

CALIFORNIA GAMBLING CONTROL COMMISSION
FINAL STATEMENT OF REASONS

REMOTE CALLER BINGO

CGCC-GCA-2009-02-C
CGCC-GCA-2009-04-C (partial)

HEARING DATE:

August 24, 2010

SUBJECT MATTER OF PROPOSED REGULATIONS:

Remote Caller Bingo: Remote Caller Bingo Vendors; Remote Caller Bingo Interim Licenses and Work Permits; Recognition of Authorized Organizations; and, Remote Caller Bingo Requirements

SECTIONS AFFECTED:

California Code of Regulations, Title 4, Division 18: Chapter 8, Article 1, Section 12480; Article 2, Section 12488; Article 3, Sections 12492, 12494 and 12496; Article 4, Sections 12498, 12499, 12501, 12502, 12504 and 12508

UPDATED INFORMATION:

The Initial Statement of Reasons, as published on June 18, 2010, is included in the file and is incorporated by reference as if fully set forth herein. The information contained therein is updated as follows:

INTRODUCTION:

Pursuant to its authority under Penal Code Sections 326.3, 326.4, 326.45, and 326.5, the California Gambling Control Commission (Commission) is proposing to amend and adopt regulations pertaining to remote caller bingo (RCB) games. The Commission previously adopted emergency regulations¹ which became effective April 24, 2009, that created an interim licensing process for license types pertaining to RCB games and recognition of nonprofit organizations that qualify to sponsor or cosponsor RCB games. The Commission also adopted emergency regulations² which set forth requirements for bingo equipment approval, standards of play, and audits. The intent of these proposed regulations is to amend and make permanent certain sections from those emergency regulations. The amendments were found to be necessary

¹ OAL File No. 2009-0414-02-E

² OAL File No. 2009-0508-02-E

to provide clarity, consistency, and technical clean-up due to recent statutory changes. In addition, the Commission is proposing to create a separate interim license type for businesses that provide bingo equipment, supplies, and services (i.e., vendors) to nonprofit organizations conducting RCB games, thus distinguishing them from manufacturers and distributors of bingo card-minding devices (CMDs).

EXISTING LAW:

Penal Code section 326.3, subdivision (b), specifies the requirements that nonprofit organizations must meet in order to be eligible to conduct RCB. Subdivision (q) requires that any person who conducts RCB games and any person who directly or indirectly manufactures or distributes supplies, devices, services, or equipment used in RCB games must be licensed by the Commission. In addition, subdivision (r) specifies that persons employed by an authorized organization performing “administrative,” “managerial,” “technical,” “financial,” and “security” duties must have work permits as defined in section 19805 of the Business and Professions Code.

Penal Code section 326.4 created the Charity Bingo Mitigation Fund (CBMF), for specified purposes,³ to be administered by the Commission.⁴ A loan to the CBMF from the accrued interest in the Indian Gaming Special Distribution Fund (SDF) was mandated in order for the CBMF to become immediately operable, and an appropriation was made, as specified.⁵ Provision for repayment of the loan was also included which requires nonprofit organizations conducting RCB games to pay to the Commission five percent (5%) of the gross revenues of each RCB game played until the loan is repaid, as specified.⁶

PROPOSED ACTION:

This proposed action amends and permanently establishes Section 12480 in Article 1; Section 12488 in Article 2; Sections 12492, 12493, and 12496 in Article 3; Sections 12500, 12501, 12503, 12504, and 12505 in Article 4; and Section 12508, in Article 5, of Chapter 8, Division 18, Title 4 of the California Code of Regulations. The amendments are follows:

I. Article 1. Definitions and General Provisions.

Section 12480. Definitions.

Subsection (a) provides that the definitions in Business and Professions Code section 19805 and Penal Code sections 326.3 and 326.5(p) shall govern the construction of regulations contained in this chapter, in addition to those definitions contained in the subsection (b) of this section. Subsection (b), for purposes of clarity, defines specific terminology as it relates to the recognition of authorized organizations conducting RCB, interim RCB licenses and work permits, interim licenses of manufacturers and distributors of RCB equipment and bingo CMDs, and vendors that provide equipment, supplies and services used in RCB games.

This proposal makes several amendments to subsection (b) as follows:

³ Penal Code § 326.4(a)

⁴ Penal Code § 326.4(b)

⁵ Penal Code § 326.4(d)(1)

⁶ Penal Code § 326.4(d)(2)

- Paragraph (1) is amended to clarify the activities related to “administrative duties.” It is defined to include all aspects of coordinating RCB games, including the planning, organizing, and scheduling with other organizations. Administrative duties may be performed by either a member of the organization or an individual that is employed by an organization as permitted by section 326.3(k)(1) of the Penal Code. The performance of administrative duties requires individuals to obtain a work permit and the definition is modified to be more appropriate by specifically deleting inapplicable descriptions such as controlling and budgeting of RCB games.
- Paragraph (5) is amended to delete the requirement that the caller must be a member of the organization and specifies that the caller shall be at the host game site. This is necessary since Penal Code section 326.3(k)(1) allows for an entity employed by the organization to conduct RCB if a written agreement is entered into; therefore, the caller may not be limited to “members” of the organization and could be an individual employed by or associated with the entity assisting with the conduct of RCB.
- Paragraph (7) is amended to delete references to distributing equipment, supplies, and services that pertain to RCB. The definition of a vendor in paragraph (39) will pertain to providers of equipment, supplies, or services used in the conduct of RCB games. This is necessary to differentiate between distributors of CMDs and providers of RCB services by more appropriately categorizing the latter as a vendor.
- Paragraph (8) is amended to delete the reference to a volunteer requiring a work permit when assisting in the conduct of RCB games in the specified categories. This was found to be necessary in order to be consistent with section 326.3(d) of the Penal Code, which allows individuals to be paid a reasonable fee, which would not apply to volunteers. The performance of these duties may be conducted by a member of the organization or an employee of a vendor that has a written agreement with the organization and is paid for their service pursuant to Penal Code section 326.3(k)(1).
- Paragraph (10) is amended to provide clarification that “financial duties” may be performed on behalf of an organization or a vendor. Penal Code section 326.3(k)(1) allows for an entity to conduct RCB if a written agreement is made with an authorized organization.
- Paragraph (15) is amended so that a fiduciary, site manager, or caller would not be limited to being directly associated with an authorized organization. Individuals performing these duties will require an interim license whether they are a member of an organization or are employed by a vendor. This was found to be necessary since Penal Code section 326.3(k)(1) allows a vendor to conduct RCB if a written agreement is made with an authorized organization. In addition, the proposed amendments pertaining to owner-licensees of a manufacturer, distributor, or vendor business would specify the three interim license types. This is necessary since the vendor license type pertains to RCB and would now be a separate license type.

- Paragraph (16) is deleted. The term, “Work permit” will be defined in paragraph (41).
- Paragraph (17) is renumbered as paragraph (16) and amended to specify that an individual that performs managerial duties may provide assistance to the licensed site manager. This is necessary to provide a clear definition and to distinguish between the performance of managerial duties, which require a work permit, and those of a site manager, which require a license.
- Paragraph (18) is renumbered as paragraph (17) and amended to delete reference to RCB services. This is technical clean-up since a provider of RCB services should not be considered a manufacturer. The provider of RCB services will be included in the definition of a vendor in paragraph (39).
- Paragraph (19) is renumbered as paragraph (18) and amended to clarify the definition of a member. This change is non-substantive.
- Paragraphs (20) through (23) are renumbered as (19) through (22) to conform to the foregoing renumbering.
- Paragraph (24) is renumbered as paragraph (23) and amended to add in the vendor license type. This is necessary since the vendor license type would now be separate. In addition, language would be added to specify that the owner is endorsed on the license certificate issued to the owner-licensee of the business, which is defined in the next paragraph. This will clarify that the owner does not receive an individual license certificate, but is instead associated with the certificate issued to the owner-licensee.
- Paragraph (25) is renumbered as paragraph (24) and amended to add in the vendor license type. This is necessary since the vendor license type pertains to RCB and would now be a separate license type.
- Paragraphs (26) through (28) are renumbered accordingly as paragraphs (25) through (27).
- Paragraph (30) is renumbered as (28). This definition is only amended to conform to the renumbering of the section reference therein.
- Paragraphs (31) and (32) are renumbered accordingly as paragraphs (30) and (31).
- Paragraph (33) is deleted. The term, “Work permit” is redefined in paragraph (41).
- Paragraphs (34) through (37) are renumbered accordingly as paragraphs (32) through (35).
- Paragraph (38) is renumbered as paragraph (36) and specifies that a site manager must be physically present at each RCB game site; is the person primarily responsible for the

game conduct, staff, and patrons at the site; and is responsible for obtaining the winner's information. Section 326.3 (p) of the Penal Code requires that the declared winner's information be reported to the on-site manager. This amendment specifies that this is part of a site manager's responsibility.

- Paragraph (39) is renumbered as paragraph (37).
- Paragraph (40) is renumbered as paragraph (38) and amended to clarify that the specified technical duties pertain to RCB equipment.
- Paragraph (41) is renumbered as paragraph (39) and amended to create a vendor license type that pertains to providers of equipment, supplies, and services used in RCB games. This distinguishes distributors of CMDs from vendors providing equipment, supplies and services used in RCB games. Although RCB related provisions pursuant to section 326.3 of the Penal Code and CMD related provisions pursuant to section 326.5 of the Penal Code were both associated with the chaptering of SB 1369, they have distinctly different purposes. The Commission licenses the manufacturers and distributors of CMDs and approves the CMDs for use in charitable bingo games, including both traditional bingo games and RCB games. The Commission also has been tasked with approving equipment, supplies, and services used solely in RCB games, including the licensing of the manufacturers, distributors, and vendors. It was determined to be more appropriate to separate the license types to make it clear that companies providing CMDs are distinct from those providing RCB equipment, supplies, or services by identifying the latter as vendors.
- Paragraph (40) is added to define a volunteer. This definition clarifies that a volunteer is a member of an organization who assists with the conduct of RCB games and is not compensated for the duties performed relating to RCB.
- Paragraph (41) is added to define the term "work permit" and to specify that a work permit is required for specific categories of duties and may be issued by the Commission or a local jurisdiction. This is necessary since Penal Code section 326.3(r) provides that work permits, as defined in Business and Professions Code section 19805, shall be obtained and maintained.

II. Article 2. Bingo Equipment, Devices, and Supplies.

Section 12488. Approval of Remote Caller Bingo Equipment.

- Subsection (a) clarifies that section 12488 does not apply to CMDs, which are governed by section 12486.
- Subsection (b) states that beginning on the effective date of this section, all equipment used to conduct RCB games must be approved by the Commission in advance, pursuant to Penal Code section 326.3(t)(1), and states that an interim approval process is established to avoid disruption of fundraising efforts by non-profit organizations as

expressed in Business and Professions Code section 19850.6 until specific procedures are established by the Commission through the regular rulemaking process.

- Subsection (c) provides a process for interim approval of RCB equipment. This subsection states that any authorized organization planning to conduct or cosponsor a RCB game must submit a written list of all equipment to be used during the game to the Commission 30 days in advance. This includes any equipment used to transmit or receive the live RCB game. The list must include: 1) the make and model numbers of the equipment; and 2) to the extent feasible, the name of the manufacturer, distributor, or vendor from which the equipment was purchased, leased or acquired. Unless disapproved by the Executive Director, the equipment shall be considered approved after 30 days. This process will provide minimal disruption to fundraising efforts and avoid requiring organizations to replace equipment by grandfathering in equipment already in use. In addition, submitting a list of equipment used will provide the Commission with a greater knowledge of the equipment in use.
- Subsection (d)(1) states that RCB equipment, except for audio and video equipment, purchased, leased, or acquired after the effective date of this section must be manufactured by a Commission-licensed manufacturer and distributed through a Commission-licensed distributor. Penal Code section 326.3(q)(1)(B) requires any person who manufactures, distributes, supplies, vends, or leases any RCB equipment to be licensed by the Commission. Section 12492 establishes a licensing process for manufacturers and distributors. In order to be consistent with the requirement that manufacturers and distributors be licensed and that all equipment be approved in advance, the Commission is requiring all equipment acquired after the effective date of these regulations to be acquired from a licensed manufacturer or distributor.
- Subsection (d)(2) states that audio and video equipment purchased after the effective date of this section which is used to transmit a live RCB game to a satellite location must either be:
 - A. Manufactured by a Commission-licensed manufacturer and distributed through a Commission-licensed distributor; or,
 - B. Be commercially available and able to transmit a live game from the host site to satellite locations in a secure, accurate, and simultaneous manner.

In subparagraph (A) of paragraph (2), the reference to *distributor* is deleted and replaced with *vendor*. This is necessary since the definitions have been amended to delete distributors of RCB equipment and supplies and instead define them as vendors. The existing technology that can be used for transmission of a bingo game, including cable, Internet, satellite, broadband, or telephone technology, is very expansive. The Commission does not want to unnecessarily burden organizations by requiring them to wait for purveyors of commercially available audio and video technology to have their equipment approved.

- Subsection (e) provides a one-year interim approval of RCB equipment. Provisions clearly establish that an interim approval does not guarantee an extension of the approval or the issuance of a regular approval, nor has it any bearing on whether the equipment and supplies will meet standards later established by the Commission through the regular rulemaking process.

III. Article 3. Manufacturers and Distributors of Bingo Equipment, Devices, and Supplies.

The title of Article 3 is amended to add in reference to a vendor license type.

Section 12492. Interim Licenses; Initial and Renewal; Conditions.

This section establishes the requirements for interim licenses and the associated conditions, for manufacturers and distributors of RCB equipment and supplies, and bingo CMDs. Section 12492 is amended throughout to add in a vendor license type. This distinguishes manufacturers and distributors of CMDs from vendors of RCB equipment, supplies, and services.

- Subsection (a) indicates that the interim approval process is established to avoid disruption of fundraising efforts by nonprofit organizations as expressed in Business and Professions Code section 19850.6.
- Subsection (b) requires any person who manufactures, distributes or provides RCB equipment, supplies or services, or bingo CMDs in this state to have a valid interim license issued by the Commission, as provided in section 326.3(q)(1)(B) of the Penal Code.
- Subsection (c) requires any manufacturer or distributor of CMDs, or any vendor providing RCB equipment, supplies or services in this state on or after April 24, 2009, to apply for an interim license within 30 days of the effective date of the section. The 30 day time period allowed manufacturers or distributors time to learn of the licensing requirement, prepare the application, and submit the application package to the Commission.
- Subsection (d) establishes a process for requesting an interim license as a manufacturer and distributor business. This section requires the owner licensee to submit an “Application for Interim License for Bingo Equipment Manufacturers and Distributors, CGCC-610,” a nonrefundable application fee in the amount of \$500.00, and, if an individual, either a completed “Request for Live Scan Service, California Department of Justice Form BCII 8016 (Rev 03/07),” confirming that the applicant has submitted his/her fingerprints to the BCII for an automated criminal history check, or two FBI fingerprint cards if the applicant is not a resident of California. This regulation is added as required by section 326.3(q)(2)(A) and section 326.5(p)(3)(B) of the Penal Code, which states the Department of Justice shall conduct a background investigation of all persons required to be licensed.

Paragraph (1) of subsection (d) is amended to reference a revised Application for Interim License for Manufacturers, Distributors, and Vendors of Bingo Equipment, Devices, Supplies, and Services, CGCC-610 (Rev. 03/10). The changes to the form would be as follows:

- The introductory paragraph would be amended to indicate that the Commission issues interim licenses to manufacturers and distributors of CMDs and any vendor providing bingo supplies, equipment, and services used in the playing of RCB games. The paragraph would further explain that an application is required from the “owner-licensee” and every “owner” with a 10 percent or greater interest in or significant influence over, the business. This will assist applicants in determining who is required to submit applications for an interim license.
- The third paragraph would be deleted and added to Section 2 since it applies to individual owner applicants.
- Section 1 would be amended by adding in the specific license categories for which an interim license is required. This will further define the license type and provide more clarity to the applicant by making it more specific.
- Section 2 would be amended to provide an explanation of an owner-licensee, an individual owner applicant, and owner entity applicants.
- Section 3a would delete the reference in the instructions that the applicant only needs to disclose business locations where it manufacturers or distributes bingo equipment. The Commission would need to know the principal place of business and if there are any other locations within California.
- Section 3c would add that the applicant is only required to disclose new information not previously disclosed to the Commission. This relieves the applicant from having to provide the same information and documentation annually.
- Section 4 would be deleted. This section was previously included as a means to gather information about the various bingo related devices, equipment, and supplies in which a company was involved. This area provided the Commission with some initial information; however, it is no longer necessary and may be confusing to the applicant.
- Section 5a and 5b would be renumbered as 4a and 4b respectively.
- Section 6 would be renumbered as Section 5.
- Section 7 would be renumbered as Section 6. In addition, condition (5) would be amended to reference the amended section number.

The application form is needed in order to obtain the necessary information regarding the business, its organization structure, its authorized representative, and the equipment and supplies the business provides. In order for the Department of Justice to conduct a criminal history background on individual owner applicants, the Live Scan form or two FBI fingerprint cards must be submitted. There are Live Scan providers located throughout California that scan the fingerprints electronically for submission to the BCII. The FBI fingerprint cards are needed for individuals that may reside outside of California. In this case the applicant would need to submit the fingerprint cards to the Commission with their application.

In addition, the Commission has determined that the \$500.00 application fee is consistent with the current \$500.00 application fee assessed for the registration of Class A Gambling Equipment Manufacturers and Distributors, pursuant to section 12008(f)(1). The registration for Gambling Equipment Manufacturers and Distributors is valid for one year and must be renewed annually with the Commission. This registration process has not yet been expanded to full licensure of the business and its owners; however, the staff workload and administrative costs would be the same.

- Subsection (e) establishes a process for requesting an interim license as an owner of a manufacturer or distributor business. The owner shall submit an “Application for Interim License for Bingo Equipment Manufacturers and Distributors, CGCC-610 (New 03/09),” a nonrefundable application fee in the amount of \$500.00, and, if an individual, either a completed “Request for Live Scan Service, California Department of Justice Form BCII 8016 (Rev 03/07),” confirming that the applicant has submitted his/her fingerprints to the BCII for an automated criminal history check, or two FBI fingerprint cards if the applicant is not a resident of California. This regulation is added to include interim licensure of persons who have a 10 percent or greater ownership interest in the manufacturer or distributor business and as required by section 326.3(q)(2)(A) of the Penal Code, which states the Department of Justice shall conduct a background investigation of all persons required to be licensed. The requirement that owners with a 10 percent or greater ownership interest must apply for an interim license lessens the burden on the shareholders and still allows for a review of owners with substantial holdings and significant influence over the business.

The application form is needed in order to obtain the necessary information regarding the applicant to determine suitability for an interim license. In order for the Department of Justice to conduct a criminal history background on the individual owner applicant, the Live Scan form or two FBI fingerprint cards must be submitted. There are Live Scan providers located throughout California that scan the fingerprints electronically for submission to the BCII. The FBI fingerprint cards are needed for individuals that may reside outside of California. In this case the applicant would need to submit the fingerprint cards to the Commission with their application.

In addition, the Commission has determined that the \$500.00 application fee is consistent with the current \$500.00 application fee assessed for the registration of Class A Gambling Equipment Manufacturers and Distributors pursuant to section 12008(f)(1).

The registration for Gambling Equipment Manufacturers and Distributors is valid for one year and must be renewed annually with the Commission. This registration process has not yet been expanded to full licensure of the business and its owners; however, the staff workload and administrative costs would be the same for the owners of the bingo equipment manufacturers and distributors.

- Subsection (f) provides that interim license approvals are valid for one year and are subject to specific conditions, including that the interim license may be renewed if regulations have not been adopted that specify the criteria for a regular license; the holder of an interim license must submit a regular application package within 30 days after the effective date of the adopted regulations and that if no response is received the interim license will not be eligible for renewal; an interim license does not obligate the Commission to issue a regular license nor does it create a vested right in the holder to either a renewal of the interim license or the granting of a subsequent regular license; the issuance of an interim license has no bearing on whether the holder will qualify for issuance of any Commission permit, registration, or license. This section also establishes a process to be followed in the event the Commission subsequently determines the holder is disqualified and provides due process and an opportunity to be heard before the interim license is cancelled.
- Subsection (g) establishes a process for a manufacturer or distributor owner licensee to request to renew an interim license by submitting an “Application for Interim License for Bingo Equipment Manufacturers and Distributors, CGCC-610 (New 03/09)” and a nonrefundable application fee of \$500.00 no later than 90 days prior to the expiration date of the interim license. This section is added to establish a renewal process in the event the regular regulations are not adopted by the time the initial interim license expires.

The Commission has determined that the \$500.00 application fee is consistent with the current \$500.00 annual application fee assessed for the registration of a Class A Gambling Equipment Manufacturers and Distributors pursuant to section 12008(f)(1).

- Subsection (h) establishes a process for manufacturer and distributor owners to renew an interim license by submitting an “Application for Interim License for Bingo Equipment Manufacturers and Distributors, CGCC-610 (New 03/09)” and a nonrefundable application fee of \$500.00 no later than 90 days prior to the expiration date of the interim license. This section is added to establish a renewal process in the event the regular regulations are not adopted by the time the initial interim license expires.

The Commission has determined that the \$500.00 application fee is consistent with the current \$500.00 application fee assessed for the registration of Class A Gambling Equipment Manufacturers and Distributors pursuant to section 12008(f)(1). The registration for Gambling Equipment Manufacturers and Distributors is valid for one year and must be renewed annually with the Commission. This registration process has not yet been expanded to full licensure of the business and its owners; however, the staff

workload and administrative costs would be the same for the owners of the bingo equipment manufacturers and distributors.

- Subsection (i) provides that each application for an initial or renewal interim license shall be reviewed and if found to be complete and correct, be set for consideration at a Commission meeting; but if found to not satisfy the requirements for interim licensure, the applicant will be provided with a written list of deficiencies.
- Subsection (j) specifies that a renewal interim license shall be valid for one year from the date of approval or from the expiration of the prior interim license, whichever is later. This section is added in the event the regular license regulations are not adopted by the time the initial interim license expires.

Section 12494. Interim License Denial; Applicant Disqualification.

- Section 12494 is renumbered as Section 12493 in order to allow Section 12494 to be used for a future regulation.

This section provides that an interim license shall be denied by the Commission if the applicant meets any of the criteria in subdivisions (b) through (f) of section 19859 of the Business and Professions Code or if the applicant is less than 18 years of age. This is added to ensure that individual manufacturer and distributor business owners are suitable for an interim license based on a review of their criminal history, if any, and that the applicant is not a minor, as specified in section 326.3(g) of the Penal Code.

The requirements and procedures for issuance of RCB interim licenses and work permits follow the same general pattern as the procedures for approving temporary cardroom employee work permits (4 CCR §§ 12120 and 12122) and temporary third-party proposition player registrations (4 CCR §§ 12203.1 and 12203.2) – both of which rely on only select provisions from Business and Professions Code section 19859, specifically subdivisions (b), (e), (f) or (g). In the case of the interim RCB licenses and work permits, the Commission is relying on subdivisions (b) through and including (f) of section 19859. Subdivision (g) is not applicable since it establishes the minimum age requirement at 21 years and Penal Code section 326.3(g) simply provides that “[n]o minors shall be allowed to participate in any RCB game.”

For the purposes of issuing interim licenses and interim work permits, it is not only sufficient and appropriate to rely on somewhat abbreviated grounds for denial in order not to delay implementation of the California Remote Caller Bingo Act (CRCBA), but also to avoid any unnecessary disruption of fundraising efforts by nonprofit organizations. Waiting for the completion or near completion of detailed background investigations conducted by the Bureau of Gambling Control (Bureau) in order to apply the standards specified in Business and Professions Code sections 19857 (a) or 19859 (a) would not be practical given the express legislative intent set forth in Business and Professions Code section 19850.6.

This regulation specifies that an individual “less than 18 years of age” is not eligible for licensure. While this reference to an individual’s age may at first seem inconsistent with subdivision (g) of Business and Professions Code section 19859, subdivision (g) is not being cited as a basis for denial. Business and Professions Code section 19850.5 specifies that the provisions of the Gambling Control Act apply to the regulation of RCB, only to the extent expressly made applicable by Penal Code section 326.3. It is noted that subdivision (g) of section 19859 has not expressly been made applicable to RCB by section 326.3. However, even if section 19859 were applicable and was determined to be in conflict with subdivision (f) of section 326.3, the provision that most directly applies to the subject program should prevail – in this case subdivision (f) of section 326.3.

Furthermore, because subdivision (f) of section 326.3 uses the term “minors,” and the term “minor” in this context is commonly understood to mean individuals “under 18 years of age,” the age 18 minimum specified in the proposed regulation is appropriate. This is supported by the definitions of “minor” found in Welfare and Institutions Code section 101, subdivision (b), and in Family Code section 6500.

Section 12496. Change of Business Location.

- This section requires that manufacturers and distributors notify the Commission in writing of new California business locations, or terminations of existing business locations within 15 days following the change. This information is needed for communication purposes and for services of notices. Section 12496 is amended by adding in the vendor license type. This is necessary since the vendor license type is being added to Chapter 8.

IV. Article 4. Remote Caller Bingo Interim Licenses and Interim Work Permits.

Section 12498. Interim Licenses; Initial and Renewal; Conditions.

Section 12498 is renumbered as Section 12500 in order to allow for Section 12498 to be used for a future regulation.

- Subsection (a) indicates that the interim approval process is established to avoid disruption of fundraising efforts by nonprofit organizations as expressed in Business and Professions Code section 19850.5.
- Subsection (b) stipulates that persons performing the duties of a “fiduciary,” “site manager,” or “caller” must have a valid interim license issued by the Commission. This subsection reinforces the provisions of section 326.3(q)(1)(A) of the Penal Code. This subsection also includes language that permits an individual to hold more than one interim license type simultaneously, but limits them to performing in the capacity of only one during the same RCB game or session. In other words, a person holding both a site manager interim license and a caller interim license could not perform as both the caller and site manager of a particular RCB session. It is not possible for one individual to perform both functions at the same time and devote adequate attention or supervision to the associated tasks. As for the fiduciary, there is an inherent conflict of interest between the duties and functions of a fiduciary and any other license or position. To allow the

fiduciary to also be the site manager for a RCB session would violate even the most basic of minimum internal controls.

- Subsection (c) requires that any “fiduciary,” “site manager,” or “caller” applying for an initial interim license submit an “Application for Interim License for Remote Caller Bingo, CGCC-620,” a nonrefundable application fee in the amount of \$50.00, and a completed “Request for Live Scan Service, California Department of Justice Form BCII 8016 (Rev 03/07)” confirming that the applicant has submitted his/her fingerprints to the BCII for an automated criminal history check and response. This regulation is required by section 326.3(q)(2)(A) of the Penal Code, which states the Department of Justice shall conduct a background investigation of all persons required to be licensed.

Paragraph (1) of subsection (c) is amended to reference a revised “Application for Interim License for Remote Caller Bingo, CGCC-620 (Rev. 03/10).” The form is revised as follows:

- In Section 1, an option is added for the applicant to indicate the organization or the vendor they are associated with. Clarification is also added regarding the application fee’s applicability to each license type applied for. This is necessary to conform to the amendment of subsection (b) which allows an individual to apply for more than one interim license at a time.
- In Section 2, the definitions of “Caller” and “Site Manager” are revised to be consistent with changes in the corresponding definitions in subsection (b) of Section 12480.
- In Section 3a, an option is added for the applicant to indicate their association with the authorized organization or vendor. This provides consistency with the regulation and allows the applicant to indicate their association with either.
- In section 5, condition (5) would be revised to reference an amended section number.

The application form is needed in order to obtain the necessary information regarding the applicant to determine suitability for an interim license. In order for the Department of Justice to conduct a criminal history background on the applicant, the Live Scan form must be submitted. There are Live Scan providers located throughout California that scan the fingerprints electronically for submission to the BCII. The Commission has determined that the \$50.00 application fee is adequate to cover the interim application processing costs. This fee may be reassessed upon development of regulations establishing the regular licensing criteria.

- Subsection (d) provides that interim license approvals are valid for one year from the date of approval and are subject to specific conditions, including that the interim license may be renewed if regulations have not been adopted that specifies the criteria for a regular license; the holder of an interim license must submit a regular application package within 30 days after the effective date of the adopted regulations and that if no response is

received the interim license will not be eligible for renewal; an interim license does not obligate the Commission to issue a regular license nor does it create a vested right in the holder to either a renewal of the interim license or the granting of a subsequent regular license; the issuance of an interim license has no bearing on whether the holder will qualify for issuance of any Commission permit, registration, or license. This section also establishes a process to be followed in the event the Commission subsequently determines the holder is disqualified and provides due process and an opportunity to be heard before the interim license is cancelled.

In paragraph (5), the reference to Section 12499 is amended to reflect the amended section number, 12501.

- Subsection (e) requires any “fiduciary,” “site manager,” or “caller” applying to renew an interim license to submit an “Application for Interim License for Remote Caller Bingo, CGCC-620,” and a nonrefundable application fee of \$50.00 no later than 90 days prior to the expiration date of the license. The Commission has determined that the \$50.00 application fee is adequate to cover the interim application processing costs. This fee may be reassessed upon development of regulations establishing the regular licensing criteria.

The form revision date is amended to conform to the change discussed under subsection (c), paragraph (1).

- Subsection (f) provides that each application for initial or renewal interim license shall be reviewed and if found to be complete and correct, be set for consideration at a noticed Commission meeting; but if found to not satisfy the requirements for interim licensure, the applicant will be provided with a written list of deficiencies.
- Subsection (g) specifies that a renewal interim license shall be valid for one year from the date of approval or from the expiration of the prior interim license, whichever is later. This section is added in the event the regular license regulations are not adopted by the time the initial interim license expires.

Section 12499. Interim License Denial; Applicant Disqualification.

Section 12499 is renumbered as Section 12501 in order to allow for Section 12499 to be used for a future regulation.

- This section provides that an interim license shall be denied by the Commission if the applicant meets any of the criteria in subdivisions (b) through (f) of section 19859 of the Business and Professions Code or if the applicant is less than 18 years of age. This is added to ensure that persons conducting RCB are suitable based on a review of their criminal history, if any, and that the applicant is not a minor as specified in section 326.3(g) of the Penal Code.

The requirements and procedures for issuance of RCB interim licenses and work permits follow the same general pattern as the procedures for approving temporary cardroom employee work permits (4 CCR §§ 12120 and 12122) and temporary third-party proposition player registrations (4 CCR §§ 12203.1 and 12203.2) – both of which rely on only select provisions from Business and Professions Code section 19859, specifically subdivisions (b), (e), (f) or (g). In the case of the interim RCB licenses and work permits, the Commission is relying on subdivisions (b) through and including (f) of section 19859. Subdivision (g) is not applicable since it establishes the minimum age requirement at 21 years and Penal Code section 326.3(g) simply provides that “[n]o minors shall be allowed to participate in any RCB game.”

For the purposes of issuing interim licenses and interim work permits, it is not only sufficient and appropriate to rely on somewhat abbreviated grounds for denial in order not to delay implementation of the CRCBA, but also to avoid any unnecessary disruption of fundraising efforts by nonprofit organization. Waiting for the completion or near completion of detailed background investigations conducted by the Bureau of Gambling Control (Bureau) in order to apply the standards specified in Business and Professions Code sections 19857 (a) or 19859 (a) would not be practical given the express legislative intent set forth in Business and Professions Code section 19850.6.

This regulation specifies that an individual “less than 18 years of age” is not eligible for licensure. While this reference to an individual’s age may at first seem inconsistent with subdivision (g) of Business and Professions Code section 19859, subdivision (g) is not being cited as a basis for denial. Business and Professions Code section 19850.5 specifies that the provisions of the Gambling Control Act apply to the regulation of RCB, only to the extent expressly made applicable by Penal Code section 326.3. It is noted that subdivision (g) of section 19859 has not expressly been made applicable to RCB by section 326.3. However, even if section 19859 were applicable and was determined to be in conflict with subdivision (g) of section 326.3, the provision that most directly applies to the subject program should prevail – in this case subdivision (g) of section 326.3.

Furthermore, because subdivision (g) of section 326.3 uses the term “minors,” and the term “minor” in this context is commonly understood to mean individuals “under 18 years of age,” the age 18 minimum specified in the proposed regulation is appropriate. This is supported by the definitions of “minor” found in Welfare and Institutions Code section 101, subdivision (b), and in Family Code section 6500.

Section 12501. Interim Work Permits; Initial and Renewal; Conditions.
Section 12501 is renumbered as Section 12503.

- Subsection (a) states that no person may act in the capacity of an employee of an authorized organization conducting RCB games without a valid work permit issued by the Commission. This subsection is amended by adding a reference to the definition of an “employee” and deleting the requirement that an employee be directly associated with an authorized organization. This helps to clarify that an employee may be associated with the organization or a vendor that the organization has a written agreement with for

the conduct of the games. In addition, language is added to indicate that a work permit could be issued by a city, county, or city and county thereby maintaining the authority and discretion of local jurisdictions and avoiding unnecessary duplication.

- Subsection (b) requires any person applying for an initial interim work permit to submit an “Application for Remote Caller Bingo Work Permit, CGCC-622,” which requires the applicant to state his/her category of duties as “administrative,” “managerial,” “technical,” “financial,” or “security.” The application fee is established at \$50.00. A Request for Live Scan Service, California Department of Justice, Form BCII 8016 (Rev. 03/07) is also required to confirm the applicant has submitted his/her fingerprints to the BCII for an automated criminal history check and response. This is required by section 326.3(q)(2) of the Penal Code.

The application form is needed in order to obtain the necessary information regarding the applicant to determine suitability for an interim work permit. In order for the Department of Justice to conduct a criminal history background on the applicant, the Live Scan form must be submitted. There are Live Scan providers located throughout California that scan the fingerprints electronically for submission to the BCII. The Commission has determined that the \$50.00 application fee is adequate to cover the interim application processing costs. This fee may be reassessed upon development of regulations establishing the regular work permit criteria.

Paragraph (1) of subsection (b) is amended to reference a revised “Application for Interim Work Permit for Remote Caller Bingo, CGCC-622 (Rev. 03/10).” The application is revised as follows:

- The introductory paragraph is revised to be consistent with changes to the regulation text.
- In Section 1, an option is added for the applicant to indicate the organization or the vendor they are associated with.
- In Section 2, an option is added for the applicant to indicate their association with the authorized organization or vendor. This provides consistency with the regulation and allows the applicant to indicate their association with either.
- In section 5, condition (5) is amended to reference an amended section number.
- Subsection (c) provides that interim work permit approvals are valid for one year from the date of approval and are subject to specific conditions, including that the interim work permit may be renewed if regulations have not been adopted that specifies the criteria for a regular work permit; the holder of an interim work permit must submit a regular application package within 30 days after the effective date of the adopted regulations and that if no response is received the interim work permit will not be eligible for renewal; an interim work permit does not obligate the Commission to issue a regular work permit nor does it create a vested right in the holder to either a renewal of the interim work permit or

the granting of a subsequent regular work permit; the issuance of an interim work permit has no bearing on whether the holder will qualify for issuance of any Commission permit, registration, or license. This section also establishes a process to be followed in the event the Commission subsequently determines the holder is disqualified and provides due process and an opportunity to be heard before the interim work permit is cancelled.

In paragraph (5), the reference to Section 12502 is amended to reflect the amended section number, 12504.

- Subsection (d) requires any holder of an interim work permit applying for a renewal of an interim work permit to submit an “Application for Interim Work Permit for Remote Caller Bingo CGCC-622,” and a nonrefundable application fee of \$50.00 no later than 90 days prior to the expiration date of the interim work permit. The Commission has determined that the \$50.00 renewal application fee is adequate to cover the interim application processing costs. This fee may be reassessed upon development of regulations establishing the regular work permit criteria.

The form revision date is amended to conform to the change discussed under subsection (b), paragraph (1).

- Subsection (e) establishes that each application for initial or renewal interim work permit shall be reviewed and if found to be complete and correct, be set for consideration at a noticed Commission meeting; but if found to not satisfy the requirements for interim work permit, the applicant will be provided with a written list of deficiencies.

Section 12502. Interim Work Permit Denial; Applicant Disqualification.

Section 12502 is renumbered as Section 12504.

- This section provides that an interim license shall be denied by the Commission if the applicant meets any of the criteria in subdivisions (b) through (f) of section 19859 of the Business and Professions Code or if the applicant is less than 18 years of age. This is added to ensure that persons conducting RCB are suitable based on a review of their criminal history, if any, and that the applicant is not a minor as specified in section 326.3(g) of the Penal Code.

The requirements and procedures for issuance of RCB interim licenses and work permits follow the same general pattern as the procedures for approving temporary cardroom employee work permits (4 CCR §§ 12120 and 12122) and temporary third-party proposition player registrations (4 CCR §§ 12203.1 and 12203.2) – both of which rely on only select provisions from Business and Professions Code section 19859, specifically subdivisions (b), (e), (f) or (g). In the case of the interim RCB licenses and work permits, the Commission is relying on subdivisions (b) through and including (f) of section 19859. Subdivision (g) is not applicable since it establishes the minimum age requirement at 21 years and Penal Code section 326.3(g) simply provides that “[n]o minors shall be allowed to participate in any RCB game.”

For the purposes of issuing interim licenses and interim work permits, it is not only sufficient and appropriate to rely on somewhat abbreviated grounds for denial in order not to delay implementation of the CRCBA, but also to avoid any unnecessary disruption of fundraising efforts by nonprofit organization. Waiting for the completion or near completion of detailed background investigations conducted by the Bureau of Gambling Control (Bureau) in order to apply the standards specified in Business and Professions Code sections 19857 (a) or 19859 (a) would not be practical given the express legislative intent set forth in Business and Professions Code section 19850.6.

This regulation specifies that an individual “less than 18 years of age” is not eligible for licensure. While this reference to an individual’s age may at first seem inconsistent with subdivision (g) of Business and Professions Code section 19859, subdivision (g) is not being cited as a basis for denial. Business and Professions Code section 19850.5 specifies that the provisions of the Gambling Control Act apply to the regulation of RCB, only to the extent expressly made applicable by Penal Code section 326.3. It is noted that subdivision (g) of section 19859 has not expressly been made applicable to RCB by section 326.3. However, even if section 19859 were applicable and was determined to be in conflict with subdivision (g) of section 326.3, the provision that most directly applies to the subject program should prevail – in this case subdivision (g) of section 326.3.

Furthermore, because subdivision (g) of section 326.3 uses the term “minors,” and the term “minor” in this context is commonly understood to mean individuals “under 18 years of age,” the age 18 minimum specified in the proposed regulation is appropriate. This is supported by the definitions of “minor” found in Welfare and Institutions Code section 101, subdivision (b), and in Family Code section 6500.

Section 12504. Recognition of Organizations Conducting Remote Caller Bingo Games.
Section 12504 is renumbered as Section 12505.

- Subsection (a) indicates that no organization may conduct RCB games in California unless they have been recognized by the Commission as being eligible. This establishes a process for the Commission to ensure that RCB games are being conducted only by organizations that are eligible pursuant to section 326.3(b)(1) through (5).
- Subsection (b) indicates that any organization requesting recognition must meet the requirements specified in section 326.3(b)(1) through (5) of the Penal Code and submit a “Statement of Eligibility to Conduct Remote Caller Bingo, CGCC-618 (New 03/09)” with a nonrefundable fee of \$50.00. The form is needed in order to uniformly collect eligibility information from the organization. In addition, the Commission has determined that the \$50.00 processing fee is adequate to cover the processing costs.
- Subsection (c) requires any organization recognized by the Commission to annually submit a “Statement of Eligibility to Conduct Remote Caller Bingo, CGCC-618 (New 03/09)” specifying any changes in the information included in the organization’s previous statement of eligibility and a nonrefundable fee of \$25.00 no later than 120 calendar days after the close of the organization’s fiscal year. It is anticipated that this will coordinate

with the submission to the Commission of audit reports required pursuant to section 326.3(w)(2) of the Penal Code. The Commission has determined that the \$25.00 processing fee is reasonable and adequate to cover the processing costs.

- Subsection (d) establishes that each statement shall be reviewed and if found to be complete and correct, be set for consideration at a noticed Commission meeting; but if found not to satisfy the requirements, the applicant shall be provided a letter declining to recognize the organization along with a written list of deficiencies.

V. Article 5. Remote Caller Bingo Requirements; Standards of Play.

Section 12508. Requirements for Organizations.

The title of Section 12508 is revised from “Requirements for Organizations” to “Remote Caller Bingo Requirements.” This title is more appropriate as this section encompasses requirements for vendors as well as organizations. This section organizes and consolidates many of the requirements of Penal Code section 326.3 in one place, thus allowing organizations to more easily find and follow the law [subsections (c), (d), (e), and (f)]. In order to be clear regarding requirements for RCB games and to delete duplication of some statutory language this section is amended as follows:

- Subsection (a) is amended to indicate that an organization conducting RCB must be recognized by the Commission pursuant to Section 12505. The current provision of this subsection concerning the length of existence of the organization is deleted as it unnecessarily reiterated an existing statutory provision.
- Subsection (b) is amended to indicate that any vendor providing RCB services and assisting with the conduct of the game must have a valid interim license issued by the Commission. This was not previously addressed in this section, but is necessary to inform RCB participants of the licensure requirement when a vendor is providing services. The current provision of this subsection concerning licensure at the local level is deleted as it unnecessarily reiterated an existing statutory provision.
- The current subsection (c) is deleted and replaced by a new subsection (c), consolidating former subsections (e), (f) and (g), to require that organizations and vendors retain records, written in English, in California, for a period of five years. This makes the requirement applicable to organizations and to vendors that provide RCB services to organizations. This subsection is intended to ensure that records are available to Commission staff for auditing purposes and are in a format that staff can read.
- Paragraph (1) of subsection (c) incorporates the provisions of former subsection (e). Those provisions are amended by deleting, at the beginning of the sentence, language pertaining only to organizations. The requirement, then, applies to organizations that conduct RCB games and to vendors that provide RCB services to organizations.

- Paragraph (2) of subsection (c) is added to indicate that records shall include the names and license and permit numbers of all organization members, including volunteers, and any vendor conducting or providing RCB services. It is necessary for the organizations and vendors to maintain these records in the event there are any disputes regarding the conduct of the game. As part of a bingo game there may be volunteers assisting in some capacity that does not necessarily require a license or permit; however, it may be necessary to determine who was present during a particular game, so it is important to keep a record of all individuals whether licensed/permitted or not.
- The current subsection (d) is deleted and its provisions become paragraph (2) of subsection (e). The requirements of current subsection (i) become the new subsection (d), and are amended to include vendors with organizations in the requirement to have records audited at least annually and copies of the reports provided to the Commission within 120 days after the close of their respective fiscal year. This is necessary since the vendor may be receiving fees from RCB game proceeds depending on the extent the vendor is assisting with the conduct of the game. This will assist in the verification of compliance in that financial records of the vendor and organization may be compared to determine if the statutory requirements or limitations regarding overhead expenses and prize payout amounts are being adhered to. The Commission has this authority and responsibility pursuant to sections 326.3(k)(1) and 326.3(w) of the Penal Code. Specifically, section 326.3(k)(1) specifies that any entity that has a written agreement with an organization must comply with the Gambling Control Act⁷.
- The current subsection (e) is renumbered as paragraph (1) of subsection (c). A new subsection (e) is added that specifies the requirements, in addition to those included in subsections (c) and (d), that apply only to organizations conducting RCB. These requirements are simply a consolidation and renumbering of what were previously included in separate subsections. Paragraph (1) was previously subsection (c), paragraph (2) was previously subsection (d), and paragraph (3) was previously subsection (h). These were and continue to be simple restatements of statutory provisions contained in Penal Code section 326.3.⁸ These statutory provisions are being duplicated here for convenience and ease of reference. Penal Code section 326.3 is relatively lengthy and many of these provisions are scattered throughout making them difficult to reference. Consolidating them here will make it easier for organizations, vendors and the general public to reference.

In addition, a provision is added in paragraph (3) that addresses and clarifies how organizations are to submit the loan reimbursement payments specified in Penal Code section 326.4.⁹ The statute created the CBMF¹⁰ and provided for a loan from the accrued interest in the SDF.¹¹ Provision for repayment of the loan was also included

⁷ Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code

⁸ Section 326.3(b)(5) – paragraph (1); section 326.3(b)(4) – paragraph (2); and section 326.3(w)(2) – paragraph (3)

⁹ Penal Code section 326.4(d)(2)

¹⁰ Penal Code section 326.4(a)

¹¹ Penal Code section 326.4(d)(1)

which requires nonprofit organizations conducting RCB games to pay to the Commission 5 percent of the gross revenues of each RCB game played until the loan is repaid, but the frequency and manner of submitting payments is not specified.

Submitting the payment with the quarterly submission of records will benefit both the organizations and the Commission in several ways. Establishing a schedule for the payments provides clarity and certainty; everyone will know when the payments are due. Submitting the payment with the records will provide the Commission with a convenient way to confirm the amount due. Bringing these payments in on a regular basis will also speed repayment of the loan. The quarterly schedule of payments also seems to strike a reasonable balance between requiring payments after the completion of each RCB session and requiring an annual payment with the submission of the organization's annual audit report.

- The current subsection (f) is deleted and its provisions incorporated into subsection (c).
- The current subsection (g) is deleted and its provisions incorporated into subsection (c).
- The current subsection (h) is deleted and its provisions incorporated into paragraph (3) of subsection (e).
- The current subsection (i) is deleted and its provisions incorporated into subsection (d).
- The current subsection (j) would be renumbered as subsection (f). This subsection was and continues to be a simple restatement [paragraphs (1) – (7)] of statutory provisions contained in Penal Code section 326.3.¹² As with various other statutory provisions, these provisions are being duplicated in this section for convenience and ease of reference. Penal Code section 326.3 is relatively lengthy and many of the provisions being consolidated in this section are scattered throughout the statute making them difficult to reference. Consolidating them here will make it easier for organizations, vendors and the general public to reference.
- Paragraph (8) of the new subsection (f) is amended to refer to submission of a copy of the local ordinance for each city, county, or city and county in which the game will be played. This is necessary to conform to recently enacted legislation¹³ that change the reference to “*the counties*” to “*any city, county, or city and county,*” in subparagraph (H) of paragraph (4) of subdivision (j) of section 326.3 of the Penal Code.

¹² Penal Code section 326.3(j)(4)

¹³ Chapter 562, Statutes of 2009 (SB 126, Cedillo), SEC. 2.

REQUIRED DETERMINATIONS:

Local Mandate:

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

Small Business Impact:

The Commission has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Consideration of Alternatives:

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

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

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

COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

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

A. 45-Day Written Comment Period

The following comments/objections/recommendations regarding the proposed action were received from David Fried, representing LIF Capitol Group LLC and Pacific Gaming LLC, during the 45-day written comment period that closed August 2, 2010:

1. DEFINITION OF "BINGO EQUIPMENT" § 12480(b)(3) defines "bingo equipment" as including "... any card-minding device; the point of sale system for card-minding devices; all network and telecommunications equipment used to communicate from the calling station to card-minding devices; the calling station and all related equipment; the main flashboard and all related equipment, the balls, the verifier, and the game pacer used in the playing of remote caller bingo games."

Comment/Recommendation:

The definition of "bingo equipment" does not distinguish between generic computer equipment that can be purchased off the shelf at a store, and custom equipment. This causes a host of problems and does not serve any regulatory purpose.

Under (b)(3), bingo equipment includes:

- The point of sale system (which is software that resides on computers you can buy off the shelf at any store)
- All network and communications equipment (also generic equipment)
- The calling station and all related equipment (some of which can be on a standard generic computer)
- The verifier (again, software running on a standard generic computer)
- Game Pacer (which also can be on a standard generic Computer)

Under §12488, “any equipment used in the conduct of RCB must be approved by the Commission in advance.” This section excludes card minding devices (subsection (a)) but includes **all of** the above related equipment which may be supplied with card minding devices. But card minding companies do not manufacture this “off the shelf” equipment. Subsection (d)(2)(B) does exclude audio/video equipment that is “commercially available.” *But why not extend this to all “commercially available” electronic or computer equipment?*

We suggest that the definition except general purpose computer and electronic equipment:

“Bingo Equipment” does not include computer, electronic, network or telecommunications equipment made for general commercial use.

Response:

This comment/recommendation is rejected as it is not germane to the proposed regulatory action. While the proposed action does include several amendments to Section 12480, the definition of “bingo equipment” is not included in those amendments, and is not related to the subject of the proposed action. The purpose and intent of this proposed action is very narrowly focused on certain amendments that were found to be necessary to provide clarity, consistency, and technical clean-up due to recent statutory changes. These amendments relate, primarily, to the licensing of employees and volunteers of nonprofit organizations and employees of companies providing services to organizations. In addition, the Commission is proposing to establish a clear distinction between the interim license type for manufacturers and distributors of bingo CMDs and those businesses that only provide RCB equipment, and administrative, managerial and staffing services (i.e., vendors) to nonprofit organizations to assist them in conducting RCB games.

However, it should also be mentioned that this definition will be addressed in another rulemaking concerning CMDs and their manufacturers/distributors. That rulemaking is currently being developed and should be made available for informal public review and discussion very soon.

2. DEFINITION OF A “GAME” § 12480(b)(11) defines “game” as “*beginning when the first ball or number symbol is called and ends when all succeeding balls or number symbols are returned to the cage or blower and the machine has been cleared.*” It also provides that “[a] game may have two or more parts with different winning patterns for each part.”

Comment/Recommendation:

This definition defines a bingo game as ending when bingo balls are returned to a cage or blower and the blower is cleared. There are three separate problems with this definition.

- A. A game ends when the game-ending winning pattern is achieved and verified. That is when the game stops, and the winner is paid. If there is a delay in returning the balls to the blower until after announcements or an intermission, neither would mean that the game is still going on.
- B. The bingo statutes refer to matching a “number or symbol.” (§326.5 (o)). The regulation should use the same words rather than narrowing how bingo may be played by referring to a “ball or number symbol.” The statute is not limited to numeric symbols. Non-numeric symbols like gemstones or animal shapes are allowed.
- C. This section would require plastic bingo balls for all bingo games. But for non-RCB games under Penal Code §326.5, video displays and electronic bingo balls are permitted.

For RCB games under Section 326.3, plastic balls are required: “... randomly drawn plastic balls are announced.”

However, this requirement is not applicable to non linked games. California Penal Code Section §326.5(o), which applies to bingo games other than RCB games, instead states:

“Electronic or video displays shall not be used in connection with the game of bingo, except in connection with the caller’s drawing of numbers or symbols, and the public display of that drawing.”

We suggest that this definition be changed:

“Game” is defined as beginning when the first ~~ball or number or symbol~~ ball or number or symbol is called and ends when a game-ending winning pattern is achieved and verified. ~~all succeeding balls and number symbols are returned to the cage or blower and the machine has been cleared.~~

Response:

This comment/recommendation is rejected as it is not germane to the proposed regulatory action. While the proposed action does include several amendments to Section 12480, the definition of “game” is not included in those amendments, and is not directly related to the subject of the proposed action. As stated above, the purpose and intent of this proposed action is very narrowly focused on certain amendments that were found to be necessary to provide clarity, consistency, and technical clean-up due to recent statutory changes. [Please refer to comment/recommendation 1, above, for further detail.]

It is also noted that the Commission does not disagree with Mr. Fried’s comments concerning the definition of “game.” However, that definition will also be addressed in another rulemaking concerning CMDs and their manufacturers/ distributors. In fact, staff is proposing an amended definition of “game” that is almost identical to the one Mr. Fried suggests. That is already being developed as part of the rulemaking mentioned under comment/recommendation 1 above.

3. DEFINITION OF “MANUFACTURER” § 12480(b)(18), renumbered (17), currently defines “manufacturer as any person that directly or indirectly performs any of certain specified functions and differentiates between manufactures and distributors of RCB equipment, supplies and services and manufacturers and distributors of bingo CMDs.

Comment/Recommendation:

There are persons, companies or related companies that both manufacture and distribute. They should not have to get duplicative licenses. There is no purpose for duplication.

We suggest that you either add a definition for a “Manufacturer & Distributor”, or a section stating that a joint license may be issued. This would apply to any company that does both manufacturing and distribution, and include two related or affiliated companies, such as a subsidiary or company with the same management and ownership.

“(18) ‘Manufacturer/Distributor’ means any person, entity, affiliated companies or companies related by management and ownership that perform the functions of a Manufacturer and Distributor.”

For example, in our case, LIF [Capitol Group, LLC] manufactures card minders and sells them only to Pacific [Gaming, LLC]. Pacific distributes only card minders from LIF. The two companies have the same owners (a trust and one individual). But last year, LIF and Pacific ended up filling out **10** sets of forms and paid 10 license fees in all when there are only **3** persons with an interest in the business.

Recognizing that there are people or companies that serve as a “Manufacturer and Distributor” will cut the license fees and paperwork in half. There is no regulatory purpose served by duplication.

We are a small business with less than 20 total employees. We already suffer from duplication by having each state license us, background us and collect fees to the tune of \$60,230 last year for **18** separate government licenses. The cost for the added duplication in this case will be a minimum of \$2,500 a year, plus time, for a total cost of \$4,000 per year in unnecessary expense.

Response:

This comment/recommendation is rejected as it is not germane to the proposed regulatory action. While the proposed action does include minor technical amendments in the definition of “manufacturer,” those amendments are limited exclusively to subparagraph (A) of paragraph (17), which relates to manufacturers of RCB equipment and supplies, not CMDs. Those amendments specifically relate to the distinction being drawn between manufacturers/distributors of CMDs and RCB equipment and supplies and “vendors” of RCB services. As stated above, the purpose and intent of this proposed action is very narrowly focused on certain amendments that were found to be necessary to provide clarity, consistency, and technical clean-up due to recent statutory changes. [Please refer to comment/recommendation 1, above, for further detail.] The Commission is proposing to create a separate interim license type for businesses that provide bingo equipment, supplies, and services (i.e., vendors) to nonprofit organizations conducting RCB games, thus clearly distinguishing them from manufacturers and distributors of bingo CMDs.

It is also noted that the definition of “manufacturer” will be addressed in another rulemaking concerning CMDs and their manufacturers/distributors. That is already being developed as part of the rulemaking mentioned under comment/recommendation 1 above.

4. DEFINITION OF “VENDOR” § 12480(b)(41), renumbered (39), currently defines “vendor” as either “*a manufacturer, as defined in paragraph (18), or a distributor, as defined in paragraph (7).*” This proposed action will change the definition of “vendor” to mean “*a person that directly or indirectly provides equipment, supplies, or services to an authorized organization for use in remote caller bingo games, including management companies that have a written agreement with an organization to assist with or conduct remote caller bingo games.*”

Comment/Recommendation:

The definition of vendor sweeps too broadly. It includes anyone that directly or indirectly supplies “equipment, supplies or services” used in a RCB game.

The definition should not include the following generic supplies and general services:

- Someone that sells folding tables or chairs
- National Cash Register Company, who supplies the cash registers purchased for the games
- Office Depot if they supply dry erase markers for laminated bingo paper
- PGE, which supplies electricity and lights

We suggest:

“‘Vendor’ ... a person that directly or indirectly provides equipment, supplies or services specifically for, or made or adapted for, use in RCB games ...”

Response:

This comment/recommendation is rejected. It is not the intent of this proposed action to sweep incidental suppliers into the net of licensure. While a very extreme interpretation of this definition might lead to a conclusion that sellers/renters of folding tables and chairs, NCR, Office Depot, and utility companies should be licensed as vendors, that is not a reasonable or logical interpretation or conclusion. Furthermore, all of the products and services Mr. Fried identifies relate primarily to traditional bingo which the Commission does not regulate. None of those items are directly or specifically related to the transmission of a live traditional bingo game to remote locations and that is the important distinction. The intent of this proposed action is to establish a distinction between the interim license type for manufacturers and distributors of bingo CMDs and those businesses that only provide RCB equipment, and administrative, managerial and staffing services (i.e., vendors) to nonprofit organizations to assist them in conducting the RCB aspect of the games.

5. RENEWAL IF INTERIM LICENSES § 12492(g) and (h) specify the requirements for renewal of interim manufacturer, distributor or vendor licenses by owner licensees [(g)] and endorsed owners [(h)].

Comment/Recommendation:

- a. Form 610 – Initial and Renewal Applications – should be revised for renewal applications. There is no reason to require a renewal application to contain or attach all the same information as an initial application.

For example, section 2 of the application asks for the business entity and entity owner to attach its Articles of Incorporation, By Laws, Partnership Agreement, trust, etc... Section 3 asks for repetitive information about the formation of the entity.

For both sections 2 and 3, an applicant renewing their license should be able to check a box stating that these documents have not changed since they were last submitted. You should not have to recopy and resubmit the same documents and information year after year if there is no change.

- b. Are these two subsections, (g) and (h), duplicative or is there a difference between them?

Response:

- a. This comment/recommendation is rejected. While the Commission does not necessarily disagree with Mr. Fried’s comment and recommendation, a change is not necessarily required at this time. This is still an interim license process and

there is another rulemaking proposal being developed to establish a regular license process. This issue can and will be addressed in that proposed action. In actual practice, staff will not be requiring renewal applicants to submit duplicative documentation where no change has taken place since the previous license issuance or renewal. (It should be noted that none of the interim licenses have reached their first renewal.) Licensees that are due for renewal could easily be notified that documentation need not be submitted again if no changes have occurred and a statement to that effect accompanies the renewal application.

- b. Subsections (g) and (h) are not duplicative; the difference is that subsection (g) applies to owner-licensees and subsection (h) applies to endorsed owners.
6. AUDITS § 12508(d) provides that “[t]he records kept by organizations and vendors, pursuant to paragraph (1) of subsection (c), shall be audited by an independent California certified public accountant at least annually, and copies of the reports shall be provided to the Commission within 120 days after the close of the organization’s and vendor’s fiscal years.”

Comment/Recommendation:

This section requires every bingo vendor to have an annual audit by a CPA without regard to the vendor’s size or sales. However, many bingo vendors may be individuals or small businesses, such as someone that supplies ink markers for marking bingo paper, or someone that sells tables and chairs. They may have \$25,000 a month in gross sales with a net profit of \$5,000 a month. But an audit could cost \$20,000 - \$50,000. That does not seem fair or justified.

There needs to be a threshold before an audit is required. We suggest the same thresholds be used as in cardroom regulations (§ 12403):

- Group I card rooms – those with \$10 million or more in gross revenue, have an audit.
- Group II card rooms – those with \$2-\$10 million a year in gross revenue have an accountant’s “review” annually in accord with accounting standards.
- Those Group III card rooms with more than \$500,000 a year in revenue have to produce financial statements “compiled” by an accountant.
- Those card rooms with less than \$500,000 a year in revenue have to prepare financial statements.

There is no reason to subject bingo vendors to a different standard.

Response:

This comment/recommendation is rejected. The audit requirement of this regulation does not necessarily apply to all “vendors.” The record keeping requirement in paragraph (1) of subsection (c), relates specifically to “records of income received and expenses disbursed in connection with the operation, conduct, promotion,

supervision, and any other related activity of remote caller bingo games.” That would not include those manufacturers, distributors or vendors that are not involved in the actual operation of RCB games. This requirement applies specifically to vendors that provide administrative, managerial and staffing services to nonprofit organizations to assist them in the actual conduct of RCB games. Since these vendors, through written agreements with organizations, perform the functions of the organizations in the conducting of RCB games, their records must be subject to the same recordkeeping and audit requirements as those organizations they represent. The vendors, after all, are essentially agents or employees of the organizations, and the records in question are the records of the organizations’ RCB games.

Furthermore, paragraphs (1) and (2) of subdivision (w) of section 326.3 of the Penal Code mandate that audits of the records of both vendors and organizations be performed, at least annually, by an independent California certified public accountant. No distinction is made between organizations or vendors based on gross annual revenue or any other criterion. There is no basis or authority, expressed or implied, that would permit the Commission to make a distinction in regulation that would lessen the pertinent requirement of section 326.3.

7. NOTICE OF PROPOSED REGULATORY ACTION; FISCAL IMPACT STATEMENTS

Comment/Recommendation:

We disagree with the fiscal impact statements about impact on business, impact on jobs, cost impacts on private persons or businesses and effects on small business.

For the reasons stated in the above comments, 1, 3-[6], there are cost and regulatory impacts that are unjustified and unconscionable, especially on small business persons. There are potentially unnecessary costs of \$80,000 annually on our business, and hundreds of thousands of dollars or more in costs collectively on all the affected businesses.

Response:

This comment/recommendation is rejected for the following reasons:

First, comments 1 and 3 are not germane to this proposed action and are, therefore, not subject to any fiscal impact consideration.

Second, comment 4 misinterprets the effect of the proposed action. The amendments do not require the licensure of any of the companies Mr. Fried identifies and no additional licensure requirements are imposed on anyone not required to be licensed currently. All the proposed action attempts to do here is to establish a clear distinction between the interim license type for manufacturers and distributors of bingo CMDs and those businesses that only provide RCB equipment, and administrative, managerial and staffing services (i.e., vendors) to nonprofit organizations to assist them in conducting RCB games.

Third, comment 5 assumes a requirement that, in practice, will not be imposed. As discussed above, steps will be taken to address the issues of submission of duplicative documents and information where no change has occurred. Therefore, the proposed action does not carry with it any fiscal impact in this regard.

Finally, any costs or fiscal impact associated with audits is the result of the statutory mandate imposed in section 326.3 of the Penal Code. The proposed action does not impose any additional fiscal impact as the audit requirement and the records to be audited are the same records associated with RCB games that are addressed in subdivision (w) of section 326.3. They are the records of the organization, whether maintained by the organization or by a vendor on behalf of the organization. Moreover, paragraph (3) of subdivision (w) explicitly provides that the costs of any required audit shall be borne by the person or entity required to be audited.

8. NOTICE OF PROPOSED REGULATORY ACTION; CONSIDERATION OF ALTERNATIVES

Comment/Recommendation:

This letter includes a number of less costly and reasonably effective alternatives to the proposed regulations.

Response:

This comment/recommendation is rejected. The alternatives suggested in Mr. Fried's above comments have been considered. For all of the foregoing reasons, those alternatives are rejected.

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

B. 15-Day Change Comment Period Ending August 18, 2010

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

C. Oral Comments Received at the August 24, 2010 Public Hearing

The following oral comments/objections/recommendations regarding the proposed action were made by David Fried, representing LIF Capitol Group LLC and Pacific Gaming LLC, during the public hearing held August 24, 2010:

Comment/Recommendation:

The commission has a set of definitions that apply to both RCB equipment and CMDs. Then there are regulations specific to RCB games, and a different set of regulations for CMDs. My question is how those interact. If a CMD manufacturer/distributor provides CMDs for use in RCB games, do they fall under the RCB regulations as providers of

goods or services to RCB games (vendors)? Or, do they still fall under the CMD regulations? How broadly do the RCB vendor regulations sweep? Are they just for the people providing the operation of the games and those providing the equipment that links those games together? Or are they sweeping anybody who provides any type of supplies or equipment to RCB games? I'm still unclear on whether there is that distinction. Is it possible that the Final Statement of Reasons could make that clear?

Response:

This comment/recommendation is accepted in that this response addresses Mr. Fried's questions and concerns, and reiterates the intent of the proposed action. The answer to Mr. Fried's central question is: No, a licensed CMD manufacturer/distributor that provides bingo CMDs for use in RCB games would not have to be additionally licensed as a RCB vendor.

As stated in response to a similar written comment submitted by Mr. Fried (A. 4. above), it is not the intent of this proposed action to sweep incidental suppliers into a broad net of RCB vendor licensure. While a very extreme interpretation of the definition of "vendor" might lead to a conclusion that sellers/renters of such items as folding tables and chairs – or CMDs – should be licensed as RCB vendors, that is not a reasonable or logical interpretation or conclusion when considered within the overall context of the regulatory framework affecting RCB and, in this instance, CMDs. Specifically, the manufacture, distribution and use of CMDs are directly related to the play of traditional bingo games, not to the transmission of a live traditional bingo game to remote locations (i.e., RCB). CMDs may be used by a player participating in a RCB game, but they have nothing to do with the transmission of that game to a satellite or remote location. That is the important distinction.

The intent of this proposed action is simply to establish a distinction between the interim license type for manufacturers and distributors of bingo CMDs and those businesses that only provide RCB equipment, and administrative, managerial and staffing services (i.e., vendors) to nonprofit organizations to assist them in conducting the RCB aspect of the games.

As previously mentioned, it should be noted that there is currently another rulemaking concerning CMDs and their manufacturers/distributors in the final stages of development. That rulemaking, which should be available for informal public review and discussion very soon, will touch on this and most, if not all, of the other issues Mr. Fried has raised in connection with this proposed action. All of his comments here are being taken into consideration in the development of that rulemaking proposal.

There were no further comments, objections or recommendations received during any of the public comment periods.

There were no comments, objections or recommendations received outside any of the public comment periods.