how to modify the stay-at-home and other orders during the COVID-19 pandemic:

1. The ability to monitor and protect our communities through testing, contact tracing, isolating, and supporting those who are positive or exposed.
2. The ability to prevent infection in people who are at risk for more severe COVID-19.
3. The ability of the hospital and health systems to handle surges.
4. The ability to develop therapeutics to meet the demand.
5. The ability for businesses, schools, and childcare facilities to support physical distancing.
6. The ability to determine when to reinstitute certain measures, such as the stay-at-home orders, if necessary.

Specifically, indicator number five above requires the ability for businesses to support physical distancing and other protocols, which are relevant to the Commission's proposed emergency regulations. The key questions that must be considered under this indicator are:

- Have we worked with businesses to support physical distancing practices when employees perform their necessary work functions?

Update on California's Roadmap to Pandemic Resilience – Four Stages

While California remains under a state of emergency, on April 28, 2020, Governor Newsom announced four Resilience Roadmap Stages in an update on California's Roadmap to Pandemic Resilience, which discusses how the state is planning its path forward in phases based on science, health, and data. The four stages that California will use to guide its gradual reopening process are:

- Stage 1: Safety and Preparedness – making essential workforce environment as safe as possible.
- Stage 2: Lower Risk Workplaces – creating opportunities for lower risk sectors to adapt and reopen. Modified school programs and childcare reopen.
- Stage 3: Higher Risk Workplaces – creating opportunities for higher risk sectors to adapt and reopen.
- Stage 4: End of Stay at Home Order – return to expanded workforce in highest risk workplaces. Requires Therapeutics.

Cardrooms are included in Stage 3, and are designated as "higher risk workplaces".

Executive Order N-60-20

On May 4, 2020, EO N-60-20 informed local health jurisdictions and industry sectors that they may gradually reopen sectors under Stage 2, and eventually Stage 3, of *California's Roadmap to Pandemic Resilience* under specific criteria and procedures outlined the State Public Officer.

COVID-19 INDUSTRY GUIDANCE AND SUBSEQUENT CLOSURE ORDERS: Cardrooms, Satellite Wagering Facilities, and Racetracks

On June 5, 2020, Governor Newsom released a document that provides guidance for cardrooms (formally known as gambling establishments), satellite wagering facilities, and racetracks with onsite wagering to support a safe, clean environment for workers. This document also provides guidance for TPPPS businesses that operate within a gambling establishment, where applicable. The guidelines recommended effective date of opening for cardrooms that had approved county variances to be no sooner than June 12, 2020. An updated version of the publication was subsequently released on July 2, 2020 and July 28, 2020. The Commission has acknowledged the guidance documents in developing this regulation. The proposed regulation allows for the vital requirements of gambling establishments to be performed leveraging modern technology.

On July 1, 2020, Governor Newsom and the CDPH released guidance directing counties that have been on the County Monitoring List for three consecutive days or more to close indoor operations for certain sectors which promote the mixing of populations beyond households and make adherence to physical distancing and wearing face coverings difficult. The directive includes the closing of cardrooms within the specified counties. On July 1, the following 19 counties were impacted: Contra Costa; Fresno; Glenn; Imperial; Kern; Kings; Los Angeles; Merced; Orange; Riverside; Sacramento; San Bernardino; San Joaquin; Santa Barbara; Santa Clara; Solano; Stanislaus; Tulare; and Ventura. On July 7, 2020 and July 8, 2020, additional counties were added, totaling 27 counties.

On July 13, 2020, Governor Newsom and the CDPH released a Public Health Order closing all indoor operations for specific sectors statewide, including all cardrooms. In addition, the Public Health Order required all cardrooms and TPPPS operations to comply with the existing guidance, which was subsequently updated on July 28, 2020. These regulations seek to support the Commission regulations and safeguards in ensuring necessary fiscal functions of the gambling establishments continue, while allowing for physical distancing measures to occur.

United States Centers for Disease Control and Prevention and the Occupational Safety and Health Administration

CDC is responding to this pandemic of respiratory disease spreading from person to person caused by COVID-19. According to CDC, the situation poses a serious public health risk. COVID-19 can cause mild to severe illness with the most severe illness occurring in adults 65 years of age and older and people of any age with serious underlying medical problems. According to CDC, the disease is thought to be spread in the following ways:

- Person-to-Person
 - Between people who are in close contact with one another (within about 6 feet).
 - Through respiratory droplets produced when an infected person coughs, sneezes or talks.

- These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.
 - Some recent studies have suggested that COVID-19 may be spread by people who are not showing symptoms.
- Contact with Contaminated Surfaces or Objects
 - It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes.

CDC advises that maintaining good physical distance (about six feet) is very important in preventing the spread of COVID-19. People should wash their hands often with soap and water or use an alcohol-based hand rub (if soap and water is unavailable). Also, frequently touched surfaces should be routinely cleaned.

CDC has provided guidance on its website for businesses and employers to plan and respond to COVID-19 and recommends following guidelines published by the United States Occupational Safety and Health Administration (OSHA). OSHA has developed the document *OSHA 3990-03 2020, Guidance for Preparing Workplaces for COVID-19*, which is based on traditional infection prevention and industrial hygiene practices. The document focuses on the need for employers to implement engineering, administrative, and work practice controls and personal protective equipment (PPE), as well as considerations for doing so.

These proposed regulations promote public health and safety by aligning with the publications and guidance aforementioned to allow for proper physical distancing to mitigate the exposure of the virus. Accordingly, the Commission has utilized the aforementioned information and directives in developing these regulations. The documents have been incorporated into the emergency rulemaking file and the relevant information therein is also discussed in the Informative Digest section below.

The Commission created these regulations to safeguard the public's health, safety, and create financial safeguards and protections. In addition, it provides clear direction to the industry to ensure efficient and effective regulation of cardroom operations during these unprecedented times.

AUTHORITY AND REFERENCE

Statutes of Authority

Business and Professions Code section 19811, subdivision (b), provides the Commission jurisdiction over the operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments.

Business and Professions Code section 19824, provides the Commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of the Gambling Control Act (Act), including, without limitation, the power to:

- For any cause deemed reasonable by the Commission via the Act or regulations adopted pursuant to the Act, deny, limit, condition, or restrict any license, permit, or approval, or impose any fine upon any person licensed or approved (subdivision (b)).
- Take actions deemed to be reasonable to ensure that gambling activities take place only in suitable locations (subdivision (e)).

Business and Professions Code section 19840 authorizes the Commission to adopt regulations for the administration and enforcement of the Act.

Business and Professions Code section 19841 requires the Commission to adopt regulations that do the following:

- Restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling (subdivision (o)).
- Define and limit the area, games, equipment permitted, or the method of operation of games and equipment, if the Commission, upon the recommendation of, or in consultation with, the Bureau, determines that local regulation of these subjects is insufficient to protect the health, safety, or welfare of residents in geographical areas proximate to a gambling establishment (subdivision (p)).

Reference Statutes

Business and Professions Code section 19801 provides legislative findings and declarations that state the following:

- Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is conducted in suitable locations (subdivision (g)).
- All gambling operations, all persons having a significant involvement in gambling operations, all establishments where gambling is conducted, and all gambling equipment must be licensed and regulated to protect the public health, safety, and general welfare of the residents of this state as an exercise of the police powers of the state (subdivision (i)).
- In order to effectuate state policy as declared in the Act, it is necessary that gambling establishments, activities, and equipment be licensed, that persons participating in those activities be licensed or registered, that certain transactions, events, and processes involving gambling establishments and owners of gambling establishments be subject to prior approval or permission, that unsuitable persons not be permitted to associate with gambling activities or gambling establishments, and that gambling activities take place only in suitable locations. Any license or permit issued, or other approval granted pursuant to the Act, is declared to be a revocable privilege, and no holder acquires any vested right therein or thereunder (subdivision (k)).

Business and Professions Code section 19823 states the responsibilities of the Commission include, without limitation, all of the following:

- Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.
- Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or

disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

- For the purposes of this section, “unqualified person” means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and “disqualified person” means a person who is found to be disqualified pursuant to the criteria set forth in Section 19859.

Business and Professions Code section 19920 provides that it is the policy of the state to require that all establishments wherein controlled gambling is conducted in this state be operated in a manner suitable to protect the public health, safety, and general welfare of the residents of the state. The responsibility for the employment and maintenance of suitable methods of operation rests with the owner licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable by the Commission or by local government shall constitute grounds for license revocation or other disciplinary action.

POLICY STATEMENT OVERVIEW

As of July 13, 2020, all gambling establishments in California have been ordered to close indoor operations to the public until further notice. Upon further directives from the Governor, CDPH and the State Public Health Officer, and in accordance with various government issued guidance documents and publications, gambling establishments will likely be allowed to reopen to the public in the future under modified orders while the state of emergency remains in effect.

The policy of the State requires that all gambling establishments in this state be operated in a manner suitable to protect the public health, safety, and general welfare of the residents of the State. The Commission’s jurisdiction over the operation and concentration, and supervision over gambling establishments and over all persons or things having to do with the operations of gambling establishments, make it necessary for the Commission to adopt emergency regulations to avoid serious harm to employees and customers and for the immediate preservation of the public health, safety, and general welfare. (See Authority and Reference section for further detail.)

Pursuant to its authority in Business and Professions Code sections 19811, 19824, 19840, and 19841, the Commission finds that adoption of regulations on an emergency basis allowing gambling enterprises subject to a state of emergency or other order and that state of emergency or other order is associated with a virus and requires physical distancing, to reduce the number of employees required to be physically present in the count room is necessary for the immediate preservation of the public health, safety, and general welfare.

In summary, the regulations allow for physical distancing to occur wherein it would otherwise not be possible to comply with existing Commission regulations and a state of emergency or other order and that state of emergency or other order is associated with a virus and requires physical distancing.

INFORMATIVE DIGEST

Pursuant to the authority vested by sections 19811, 19824, 19840, and 19841 of the Business and Professions Code, and to implement, interpret, or make specific sections 19801, 19823, 19920,

and 19984, the Commission is proposing to adopt the amendments to Chapter 7 of Division 18 of Title 4 of the California Code of Regulations, as described below.

Gambling Enterprise Requirements

New subsection 12385 (g) provides that where the gambling establishment is subject to a state of emergency or other order and that state of emergency or other order is associated with a virus and requires physical distancing, a gambling enterprise may reduce the number of employees required to be physically present in the count room to conduct the count to allow for sufficient physical distancing and allow other individual(s) designated to perform the count within the gambling establishment but outside of the count room if the following requirements are met:

- Individuals designated to perform the count cannot maintain sufficient physical distancing within the count room(s) and other protective measures are not practical or possible to meet physical distancing requirements.
- The count is performed with live video surveillance of all of the designated individual(s) performing and/or participating in the count.
- The gambling enterprise maintains the surveillance recordings for at least 14 days.
- Individuals designated to perform and/or participate in the count, but are located outside of the count room, are physically present in a secure and non-public location within the gambling establishment.
- The count is performed using communication devices that allow for synchronous communication.
- The gambling enterprise provides notification and a copy of the current procedures for designated individual(s) to perform counts at the gambling establishment but outside the count room to the Bureau at least 24 hours prior to the first count that includes an employee performing and/or participating in the count.
- If a gambling establishment's count procedure for designated individual(s) to perform counts at the gambling establishment but outside the count room is revised, the gambling enterprise must submit one copy of its revised procedures to the Bureau at least 24 hours prior to implementing the revised count procedures.

CDC has identified COVID-19 as a disease that can spread between people who are in close contact with one another (within about six feet), through respiratory droplets produced when an infected person coughs or sneezes or by coming in contact with contaminated surfaces or objects. These requirements are necessary to implement recommendations provided by CDC and OSHA for employers to develop a workplace-specific COVID-19 prevention plan that can help guide protective actions against COVID-19. For some cardrooms within California, the count room is small with limited opportunities to allow adequate physical distancing measures to be undertaken. These regulations will address this limitation if alternative methods are not available or practical when a state of emergency or other order is associated with a virus and requires physical distancing. These regulations will further support keeping cardroom employees protected, maintaining the integrity of the count procedures, and maintaining compliance with Commission requirements. In order to protect both employees and the public, it is necessary to allow gambling enterprises to engage in business practices that are consistent with Federal and State guidelines. Additionally, it is essential for the Bureau to receive timely notification of

updated changes promptly to ensure compliance with related federal and state laws and that financial safeguards remain intact.

FISCAL IMPACT ESTIMATES:

MANDATE IMPOSED ON LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

COST TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE: The Commission has determined that this regulatory proposal will not have a significant fiscal impact on state agencies.

DOCUMENTS RELIED UPON:

State of California – Office of Governor Gavin Newsom

State of Emergency Proclamation – March 4, 2020

<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

Executive Order N-33-20 – March 19, 2020

<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

California’s Roadmap to Modify the Stay-at-Home Order – Six Critical Indicators – April 14, 2020

<https://www.gov.ca.gov/wp-content/uploads/2020/04/California-Roadmap-to-Modify-the-Stay-at-Home-Order.pdf>

Update on California’s Pandemic Roadmap – Four Resilience Roadmap Stages – April 28, 2020

<https://www.gov.ca.gov/wp-content/uploads/2020/04/Update-on-California-Pandemic-Roadmap.pdf>

COVID-19 INDUSTRY GUIDANCE: Cardrooms, Satellite Wagering Facilities, and Racetracks – Initially Published on June 5, 2020 and Updated on July 2, 2020 and July 28, 2020

<https://covid19.ca.gov/pdf/guidance-cardrooms-racetracks.pdf>

California Department of Public Health – State Public Health Officer

Essential Critical Infrastructure Workers List – March 22, 2020

<https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

Guidance for the Use of Face Coverings – June 18, 2020

https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf

United States Centers for Disease Control and Prevention

How COVID-19 Spreads – April 13, 2020 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html#>

Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19) – April 19, 2020

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

Prepare Your Small Business and Employees for the Effects of COVID-19 – April 6, 2020

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-small-business.pdf>

Reopening Guidance for Cleaning and Disinfecting – Public Spaces, Workplaces, Businesses, Schools, and Homes – April 28, 2020

https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/Reopening_America_Guidance.pdf

Cleaning and Disinfecting Your Facility Fact Sheet – April 1, 2020

<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility-H.pdf>

What To Do If You Are Sick – April 28, 2020

<https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>

United States Occupational Safety and Health Administration

OSHA 3990-03 2020, Guidance for Preparing Workplaces for COVID-19

<https://www.osha.gov/Publications/OSHA3990.pdf>

United States Environmental Protection Agency

United States Environmental Protection Agency List N: Disinfectants for Use Against SARS-CoV-2 (COVID-19) – July 23, 2020

<https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>

Lancet Microbe 2020 Study

Stability of SARS-CoV-2 in Different Environmental Conditions

Supplementary Appendix to: Chin A W H, Chu J T S, Perera M R A, et al. Stability of SARS-CoV-2 in different environmental conditions. Lancet Microbe 2020; published April 2, 2020.