

**ACCOUNTING AND FINANCIAL REPORTING REQUIREMENTS FOR GAMBLING  
ENTERPRISES, THIRD-PARTY PROVIDERS OF PROPOSITION PLAYER SERVICES  
AND GAMBLING BUSINESSES**

CGCC-GCA-2014-04-R

**SUMMARY OF ALL PUBLIC COMMENTS AND RECOMMENDED RESPONSES**

**I. 45-DAY WRITTEN COMMENT PERIOD**

The following written comments/objections/recommendations were received regarding the text of the proposed action during the 45-day written comment period that commenced May 2, 2014 and ended June 16, 2014:

**A. Section 12002. General Definitions.**

With the addition of a new Chapter 5, certain definitions limited to Chapter 2.1 and 2.2 will now also apply in Chapter 5. Additionally, some terms are used throughout the regulations. For simplicity and clarity, these terms would be added in the general definitions for Division 18. Duplications of these terms would then be removed accordingly. The following amendments are proposed:

1. Subsection (g) – The term “dealer’s bank” would be moved from paragraph (2) of subsection (b) of Section 12400 and added in Section 12002. The phrase “gambling establishment” would be changed to “gambling enterprise.”

**a. Alan Titus, Artichoke Joe’s, in a letter dated June 16, 2014 (Mr. Titus):** The use of the word “total” is not clear and creates confusion. Instead, Mr. Titus suggests amending the text as follows:

“(g) ‘Dealer’s bank’ means any and all monies a dealer has on deposit with the gambling enterprise or is assigned from the cage bank or chip trays.”

**Recommended Response:** This comment was accepted, and the proposed action was modified, as suggested, to accommodate it.

2. Subsection (h) – The term “drop” would be moved from paragraph (3) of subsection (b) of Section 12400 and added in Section 12002, and references to TPPPS players would be added. The phrase “gambling establishment” would be changed to “gambling enterprise.” Finally, the current definition of the term “drop” may unintentionally include tournament fees; therefore the definition is amended to exclude tournament fees.

**a. David Fried, California Grand Casino and Oaks Card Club, in a letter dated June 16, 2014 (Mr. Fried); and Mr. Titus:** Mr. Fried comments that the definition should exclude services and facilities payments from TPPPS companies. Mr. Fried

also comments that this definition for “drop” includes jackpot collections, and questions if this is intentional. Mr. Titus comments that the use of the word “total” is not clear and creates confusion. As the definition is written, a portion of the compensation collected from patrons would not be considered to be “drop.”

Mr. Fried suggests amending the text as follows:

“(h) ‘Drop’ means the total amount of compensation collected from patrons or TPPPS companies by a gambling enterprise to play in controlled games, not including tournament fees or payments under approved contracts for Third-Party Proposition Player Services.”

Mr. Titus suggests amending the text as follows:

“(h) ‘Drop’ means any and all compensation collected from patrons or TPPPS companies by a gambling enterprise to play in controlled games, not including tournament fees.”

**Recommended Response:** These comments were accepted, and the proposed action was modified as follows to accommodate them:

“(h) ‘Drop’ means any and all player collection fees received from patrons or TPPPS companies by a gambling enterprise to play in controlled games, not including tournament fees, or payments under contracts for Third-Party Proposition Player Services.”

3. Subsection (m) – The term “jackpot” would be moved from paragraph (8) of subsection (b) of Section 12400 and added in Section 12002. The phrase “authorized game” would be changed to “controlled game” as defined in section 19805. Finally, the term “predetermined” would be changed to “specified.”

**a. Mr. Fried:** This definition confuses promotions and jackpots. A jackpot is a type of promotion where the prize is based on the outcome of the hand or achieving a designated hand. Participation prizes are also a type of promotion, but are not a jackpot. The current definition would include both jackpot awards and participation prizes. Instead, the definition should refer to the specific type of promotions that are prizes awarded based on a specified result occurring in the play of the game. Mr. Fried suggests amending the text as follows:

“(m) ‘Jackpot’ means a gaming activity where the prize is determined by specified criteria determined in the play of a controlled game.”

**Recommended Response:** This comment was accepted, and the proposed action was modified as follows to accommodate it:

“(m) ‘Jackpot’ means a gaming activity where the prize is awarded based on specified criteria occurring in the play of a controlled game.”

4. Subsection (o) – The term “player’s bank” would be moved from paragraph (11) of subsection (b) of Section 12400 and would be amended to include the monies a TPPPS company has on deposit to be consistent with the Bureau of Gambling Control (Bureau) regulations. The phrase “gambling establishment” would be changed to “gambling enterprise.”

**a. Mr. Titus:** The use of the word “total” is not clear and creates confusion. The status of a portion of the monies a player has on deposit is left unclear. Instead, Mr. Titus suggests amending the text as follows:

“(o) ‘Players bank’ means any and all monies a patron or a TPPPS company has on deposit with the gambling enterprise.”

**Recommended Response:** This comment was accepted, and the proposed action was modified, as suggested, to accommodate it.

**B. Section 12312 – Record Retention and Maintenance; General Provisions.**

Section 12312 consolidates several current requirements for accounting and financial reporting into one section, adding references to TPPPS companies and gambling businesses where appropriate.

1. The current requirement of subsection (b) of Section 12401 to maintain various accounting records would become subsection (c) of Section 12312. References to TPPPS companies and gambling businesses would be added.

**a. Nathan DaValle, Assistant Bureau Chief, Bureau of Gambling Control, in a letter dated June 16, 2014 (Mr. DaValle):** The Bureau of Gambling Control (Bureau) would like to ensure that detailed records are maintained to track that the monies paid out are approved, not excessive, and are maintained for each specific jackpot. Mr. DaValle suggests changing the proposed text of paragraph (4) of subsection (c) to read as follows:

“(4) Records, separated by gaming activity, of all jackpot monies contributed by the gambling enterprise, jackpot monies collected from patrons, and monies withdrawn for either jackpot administrative fees or payment to patrons.”

**Recommended Response:** This comment was accepted, and the proposed action was modified, as suggested, to accommodate it.

**C. Section 12313. Financial Statements and Reporting Requirements.**

The current Section 12403 would be renumbered as Section 12313 with non-substantive edits for clarity and simplicity. Additionally, the following amendments are proposed:

1. Subsection (a), paragraph (4) – The reference to those in Group III with gross revenue of less than \$500,000 per year would be changed to refer to the new Group IV.

**a. Mr. DaValle:** The Bureau is concerned about the option to submit a federal tax return in lieu of the financial statements. Since an income tax return is derived from the financial statements, the licensee should be able to provide the statements. Mr. DaValle suggests that clauses 1 and 2 of subparagraph (A) be deleted and the requirement to engage an independent accountant to perform a compilation of the licensee’s annual financial statements in clause 1 be added to subparagraph (A), as follows:

“A Group IV licensee shall prepare financial statements that include, at a minimum, a statement of financial position and a statement of income or a statement of operations. If the licensee is unable to produce the financial statements, it shall engage an independent accountant licensed by the California Board of Accountancy to perform a compilation of the licensee’s annual financial statements in accordance with standards for accounting and review services or with currently applicable professional accounting standards. Management may elect not to provide footnote disclosures as would otherwise be required by generally accepted accounting principles.”

**Recommended Response:** This comment was considered, but was not incorporated. The current regulatory provision of Section 12403 that allows for the submission of a federal tax return is only applicable if the licensee is unable to produce financial statements. Subsection (a) states “A licensee shall prepare financial statements covering all financial activities...” Subsection (a), paragraph (4), subparagraph (A), also states “A Group IV licensee shall prepare financial statements...” The submission of federal tax forms for Group IV licensees only applies “if the licensee is unable to produce financial statements...” This is a current provision relating to what is now a subset of Group III (i.e., licensees with a gross revenue of less than \$500,000 per year), but would become Group IV under the proposed action. In other words, under the current regulation, a Group III licensee with gross revenue of less than \$500,000 per year that is unable to produce financial statements is permitted to submit a copy of a federal income tax return, as specified. Other than the creation of a new Group IV, there is no difference between the current regulation and the proposed action. Group IV licensees are those with gross revenue of less than \$500,000 per year.

According to the Final Statement of Reasons for the current regulation (CGCC-GCA-2003-02-R), this provision was included as a less expensive method of submitting

financial information for those licensees with the lowest revenues. Business and Professions Code section 19840 provides that the Commission shall take into consideration the operational differences of large and small establishments to the extent appropriate. To delete the current provision permitting the submission of federal tax forms in limited circumstances would remove this less expensive and burdensome method and impose an adverse economic impact on those licensees who may be the least likely to have the resources necessary to hire an accountant.

In a review of this matter, no requirement could be found for the use of financial statements in the preparation of federal or state tax returns. In some instances, licensees' tax returns may be clearer and more concise than the supporting documentation used to prepare them. Furthermore, that supporting documentation would be available to the Bureau for audit just as it would be to the IRS.

2. Subsection (c) – The phrase “and the Commission” would be added to allow the Commission to also receive a copy of the annual financial statements to be used to make determinations on an applicant’s suitability for licensure and other approvals.

**a. M. Robbins, in a letter received June 3, 2014 (Robbins):** The reinsertion of “and the Commission” is not in accordance with the Governor’s Reorganization Plan No. 2 (GRP No. 2). The submission of the financial statements to both the Bureau and the Commission is unnecessarily duplicative. In accordance with GRP No. 2, Section 19826 provides that the Bureau investigates and is “to receive and process,” so the Commission should get this information from the Bureau. Requiring the licensees to submit a copy to both the Commission and the Bureau would require staff at both the Commission and Bureau to copy financial statements instead of one person at the Bureau, and therefore be a burden upon the taxpayers as well as contrary to the intentions of GRP No. 2. Robbins suggests that the text be amended to remove “and the Commission” and suggests that the Commission request financial statements from the Bureau.

**Recommended Response:** This comment was considered, but was not incorporated. Licensees have submitted copies of financial statements to both the Commission and the Bureau since 2003. This requirement is not inconsistent with GRP No. 2 or Business and Professions Code Section 19826. The general purpose of GRP No. 2 was to eliminate inefficiencies and separate the policy functions of the Commission from the licensing, investigation, compliance, and enforcement functions of the Bureau. Business and Professions Code Section 19826, as amended by GRP No. 2, requires the Bureau to “receive and process *applications* for any license, permit, or other approval, and to collect related fees.” That section also requires the Bureau to investigate the qualifications of applicants, as specified.

As indicated in the Commission’s Initial Statement of Reasons, while the Bureau uses the annual financial statements for investigative purposes, the Commission also uses these financial statements on a regular, ongoing basis for non-investigative purposes

(to make determinations on an applicant's suitability for licensure and other approvals). Upon further review, we believe that it would be more efficient overall for licensees to resume providing the financial statements to the Commission when they provide these statements to the Bureau, as this would ensure that the Commission has timely access to the most current financial statements used for Commission decisions.

The suggested alternative would be more burdensome to the Commission, Bureau and licensees, as it would require the Commission to submit a request to the Bureau for financial statements and require the Commission to await a response from the Bureau. As a result, this could cause delays in making suitability determinations for licensure and other approvals which, in turn, could negatively impact applicants and licensees.

## **II. JULY 23, 2014 REGULATION HEARING**

The following comments/objections/recommendations were received regarding the text of the proposed action during the regulations hearing held July 23, 2014:

### **A. Section 12002. General Definitions.**

With the addition of a new Chapter 5, certain definitions previously limited to Chapter 2.1 and 2.2 will now also apply in Chapter 5. Additionally, some terms are used throughout the regulations. For simplicity and clarity, these terms would be added in the general definitions for Division 18. Duplications of these terms would then be removed accordingly. The following amendments are proposed:

1. Subsection (h) – The term “drop” would be moved from paragraph (3) of subsection (b) of Section 12400 and added in Section 12002, and references to TPPPS players would be added. The phrase “gambling establishment” would be changed to “gambling enterprise.” Finally, the current definition of the term “drop” may unintentionally include tournament fees; therefore the definition is amended to exclude tournament fees.

**a. Misty Trejo, Bureau of Gambling Control (Ms. Trejo):** Based on the summary of 45-day written comments document, it looks like the definition of “drop” will be changed to refer to “any player collection fees received” instead of “compensation.” For jackpots, we call the player contribution a “jackpot collection fee.” In the MICS [minimum internal control standards] regulations those [jackpot collection fees] have to be segregated from regular player collection fees.<sup>1</sup> In proposed Section 12312 (c)(4) licensees have to track all of their jackpot money. I don't think that they [jackpot collection fees] are going to be confused with the player collection fees because they're segregated, and they have to account for their jackpot money separately from their regular collection fees or, in this case, the drop. I am

---

<sup>1</sup> Title 4, California Code of Regulations, Section 12384 (a)(2).

comfortable with this definition with the changes recommended in the 45-day written comments document.

**Recommended Response:** This comment was considered and accepted, but no additional modification was necessary.

As originally proposed, subsection (h) of Section 12002 expressly applied the term “drop” to compensation collected from players to play in controlled games. A jackpot is not a controlled game, but rather a gaming activity appended to or relying upon a controlled game.<sup>2</sup> That distinction alone separates jackpot collection fees from player collection fees. The express purpose of the collection being for the play in controlled games further clarifies the limitation. In addition, the change of the phrase “the total amount of compensation collected” to “any and all player collection fees received” [see comment I.A.2.a., above]; and the specific exclusion of “jackpot collections” [see comment II.A.2.b., below] help to further clarify the distinction.

Furthermore, Ms. Trejo is correct, paragraph (2) of subsection (a) of Section 12384 of the MICS regulations expressly requires that “jackpot collections shall be deposited into a separate drop box, or otherwise segregated, and accounted for separately.” Even without the abovementioned clarifying changes, this requirement for segregation and separate accounting would make it clear that “drop” could not be interpreted to include jackpot collection fees.

**b. Mr. Fried:** The jackpot fee is a mandatory fee for those clubs that take a separate jackpot fee; so some people might interpret player collection fees to include jackpot fees. If you want a clean definition that just refers to the revenue of the club, then the word “jackpots” should be added to the phrase that begins, “not including tournament fees, ...”

**Recommended Response:** This comment was accepted, and the proposed action was modified as follows to accommodate it:

“(h) ‘Drop’ means any and all player collection fees received from patrons or TPPPS companies by a gambling enterprise to play in controlled games, not including tournament fees, jackpot collections, or payments under contracts for proposition player services.”

2. Subsection (m) – The term “jackpot” would be moved from paragraph (8) of subsection (b) of Section 12400 and added in Section 12002. The phrase “authorized game” would be changed to “controlled game” as defined in section 19805. Finally, the term “predetermined” would be changed to “specified.”

---

<sup>2</sup> See Title 11, California Code of Regulations, Section 2010, subsection (f).

**a. Mr. Fried:** A jackpot is a really large prize you get when you have a great hand beat by another great hand. The problem that I was concerned about in my previous comment [See comment I.A.2.a.] is defining it so broadly that if you're just participating in the game and you get a discount on food that's a gaming activity because the criteria or the eligibility is you're participating in the game. So my comment was exclude what I call "participation awards" and focus on a prize that you get because something happens in the play of the hand or the play of the game. That may mean that things like bonus bets would be swept in by this definition. A bonus is a bonus prize; a jackpot is a jackpot prize, and they're both determined by things that happen in the play of the game. If you want to use the word "jackpot" in a really narrow way, then the definition may need to be changed, but I think what's in the recommended response is better than the prior draft which swept in participation awards.

**Recommended Response:** This comment was considered, but was not incorporated. This comment appears to incorrectly use "bonus bet" and "bonus" as synonymous terms when they refer to two distinctly different things. A bonus bet is included and approved in game rules; a bonus is a gaming activity and is approved as such. In fact, bonus and jackpot are essentially synonymous terms since they are both gaming activities, prizes awarded based on specified criteria occurring in the play of a controlled game, are funded by players, and are paid by the gambling enterprise from the fund created by the player contributions. Therefore, it would not be inappropriate if bonuses are "swept in by this definition." On the other hand, a bonus bet is not a gaming activity and does not operate like a gaming activity, and would not be "swept in by this definition."

3. Subsection (r) – The term "third-party providers of proposition player services" or "TPPPS" would be added to allow this term to be uniformly used throughout the Commission's regulations.

**a. Mr. Fried:** This definition refers to a business entity, and I think it should refer to a person. You can have a sole proprietor that's a third-party provider or a gambling business. So I think it should be "business entity or person," or it should just say "person."

**Recommended Response:** This comment was accepted, and the proposed action was modified as follows to accommodate it:

"(r) 'Third-party providers of proposition player services' or 'TPPPS' or 'TPPPS company' means a person that is licensed or registered in accordance with Chapter 2.1 of this division."

This comment is also applicable to the definition of "gambling business" in subsection (k). Therefore, subsection (k) was also modified as follows to accommodate it:

“(k) ‘Gambling business’ means a person that is registered or licensed in accordance with Chapter 2.2 of this division. ‘Gambling business’ does not include the provision of proposition player services.”

The term “person” is used in both subsections (k) and (r) because that term, as defined in the Act,<sup>3</sup> includes not only individuals, but also all types of business entities, including sole proprietorships.

**B. Section 12313. Financial Statements and Reporting Requirements.**

The current Section 12403 would be renumbered as Section 12313 with non-substantive edits for clarity and simplicity. Additionally, the following amendments are proposed:

1. Subsection (a), paragraph (4) – The reference to those in Group III with gross revenue of less than \$500,000 per year would be changed to refer to the new Group IV.

**a. Frances Asuncion, Bureau of Gambling Control:** The Bureau submitted a comment<sup>4</sup> on page 6, line 19, requesting that the words “in lieu of” be removed. It's important for our audit staff to collect financial statements so that they can review and possibly audit certain line items. We would like that to be considered because it's important to not only have a tax return but also to have their financial statements. And this particular group, group four, should be required to have financial statements.

**Recommended Response:** This comment was considered, but was not incorporated. The current regulatory provision of Section 12403 that allows for the submission of a federal tax return is only applicable if the licensee is unable to produce financial statements. Subsection (a) states “A licensee shall prepare financial statements covering all financial activities...” Subsection (a), paragraph (4), subparagraph (A), also states “A Group IV licensee shall prepare financial statements...” The submission of federal tax forms for Group IV licensees only applies “if the licensee is unable to produce financial statements...” This is a current provision relating to what is now a subset of Group III (i.e., licensees with a gross revenue of less than \$500,000 per year), but would become Group IV under the proposed action. In other words, under the current regulation, a Group III licensee with gross revenue of less than \$500,000 per year that is unable to produce financial statements is permitted to submit a copy of a federal income tax return, as specified. Other than the creation of a new Group IV, there is no difference between the current regulation and the proposed action. Group IV licensees are those with gross revenue of less than \$500,000 per year.

---

<sup>3</sup> Business and Professions Code section 19805, subdivision (ae), defines “person to include “a natural person, corporation, partnership, limited partnership, trust, joint venture, association, or any other business organization.”

<sup>4</sup> Referring to the letter dated June 16, 2014, from Nathan DaValle, Assistant Bureau Chief, Bureau of Gambling Control.

According to the Final Statement of Reasons for the current regulation (CGCC-GCA-2003-02-R), this provision was included as a less expensive method of submitting financial information for those licensees with the lowest revenues. Business and Professions Code section 19840 provides that the Commission shall take into consideration the operational differences of large and small establishments to the extent appropriate. To delete the current provision permitting the submission of federal tax forms in limited circumstances would remove this less expensive and burdensome method and impose an adverse economic impact on those licensees who may be the least likely to have the resources necessary to hire an accountant.

In a review of this matter, no requirement could be found for the use of financial statements in the preparation of federal or state tax returns. In some instances, licensees' tax returns may be clearer and more concise than the supporting documentation used to prepare them. Furthermore, that supporting documentation would be available to the Bureau for audit just as it would be to the IRS.

**b. Tony York, Bureau of Gambling Control (Mr. York):** As auditors we will adapt if we have to, but the concern is that it will take the burden off the applicant and put it on the Bureau. Using the shoe box method of accounting, we would go ahead and collect those receipts and put those numbers together; but then it's our numbers and not the licensee's numbers. The issue with "in lieu of" is you're giving them that option. At this time, we haven't had to do this, but there is one cardroom that we're having issues with where we're probably going to have to go in and take their records and create financials if they can't do it themselves. We would rather have language where if you have the financial statements, submit those. But if you do not have them, then we would go ahead and accept the tax returns.

**Recommended Response:** This comment was considered, but was not incorporated. Again, this is a current regulatory provision. Section 12403 currently provides for the submission of a federal tax return only if the licensee is unable to produce financial statements. [See comments I.C.1.a. and II.B.1.a., above] This is precisely what Mr. York seems to suggest the requirement should be.

This proposed action does not affect the burden of preparation of financial statements or shift any burden to the Bureau. Again, this is a current regulatory provision. If a licensee is unable to prepare its own financial statements, and the Bureau wishes to perform an audit, the Bureau would currently have to use the licensee's receipts and other source documents to construct whatever records the Bureau auditors feel are necessary. The numbers would not be the Bureau's numbers since everything would have to be based on the licensee's receipts and source documents. Nothing is changed under the proposed action.

**C. Section 12315 – Records and Reports of Monetary Instrument Transactions for Gambling Enterprises.**

The current Section 12404 would be renumbered as Section 12315, with the following amendments:

1. Subsection (b) – This subsection would be amended to refer to Chapter X of Title 31 of the Code of Federal Regulations. On March 1, 2011, the Financial Crimes and Enforcement Network (FinCEN) transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X as part of an ongoing effort to increase the efficiency and effectiveness of its regulatory oversight. 31 CFR Chapter X is organized by generally applicable regulations and by industry-specific regulations. The provisions that are applicable to casinos and card clubs (cardrooms), including all of the sections currently listed in Section 12404, are now found in 31 CFR Chapter X, Part 1021 (revised as of July 1, 2011). There have been no substantive changes made to the underlying regulations as a result of this transfer and reorganization.

**Mr. Fried:** I think anytime you're writing regulations and you're referring to federal statutes and regulations, all of which evolve, to refer to them in a very specific way is a mistake, because when they evolve your references then are incorrect. It would be better to just say, for subsection (b) and beyond, that we will comply and keep records available for inspection consistent with federal law on banking transactions, or consistent with FinCEN. If FinCEN changes, then you're going to have to come back and change the regulation.

Section 19841 of the Business and Professions Code doesn't require you to adopt this regulation. It says that the Commission is supposed to have regulations requiring us to keep records of cash and credit transactions. The regulations may include that we file reports with the department similar to what we file with the federal government on cash transactions. However, that's not what the regulation does. It just says that we have to have the reports on the premises and available for inspection. I don't think you have to require us to do anything except comply with federal law and have those compliance records available for inspection.

The practice is you fill out the [federal] form and it's filed electronically, then you print a copy and put it in your file. And that form may change, you know, two months from now. They may make a change in the form of what they're looking for. We don't need duplication. Because tomorrow, if they amend FinCEN, they may change the section number and then you're back here having to amend a regulation just to modify a section number.

We don't need to include a sentence in (b) saying we have to comply with federal law. We have to comply with federal law whether it's in this regulation or not. But in (c) we could say, "A gambling enterprise, regardless of gross revenue, shall make and keep on file at the gambling establishment a report of each transaction in currency in excess of \$10,000, as is required by federal law." And then keep the next sentence,

“These reports shall be available for inspection at any time as requested by the Bureau.” And then get rid of the next sentence and all the subparts.

**Recommended Response:** This comment was accepted, and the proposed action was modified as follows to accommodate it:

“(b) A gambling enterprise, regardless of gross revenue, shall make and keep on file at the gambling establishment a report of each transaction in currency, in accordance with sections 5313 and 5314 of Title 31 of the United States Code and with Chapter X of Title 31 of the Code of Federal Regulations, and any successor provisions. These reports shall be available for inspection at any time as requested by the Bureau.”

Subsections (b) and (c) were consolidated in a new subsection (b) and subsection (d) was renumbered (c).

The phrase “and any successor provisions,” which is also used in both Business and Professions Code section 19841 and Penal Code section 14162, will address the applicability of any future changes in federal statute or regulation. All this subsection requires is that licensees retain copies of the applicable Title 31 reports – as they are already required to do – and make them available to the Bureau for inspection upon request.

### **III. 15-DAY CHANGE WRITTEN COMMENT PERIOD**

The following written comments/objections/recommendations were received regarding the modified text of the proposed action during the 15-day written comment period that commenced August 11, 2014 and ended August 26, 2014:

#### **A. Section 12003 – General Requirements.**

Several requirements, such as requiring records to be maintained in English, are included in multiple sections throughout the Commission’s regulations. Moreover, requirements such as allowing electronic communication and storage have been repetitively added to individual chapters of the regulations as they are not yet generally allowed. These repetitive provisions could be included in a general requirements section for simplicity and clarity. Duplications of these requirements could then be removed accordingly.

1. Subsection (c) – The current requirement of Section 12405 that each licensee must provide the Bureau with copies of any records upon request would be added to Section 12003. To comply with subsection (d), if hardcopies of documents stored in another form are required by the Bureau, the licensee would need to be able to comply with that request. This maintains efficient and consistent procedures for the Bureau to obtain records for investigatory and auditing purposes.

**Charles Bates, Bay 101, in an e-mail received August 26, 2014 (Mr. Bates):** Bay 101 suggests that the wording of the last line of 12003 (c) be modified to allow production of records on electronic media. If the commission or the Bureau is unable to read or make a hard copy of the file then they could go back to the licensee and request a hard copy of the specific document or file that they need. This particular requirement by the proposed regulation would be burdensome, expensive, time consuming and the SOR [statement of reasons] implies that electronic production is the preferred method. In light of today's electronic media, hard copy requests are outdated. Requests made for documents by the Bureau or the Commission should be transmitted electronically, or by hard copy, whichever is most convenient and efficient. Considering the allowance in subparagraph (d), this sentence in (c) is confusing and contradictive. The last sentence in (c) would be better deleted and the requirement of (d) adopted.

**Recommended Response:** This comment is not germane to the modified text of the proposed action. No modifications were made in subsection (c) of Section 12003 in the modified text published on August 11, 2014.

2. Subsection (d) – The option to store and submit records in either a permanent form or other media unless otherwise specified would be added. As electronic methods of storage and communication become more common for licensees and the Bureau, this option would allow for faster and less expensive methods of communication and document storage requirements.

**Mr. Bates:** Is the word “permanent” being used to mean “hard copy” or is it being used to indicate the many forms of permanent information storage – electronic, paper, magnetic tape, CDs, thumb drives, ink, etc.? As described in the statement of reasons the intent appears to indicate primarily electronic media and alternatives to “hard copy.” This sentence needs to be clearer by clearly stating that the preferred method for transfer of documents and response to requests for documents is electronic media. Additionally, this subsection seems to negate the need for the last sentence in 12003(c), as discussed above.

**Recommended Response:** This comment is not germane to the modified text of the proposed action. No modifications were made in subsection (d) of Section 12003 in the modified text published on August 11, 2014.

## **B. Section 12311 – Definitions.**

The current Section 12400 would be renumbered as Section 12311, with some amendments for accuracy and clarity. The meaning of the words and terms in this article may not be consistent with the meaning of similar words or terms used in other existing regulations. As a result, these definitions are necessary to ensure that the proposed regulations are clear, concise and easy to understand. The following amendments are proposed:

1. Subsection (a) – The current subsection (a) of Section 12400 would be retained in Section 12311 and amended to reference the definitions in Section 12002.

**Mr. Bates:** Section 12002 of the B&P code relates to Food and Agriculture. What section of the B&P code is being referenced? Perhaps, this is a typo and it should read “and Section 12002 of this division.”

**Recommended Response:** This comment is not germane to the modified text of the proposed action. No modifications were made in subsection (a) of Section 12311 in the modified text published on August 11, 2014. While this comment is not germane, a nonsubstantive, grammatical change to this subsection was made for clarity and to be consistent with the original intent. This change added clarifying language that does not change the meaning of this subsection. The subsection was changed to read as follows:

“(a) Except as otherwise provided in subsection (b), the definitions in Business and Professions Code section 19805 and Section 12002 of this division shall govern the construction of this chapter.”

The addition of the phrase “of this division” clarifies that the reference is to Section 12002 of Division 18 of Title 4 of the California Code of Regulations, and not section 12002 of the Business and Professions Code. Adding this language is a nonsubstantive grammatical, editorial change that has no regulatory effect.

### **C. Section 12313 – Financial Statements and Reporting Requirements.**

The current Section 12403 would be renumbered as Section 12313 with non-substantive edits for clarity and simplicity. Additionally, the following amendments are proposed:

1. Subsection (a) – The current reporting requirements of Section 12403 would be amended to include TPPPS companies and gambling businesses. The various license types would be specified for clarity. TPPPS companies and gambling businesses will have different information to submit on their annual financials than gambling enterprises due to the different natures of the entities. Therefore, the license types are individually referenced rather than trying to refer to them collectively as “licensees.”

**Mr. Bates:** This Licensee does not have access to the information required by this sentence, nor does it seek such information on the TPPPS company. It would be presumed that the TPPPS would also reject any requirement to share “all financial activities” with this licensee. Bay 101 believes this requirement is unclear, confusing, invasive, unreasonable and burdensome. Additionally, it would cause undue acrimony between the participants in the business operation if the financial activities of one party was ordered given to the competitor or adversary. This requirement is unreasonable and should be either dropped or reworded to clearly require the TPPPS to abide by this article, which seems to be the intent indicated in the SOR published

by the regulator. It should not require the licensee to prepare a financial statement on “all activities of the TPPPS company.”

**Recommended Response:** This comment is not germane to the modified text of the proposed action. No modifications were made in subsection (a) of Section 12313 in the modified text published August 11, 2014.

While this comment is not germane, a nonsubstantive, grammatical change to this subsection was made for clarity and to be consistent with the original intent. This change added clarifying language that does not change the meaning of this subsection. The subsection was changed to read as follows:

“(a) Each licensee shall prepare financial statements covering all the financial activities of the TPPPS company, the gambling business, or the gambling enterprise, as applicable, for each fiscal year, in accordance with generally accepted accounting principles, unless otherwise provided in this section.”

As used in Chapter 5, the term “licensee” includes owner licensees, as defined in subdivision (ad) of section 19805 of the Business and Professions Code, as well as holders of TPPPS or gambling business licenses or registrations. Clearly, the intent of subsection (a) of Section 12313 is to apply the requirement to prepare financial statements to all three license types. The addition of the phrase “as applicable” clarifies that the requirement applies to financial statements for the financial activities of the particular licensee. Adding this language is a nonsubstantive grammatical, editorial change that has no regulatory effect.

2. Subsection (a), paragraph (4) – The reference to those in Group III with gross revenue of less than \$500,000 per year would be changed to refer to the new Group IV.

**Mr. DaValle:** Mr. DaValle reiterated the Bureau’s previous comment concerning the option to submit a federal tax return in lieu of financial statements. [See comments I.C.1.a. and II.B.1.a. and b., above]

**Recommended Response:** This comment is not germane to the modified text of the proposed action. No modifications were made in paragraph (4) of subsection (a) of Section 12313 in the modified text published August 11, 2014.

3. Subsection (b) – The repetitive provision in paragraphs (2), (3), and (4) of subsection (b) of Section 12403 would be merged into subsection (b) of Section 12313 for simplicity and clarity. The remaining subsections would be renumbered accordingly.

**Mr. Bates:** This paragraph seems to be inconsiderate of the licensee’s constitutional rights to due process. Mere “concern” about the laundry list of areas which someone may have reviewed or analyzed is insufficient to grant the Bureau sweeping power to order significant monetary expenditure by a licensee. This may amount to a “taking.”

Any order of this nature should be sparingly used and ordered, after due consideration, review and decision by the Commission. To allow the Bureau to order a licensee to incur such financial burden without due process is not within their power nor can it be granted by regulation. This section should clearly state that such order may only be made after a “finding” by the Commission.

**Recommended Response:** This comment is not germane to the modified text of the proposed action. No modifications were made in subsection (b) of Section 12313 in the modified text published August 11, 2014.

4. Subsection (e) – The current subsection allows the Bureau or the Commission to require a licensee to engage an independent accountant, as specified, to perform a fraud audit if fraud or illegal acts are suspected. The phrase “by the Bureau or Commission” is being added at the end of the subsection as a nonsubstantive change to clarify by whom the fraud or illegal acts are suspected.

**Mr. Bates:** If there is a “suspicion of fraud or illegal acts,” the licensee must be afforded due process. Neither the Bureau nor the Commission has the power to order the licensee to waive its 5th amendment right. The bar is raised when the words “illegal activity and fraud” are bandied about. If there is suspicion that fraud or illegal activities are afoot then the investigative entity must use the tools available to it via the criminal procedure. It cannot use its administrative position to force a citizen to investigate itself for the benefit of the investigator and the detriment of self. This paragraph must be adjusted to provide for due process protection of the licensee or be deleted in its entirety.

**Recommended Response:** This comment is not germane to the modified text of the proposed action. This comment is directed at the provisions of this subsection in general and does not relate to the specific nonsubstantive clarifying change that was made. The provisions to which this comment pertains are part of a current regulation (subsection (d) of Section 12403) that is being renumbered as subsection (e) of Section 12313, without any substantive change. The only change being made is the addition of the phrase “by the Bureau or Commission” at the end of the subsection to clarify by whom the fraud or illegal acts are suspected.

#### **IV. COMMENT RECEIVED OUTSIDE THE PUBLIC COMMENT PERIODS**

The comment letter listed below was not received during any of the abovementioned public comment periods. While it is included in the rulemaking file, it has not been summarized or responded to.

- A. Letter dated July 21, 2014, from Mark Kelegian, representing the Oceans 11 Casino and the Crystal Casino.