

CALIFORNIA GAMBLING CONTROL COMMISSION
**DESCRIPTION OF PROPOSED REGULATORY ACTION
THIRD-PARTY PROVIDERS OF PROPOSITION PLAYER
SERVICES; CONTRACTS**

INTRODUCTION:

The California Gambling Control Commission (Commission) is proposing to amend previously adopted regulations for the content of contracts related to providing third-party proposition player services along with the review and approval processes for these contracts. These proposed amendments to the regulations better implement various aspects of the Gambling Control Act (Act)¹ and provide further protection to the public.

A majority of the proposed changes consist of a general reorganization of the regulations. The trend is a simplification of the contract content requirements, with operative provisions being moved into the compliance section. There are several items with proposed options open for discussion; including, how consideration between the Third-Party Provider of Proposition Player Services (TPPPS) and the gambling enterprise is determined, how contracts could be limited due to collusion concerns, and if Commission review should continue to be part of the contract approval process.

EXISTING LAW:

Business and Professions Code section 19984 provides that a gambling enterprise may contract with a third party for the purpose of providing proposition player services at the gambling establishment and provides authorization for any contract to be approved by the Bureau under criteria established by the Commission through regulation.

California Code of Regulations (CCR) Section 12200 provides definitions for this chapter, including; rebate and third party proposition or TPP.

CCR Section 12200.7 provides a number of criteria that must be included in the proposition player contract. This section also provides limitations on what a contract can include.

CCR Section 12200.9 provides the review and approval processes and requirements for a proposition player contract.

CCR Section 12200.10A provides the review and approval process for an expedited review and approval process for a proposition player contract.

CCR Section 12200.10B provides the review and approval process for amendments to an existing proposition player contract.

¹ Business and Professions Code section 19800, et seq.

CCR Section 12200.10C provides the process by which the Bureau submits contracts to the Executive Director prior to approval so that Commission staff can provide comments on any contract or amendment.

CCR Section 12200.11 provides the review and approval process for extensions to existing proposition player contracts.

CCR Section 12200.21 provides minimum standards to which registrants and licensees shall comply, including, the game rules as approved by the Bureau, and that only authorized individuals may control currency or chips that are used in the performance of the contract.

GENERAL OVERVIEW OF OPTIONS:

The proposed action includes eight options, three of which touch on many sections of the regulations. While the individual aspects of the regulation are addressed within the description of each section, the following summary statements provide a cohesive explanation of the effects of each.

Option 1

This option modifies the restrictions in determining the contract amount that is currently present in regulation.

- The four categories of advertising, services, facilities and equipment are maintained.
- The standard of “substantially disproportionate” is replaced with the specific costs of advertising, equipment and their direct benefit to the TPPPS.
- The payment amount for services and facilities is limited by the established value.
- These redefinitions are not extreme and should provide relatively little monetary change.

The main effect of this regulation is to shift the burden of acceptability to the TPPPS as the applicant. Currently, the burden is on the Bureau to determine that the payment is not substantially proportionate. This would require the Bureau, in the example of house cleaning services, to have knowledge of what a normal house cleaning service would cost within the specific area of the gambling enterprise. The proposed regulation would shift the burden to the TPPPS to show that the portion of the fee related to house cleaning was similar to other equivalent services. In essence, the current regulations require the Bureau to be an expert on all portions of all contracts, while the proposed regulations place the burden on the TPPPS to show the Bureau how their proposed contract amount is appropriate given the provided services.

Economic Impact of Option:

The economic impact of this option is not fully understood and is further addressed on page 34.

Option 2

This option removes many of the restrictions currently in regulation and similarly simplifies the review by the Bureau. This option establishes a “safe harbor” that the TPPPS and gambling enterprise may utilize when justifying their contract amount. If the parties can show that their proposed contract amount is below the prescribed value, their contract amount is presumed appropriate.

Economic Impact of Option:

With known 2013 collection fees and operation costs, the direct economic impact of this option is estimated to be **\$2.86 million**, representing the reduction required in contract payments for gambling enterprises that were contracting above their limit in 2013.

Option 3

This option would bar any payments between the TPPPS and the gambling enterprise for any reason.

Economic Impact of Option:

The economic impact of this option is not fully understood; however, the immediate effect would be to cease all TPPPS contract payments, providing at a minimum, an estimated **\$132 million** economic impact through just the elimination of all contract payments. This economic impact is further discussed on page 35.

Option 4

This option would limit any payment by the TPPPS to a specific per-table fee.

Economic Impact of Option:

The economic impact of this option is not fully understood. While the current contract amounts are known, what is not known are the maximum numbers of tables currently be operated by the TPPPS. Additionally, it has been reported to the Commission that often contracts include the maximum number of tables approved for total use by the gambling enterprise and not those practically being used in California games. While this allows the parties maximum flexibility without having to report back to the Bureau a temporary increase in service by the TPPPS, it would also allow for an inflation of the maximum fee allowed under the contract.

PROPOSED ACTION:

This proposed action will make changes within Division 18 of Title 4 of the California Code of Regulations, as follows:

The proposed changes in Chapter 1 are as follows:

Amend Section 12002. Definitions.

Subsection (d) is added to clarify the definition of “affiliate.” Section 19805, subdivision (a), of the Business and Professions Code² provides a definition for “affiliate;” however, it does not provide clarity concerning which individuals or entities may fall under this definition. The proposed action provides clarity regarding the individuals and entities that are required to be reported by breaking down the different categories of control.

- Paragraph (1) provides clarity for the types of trusts or other estates captured under the category of control. This paragraph provides that trusts or other estates are considered under the control of the specified person or their spouse or registered domestic partner if either has a substantial beneficial interest or serves in a fiduciary capacity similar to that of a trustee.
- Paragraph (2) provides clarity for the types of businesses captured under the category of control. This paragraph provides that businesses in which the specified person and their spouse or registered domestic partner owns a combined interest of at least 10 percent are under the control of the specified person. The minimum 10 percent ownership interest threshold is intended to be consistent with the identification of specified persons and significant ownership.
- Paragraph (3) provides clarity for the types of individuals captured under the concept of control, as required by the Act. This paragraph provides that individuals fall under this category if they are the spouse or registered domestic partner of the specified person.
- Paragraph (4) provides clarity for the types of individuals captured under the concept of control, as required by the Act. This paragraph provides that individuals fall under this category if they are a close family member of either the specified person or the spouse or registered domestic partner of the specified person and either live in the same home as the specified person or participate in the management of any business in which the specified person has an ownership interest.
- Paragraph (5) provides clarity for the types of individuals captured under the concept of control, as required by the Act.
- Paragraph (6) provides clarity for the types of individuals captured under the concept of control, as required by the Act.

It is necessary to identify those individuals and entities that are financially closest to individuals involved in the TPPPS contracting process in order to comply with the Act. Section 19984 specifies that the gambling enterprise shall not have any interest in the funds

² All further statutory references are to the Business and Professions Code, unless otherwise specified.

wagered, lost, or won, and while the regulations have been crafted to ensure that inappropriate payments are not provided, the identification of these other sources allows for the process to ensure that inappropriate payments are not being provided through some other secondary avenue. In order to establish these secondary procedures, identification of the possible recipients of inappropriate funds is needed and the language of section 19805, subdivision (a) does not provide the specificity necessary.

The current subsections (d) through and including (x) will also be renumbered as (e) through and including (y), accordingly.

Subsection (z) is added to include a definition for “specified person.” Section 19805, subdivision (a), provides a definition of affiliate. As part of the affiliate definition, individuals are identified based on their relationship (control) with a specified person. The statutory provision does not provide any context or explanation of who is a specified person and this definition is proposed to do so.

This definition is necessary because while the Act provides a definition of affiliate in subdivision (a) of section 19805, that definition uses the term specified person. The definition does not, however, provide any clarification of who a specified person may be. Therefore, this regulation provides the required clarity to the term so that affiliates can be accurately and consistently determined.

A specified person would be identified in relationship to a gambling enterprise, TPPPS, or gambling business based on an ownership interest of at least 10 percent. The definition of specified person is first limited to a consideration of owners of a business based upon the context of the Act. The purpose of the Act is to provide assurance to the public that gambling is safe and free from criminal influence. To accomplish this, individuals apply for and receive licenses, registrations, or some other form of approval. To receive this approval, applicants must undergo background checks. At the highest level are those applicants with direct control over the workings and assets of the business. These individuals can exert significant influence over the gambling enterprise; therefore, the State has the highest level of interest in these people and in those who can influence them.

Many business structures do not include a single primary owner, but can include a multitude of individuals and entities, some with very small ownership percentages. Individuals with small ownership interests, even if influenced by others, may not be in a position to actually effectuate any action within the business. Therefore, an exception to ownership is provided to remove individuals without this control, defined as someone with less than 10 percent ownership interest and no other reason for licensure (such as working in the facility). The value of 10 percent interest is consistent with the U.S. Securities and Exchange Commission’s idea of beneficial ownership [United States Code, Title 15, Chapter 2B, 78p(a)].

The current subsections (y) through and including (aa) will also be renumbered as (aa) through and including (ac), accordingly.

The proposed changes in Chapter 2.1 are as follows:

Amend Section 12200. Definitions.

This proposed action would add three new terms to Section 12200, consolidate or delete several existing definitions and renumber various paragraphs accordingly. In addition, numerous grammatical, editorial and clarifying changes are made through the section.

Current paragraph (3) of subsection (b) is moved to Section 12250. Any proposed changes to the definition are addressed in that section.

Subparagraphs (C) and (D) of paragraph (7) of subsection (b) are removed from the definition of “license” as they are not part of a definition. Subparagraph (C) has been moved to paragraph (2) of subsection (b) of Section 12280 while subparagraph (D) is repealed as it is duplicative of paragraph (1) of subsection (b) of Section 12280. Additionally, subparagraph (B) includes a non-substantive grammatical, editorial change to make formatting consistent and has no regulatory effect.

Current paragraph (20) of subsection (b) is moved to Section 12250. Any proposed changes to the definition are addressed in that section.

Current paragraph (21) of subsection (b) is moved to Section 12250. Any proposed changes to the definition are addressed in that section.

Current paragraph (28) of subsection (b) includes a non-substantive grammatical, editorial change that corrects an unnecessary internal cross reference.

Repeal Section 12200.7. Proposition Player Contract Criteria.

This Section is moved to 12270. Specific proposed changes are discussed there.

Repeal Section 12200.9. Review and Approval of Initial and Renewal Proposition Player Contracts.

This Section is moved to 12274. Specific proposed changes are discussed there.

Repeal Section 12200.10A. Expedited Review and Approval of Proposition Player Contracts.

This Section is moved to 12276. Specific proposed changes are discussed there.

Repeal Section 12200.10B. Review and Approval of Amendments to Proposition Player Contracts.

This Section is moved to 12278. Specific proposed changes are discussed there.

Repeal Section 12200.10C. Submission of Contracts or Amendment to Commission.

This section provides guidance to the Bureau on how it must communicate with the Commission during the contract approval process. The proposed action repeals this section.

Subsection (a) requires that the Bureau provide copies of contracts and amendments to the Commission for review and comment. This step in the process is extraneous and unnecessary. Currently this provision only requires that the Bureau provide the contract for comment but provides no requirement that any comments be considered, or that any approval or disapproval occur after the receipt of Commission comments. Section 19984 clearly provides authority to approve contracts to the Bureau while only providing regulatory authority to the Commission. As this provision only creates an extra step in the process, it is repealed. By repealing this provision, unneeded work is avoided for both Commission and Bureau staff, allowing the Bureau to more effectively and efficiently focus on approving and enforcing pertinent sections of the regulations and making the contract review process simpler and perhaps faster.

Subsection (b) is deleted and the provisions are incorporated into Sections 12274, 12278 and 12280. This provision requires that the Bureau provide copies of its notices of approval and disapproval to the Commission.

Repeal Section 12200.11. Extension of Proposition Player Contracts.

The proposed action repeals this section. This section provides a structure which, for the most part, is duplicative of Section 12200.9, now Section 12274. As part of the changes in Section 12274, the non-duplicative provisions of this section are incorporated into the standard application approval process. The different provisions, such as the difference in playing book form submittal have been provided for. By combining the sections, the language of paragraph (1) of subsection (a) of Section 12274 is expanded to cover the renewal process. This expansion ensures that the protection provisions included in the regulations cannot be circumvented by renewing a contract.

Repeal Section 12200.21. Compliance.

This Section is moved to 12280. Specific proposed changes are discussed there.

Amend Section 12204. Ineligibility for Registration.

This section provides a series of criteria that detail when an applicant is automatically ineligible for registration.

The proposed change to subsection (c) is a non-substantive, editorial change without regulatory effect. This change is necessary to have this provision conform to a consistent format.

The proposed change to subsection (g) is a non-substantive, editorial change without regulatory effect. This change is necessary to have this provision be consistent with other changes in the regulation. All of the paragraphs and subsections referenced in this subsection have either been repealed or moved.

The proposed change to subsection (h) is a non-substantive, editorial change without regulatory effect. This change is necessary to have this provision be consistent with other changes in the regulation. All of the paragraphs and subsections referenced in this subsection have either been repealed or moved.

Amend Section 12218.8. License Renewals.

This section includes a series of provisions that detail the procedure for renewing a license.

The proposed change to subsection (c) is a non-substantive, editorial change without regulatory effect. This change is necessary to have this provision be consistent with other changes in the regulation. The referenced paragraph has been renumbered due to other changes in subsection (b) of Section 12200.

Amend Section 12204. Ineligibility for Licensing.

This section provides a series of criteria that detail when an application is automatically ineligible for registration.

The proposed change to subsection (c) is a non-substantive, editorial change without regulatory effect. This change is necessary to have this provision conform to a consistent format.

The proposed change to subsection (h) is a non-substantive, editorial change without regulatory effect. This change is necessary to have this provision be consistent with other changes in the regulation. All of the paragraphs and subsections referenced in this subsection have either been repealed or moved.

The proposed change to subsection (i) is a non-substantive, editorial change without regulatory effect. This change is necessary to have this provision be consistent with other changes in the regulation. All of the paragraphs and subsections referenced in this subsection have either been repealed or moved.

The proposed changes in Chapter 3 are as follows:

Amend Section 12250. Definitions.

This proposed action would add one new term to Section 12250 and move three existing terms from Section 12200.

The definition for “authorized player” in paragraph (3) of subsection (b) of Section 12200 is moved to be paragraph (2) of subsection (b) of this section. The definition is revised to be consistent with other proposed regulatory changes. The language is changed to provide that it is the registration or license that authorizes play in a controlled game and not the badge. The final sentence, which is a control provision and not part of a definition, has been moved and incorporated into subsection (b) of Section 12280.

Paragraph (4) of subsection (b) is added to provide a definition for the term “derivative party.” This definition establishes a general term that may be used when referring collectively to the various owners of either a TPPPS or gambling enterprise. This definition is necessary so that a simple method is available to identify and refer to a TPPPS or gambling enterprise’s ownership.

The definition for “proposition player contract” in paragraph (20) of subsection (b) of Section 12200 is moved to be paragraph (11) of subsection (b) of this section. The definition is amended to clarify that the proposition player contract is between the gambling enterprise and the primary owner of the TPPPS. The removal of the independent contractor reference removes an unnecessary and inaccurate description of the two-party relationship.

The definition for “rebate” in paragraph (21) of subsection (b) of Section 12200 is moved to be paragraph (12) of subsection (b) of this section. The definition is amended to clarify that a rebate may include a complete return of chips or money and is not limited to only a partial return. This change is necessary to clarify that a full return of chips or money is subject to all provisions related to rebates.

Amend Section 12251. General Provisions.

This section contains non-substantive revisions to conform the references to the newly identified article in order to provide clarity that its requirements do not apply to the proposed article for TPPPS Contracts.

Amend Section 12259. Approval of Electronic Playing Book Systems.

This section contains non-substantive revisions to conform the references to the newly identified article in order to provide clarity that its requirements do not apply to the proposed article for TPPPS Contracts.

Adopt Section 12270. Proposition Player Contract Criteria.

This proposed action would renumber Section 12200.7 as Section 12270. This proposed action describes the minimum requirements of any contract between a TPPPS and a

gambling enterprise, including; provisions that must be included in the contract, and how any payment under the contract can be determined. By providing these guidelines, the regulations help to ensure that there is a proper separation between the gambling enterprise and the funds wagered, lost, or won during the play of controlled games.

Subsection (a) provides that even during the effective term of a contract, should the contract have any provisions that come into conflict with any changes in the Act the contract is superseded by the statutory changes. The language is revised to expand the Act's application from just section 19984 to the entire Act. This is necessary to ensure that the contracts remain in compliance with the law if any relevant provisions of the Act are changed, not just section 19984.

Additionally, the requirement that the contract be superseded by changes in the regulations is deleted and replaced with a provision in Section 12276 which would prevent an expedited review in the event that regulations have been revised. This is necessary to allow these, and any other changes to the contract regulations to be adopted within the next contract cycle without requiring every single contract to be redone upon the effective date of these regulations as that would be burdensome to both the Bureau and industry.

Subsection (b) specifies the provisions that must be included in every contract. This subsection is revised with a non-substantive grammatical, editorial rewording. Additionally, the paragraphs contained within this subsection have been revised and renumbered as required.

Paragraph (1) of subsection (b) provides that the parties to the contract must be specified in the contract. Additionally, the requirement to provide both derivative parties and affiliates of the specified persons has been included. Other aspects of the contract process have been proposed to reference both of these categories of individuals. The necessity of those additional provisions will be provided in those sections. In order to provide a reference to these individuals, it is necessary that they be identified. If the list of individuals were to change, the parties to the contract would be required to notify the Bureau. Notification would provide the Bureau with the opportunity to reexamine the relevant parts of the contract to ensure continued compliance with the Act and regulations.

Paragraph (3) of subsection (b) provides that the specific name of any games that the TPPPS provides services for must be included in the contract. This paragraph has been revised to require the game number assigned by the Bureau in addition to the game name. This is necessary because while the Bureau approves many games, and does not require that a specific name be linked to a specific set of rules, so often each cardroom will put a different spin on the game name. It is therefore possible that the same game number is given multiple names. Therefore, just providing the name does not actually identify a unique game. By providing the game number, a unique game is identified.

Additionally, the reference to gaming activities is changed to controlled game(s). The term "gaming activity" is defined in Title 11, CCR, Section 2010, subsection (f); however, that is

not the way this term is being utilized in this paragraph. The purpose of this paragraph is to identify the services being provided, not just jackpots and promotions as provided in the definition of “gaming activity.” Therefore, for the purposes of clarity, the use of “controlled games,” as defined in Business and Professions Code section 19805, subdivision (g), is utilized.

Paragraph (4) of subsection (b) specifies that the minimum and maximum number of tables available for service by the TPPPS must be provided. This section includes non-substantive grammatical, editorial changes to make the paragraph consistent with the terms used in this chapter. These changes have no regulatory effect.

Paragraph (5) of subsection (b) specifies that no more than one of any license type may simultaneously play at one table. This provision is moved to paragraph (4) of subsection (b) of Section 12280. This is necessary as the provision is not a contractual issue, but instead a compliance standard that should be enforced by the Bureau and not the parties to the contract. By moving it to Section 12280, the provision becomes clearly enforceable by the Bureau. A new paragraph (5) would specify that if there is an agreement to prohibit any other TPPPS or a gambling business from operating in the gambling establishment, it must be included in the contract. This is a non-substantive grammatical, editorial change as subsection (a) of Section 12280 already contains this provision. This is necessary as Section 12280 is not the most appropriate regulation in which to include this provision, and it has been incorporated into the section specifically intended for detailing contract terms.

A new paragraph (6) of subsection (b) is added and the current paragraph (6) is renumbered as paragraph (7) accordingly. The new paragraph (6) requires that if the TPPPS is to be assigned a dedicated seat at a table it must be specified in the contract. This is a non-substantive grammatical, editorial change as subsection (a) of Section 12280 already contains this provision. This is necessary as Section 12280 is not the most appropriate regulation in which to include this provision, and it has been incorporated into the section specifically intended for detailing contract provisions.

The current paragraph (7) of subsection (b), renumbered as paragraph (8), requires that if specific items are being stored by the TPPPS at the gambling establishment, the purpose of those items must be included in the contract. Additionally, the location and security measures for the space must be included. A requirement to also include the location of the storage facilities utilized by the TPPPS within the gambling establishment is added to this paragraph. Including this information is necessary so that the Bureau is made aware of what facilities are being provided by the gambling enterprise to the TPPPS. This allows the Bureau to assess any link between facilities and payments. By specifying the purpose of the items being stored, the Bureau cannot only assess the link between payments and facilities, but also the reasonableness of the payment amount.

Paragraph (8) of subsection (b) in the current regulation is repealed. This provision requires that the contract include a provision requiring compliance with laws and regulations pertaining to controlled gambling. By including this provision, it requires the parties to the

contract (the TPPPS and gambling enterprise) to police any possible violation of law and enforce it as a violation of the contract. Possible violation of laws or regulations should not be enforced through the contract, but should instead be reported to the Bureau for proper investigation and possible action through appropriate regulatory processes. While this change would in no way remove the requirement that a TPPPS or gambling enterprise operate in compliance with the laws and regulations pertaining to controlled gambling, a provision is being added to Section 12280, as subsection (i), making it clear that the gambling enterprise is responsible for ensuring that proposition player services are conducted lawfully in their establishments.

Paragraph (9) of subsection (b) in the current regulation is repealed. This paragraph requires that the contract contain a provision that services may only be provided by authorized players who are licensed or registered. This requirement, while important, is not necessary in the contract. Requirements already exist that limit play to only authorized players, such as paragraph (1) of subsection (b) of Section 12280. Including it in the contract only authorizes the gambling enterprise to report a violation of a contract provision. Therefore, similar to other provisions, this change would instead put the focus on the Bureau's investigatory powers and not as a contractual issue between the parties.

Paragraph (10) of subsection (b) in the current regulation is repealed. This provision requires that the TPPPS must provide a copy of its registration or license to the gambling enterprise who shall maintain it on file along with a copy of the approved contract. While the two parties might desire such an exchange, there is no need for this to be required in the contract. The two parties should be allowed to maintain their business records as they mutually agree, with the Commission and Bureau already having separate access to all of these documents. The repeal of this provision would not prevent any local agency from requiring these documents be available and would not prohibit the contracting parties from voluntarily including a similar requirement in a contract.

Paragraph (11) of subsection (b) in the current regulation is repealed and moved to paragraph (3) of subsection (b) of Section 12280. This provision prohibits an individual who possess dual licensure (TPPPS and gambling establishment) from performing any TPPPS functions within their associated gambling establishment. This provision is critical, but should not be enforced by the two parties through the contract, but instead by the Bureau.

Paragraph (12) of subsection (b) in the current regulation is repealed and moved to subsection (c) of Section 12280. This provision clarifies that the TPPPS is required to pay the collection fees related to their level of participation at any stage of play. This provision is critical, but should not be enforced by the two parties through the contract, but instead by the Bureau. Additionally, the language is revised to provide additional clarity. The original language of "... as those charged to other participants during the play of the game" is unclear when the practicalities of rotation and collection fee schedules are taken into consideration. The original language could be interpreted to mean that at any given time two players have paid the same amount in collection fees. This is inaccurate, as during the play of the game collections fees can vary based on the amount being wagered. Additionally, the positions of

player and player-dealer are generally not required to pay the same amount and players have an option of declining their turn to play. Therefore, it is necessary to clarify the purpose of this provision and the language is revised to require that the amount paid must be the same “for the same level of participation” which will reflect the variations between positions and amounts wagered.

Paragraph (13) of subsection (b) in the current regulation is repealed. This provision requires that a copy of the playing book form be included as part of the contract. This provision only requires that the gambling enterprise approve, as part of the contract, the playing book form as the playing book form is already separately required to be submitted as part of the contract approval process of Section 12274. There is no additional need for the playing book form to be agreed to by the gambling enterprise in the contract; and therefore, this provision is not necessary.

Paragraph (14), renumbered as paragraph (9), of subsection (b) requires that any agreement related to the TPPPS inspecting or receiving copies of surveillance recordings be included in the contract. This provision is amended to change the term “house” to “gambling enterprise.” This change is necessary to maintain consistency with other changes and clarifies that the contract is with the gambling enterprise and not the house. Section 19805 defines “house” as “...the gambling enterprise, and any owner, shareholder, partner, key employee, or landlord thereof.” In the context of identifying the parties to the contract, the house is not the appropriate entity to fill that role. A key employee is just an employee of the business and while that person may be authorized to act in specific roles on behalf of the business, they are not a party to the contract or responsible for fulfilling the contract. Conversely, gambling enterprise, also defined in section 19805, means “...a natural person or an entity... that conducts a gambling operation...” As the party conducting the business, gambling enterprise is the more specific and relevant term to use to refer to a party to the contract.

Paragraph (15) of subsection (b) in the current regulation requires disclosure of any financial arrangements between the parties to the contract that may exist in addition to the specific provisions of the contract. This contract requirement is duplicative of other similar provisions and is therefore repealed. This provision requires that any other arrangements be considered as part of the contract. This requirement, while important, should not be an issue within the contract. The Bureau needs this information during the contract review, in order to have a complete understanding of the financial arrangements between the parties. This allows the Bureau to ensure that the provisions of law and regulation related to the payment of funds are not being circumvented. Whether the contract includes this provision or not, the parties are still required to follow the requirements of the regulations. Proposed paragraph (8) of subsection (a) of Section 12274 includes the requirement that all financial arrangements must be reported with the contract; the new Section 12278 contains the requirements for modifying and amending a contract; and, a new subsection (j) in Section 12280 specifies how any new arrangements during the term of the contract must be reported to the Bureau.

Paragraph (16) of subsection (b) in the current regulation requires that any legal dispute between the parties to the contract be reported to the Bureau and Commission. While an important requirement, it is not one that must be included in the contract. Accordingly, this provision is moved to subsection (d) of Section 12280 with only minor grammatical, editorial changes that have no regulatory effect.

Paragraph (17) of subsection (b) in the current regulation requires that any occurrence of a registrant being arrested or removed from the gambling establishment must be reported to the Bureau and the Commission. While an important requirement, it is not one that must be included in the contract. Accordingly, the provision is moved to subsection (e) of Section 12280 with only minor grammatical, editorial changes that have no regulatory effect.

Paragraph (18) of subsection (b) in the current regulation requires that any occurrence of cheating reported to the gambling enterprise by the TPPPS must be reported to the Bureau and the Commission, in writing, within 5 days. While an important requirement, it is not one that must be included in the contract. Accordingly, this provision is moved to subsection (f) of Section 12280 with only minor grammatical, editorial changes that have no regulatory effect.

Paragraph (19) of subsection (b) in the current regulation requires that if the TPPPS is allowed to provide rebates, any criteria for providing rebates must be included in the contract or, if rebates are not allowed, a statement to that effect must be included. This provision is deleted. Consistent with the proposed addition of subsection (k) of Section 12280, which would bar the TPPPS from issuing rebates, this provision is no longer appropriate or necessary.

Paragraph (20) of subsection (b), renumbered as paragraph (10), requires that if the TPPPS and gambling enterprise have a pre-arranged tipping agreement through which the TPPPS tips the gambling enterprise employees, it must be included in the contract. Additionally, if there is no agreement, a statement to that effect must be included in the contract. This revision is necessary to improve clarity. Current industry practice includes the parties agreeing that tipping is allowed but not specifying a specific tip schedule. In these cases, the contract simply identifies that the TPPPS will tip at its discretion. This provides the Bureau with no verifiable information. There has been confusion as to whether this qualifies as a tipping arrangement that must be included in the contract. The change provides this clarity by limiting the requirement to a yes/no response concerning tipping. The current provision requires that the specifics of the tipping arrangement be included in the contract and while the change to this provision removes that requirement, the addition of subsection (g) to Section 12280 addresses tipping and tipping arrangements.

Paragraph (21) of subsection (b) in the current regulation specifies that any reimbursement by the TPPPS to the gambling enterprise for equipment must be included in the contract. This provision, while important, deals with the direct payment by the TPPPS to the gambling enterprise. Subsection (c) of this section discusses payments; therefore, paragraph (21) is repealed and the requirement incorporated into the changes to subsection (c).

Paragraph (22) of subsection (b) in the current regulation requires that the contract include a provision that states the contract is a complete expression of all agreements and financial arrangements between the TPPPS and gambling enterprise and that any revisions must be approved by the Bureau in accordance with Commission regulations. This contract requirement is duplicative of other similar provisions and is therefore repealed. Whether the contract includes this provision or not, the parties are still required to follow all regulation requirements. Proposed paragraph (8) of subsection (a) of Section 12274 includes the requirement that all financial arrangements must be reported with the contract; proposed Section 12278 contains the requirements for modifying and amending a contract; and, a new subsection (j) in Section 12280 specifies how any new arrangements during the term of the contract must be reported to the Bureau.

Subsection (c) in the current regulation provides the structure within which any payment to the gambling enterprise is determined. This includes limiting reimbursement to just services, facilities and advertising, and prohibiting the amounts from being based upon a percentage of the TPPPS's profits, wagers, or number of players, and from being substantially disproportionate to the value of the services or facilities provided. There are options proposed that modify the payment restrictions.

- **Option 1** would modify and clarify the current restrictions.
 - Current subsection (c) contains only associated paragraphs and no direct provisions. The second and third sentences of paragraph (1) are moved to subsection (c). Together, these provide clarity that the contract must include all direct payments between the TPPPS and the gambling enterprise.
 - The first sentence of paragraph (1) of subsection (c) in the current regulation provides that payments may not be based on the profits or revenues of the TPPPS, unless expressly authorized. While this restriction is important, and is replaced by a similar provision, the qualification of “[e]xcept as expressly authorized...” has no meaning as there is no exception included in the current, or amended regulations. This restriction is maintained as paragraph (1) but modified to more closely meet the restriction provided for in section 19984 as restricting interest in the funds wagered, lost or won. The first half of paragraph (2) is then incorporated with the clarification that the gambling enterprise cannot receive money based upon a percentage of the TPPPS's profits and wagers. These modifications provide a limitation to reimbursement more closely aligned with the Act, and provide a clear separation between the banking of a game and the offering of a game.
 - The last sentence of the current paragraph (1) requires that a detailed list, excluding specific costs, be included in the contract. This provision is modified and renumbered as paragraph (2) of subsection (c) to require a detailed list of all items provided for in the contract. The limitation of

excluding specific costs is removed. This is necessary because the Bureau has expressed concern that the restriction was making it hard for a review to be conducted to ensure that payment was consistent with the other requirements. It is a requirement of section 19984 to prohibit the connection of the gambling enterprise with the results of the play of a controlled game and, the Bureau must ensure this by analyzing the contract. Restricting the information provided to the Bureau limits their ability to ensure compliance.

- The current paragraph (1) also includes a restriction of payment to three categories: services, facilities and advertising. Additionally, the last sentence of the current paragraph (2) limits the payment to a fixed amount for the services and facilities and to a reasonable share of advertising. Finally, the first sentence of the current paragraph (3) disallows payments for services and facilities that are substantially disproportionate to their value. These three provisions provide an unclear limitation of the payment amount, using undefined concepts of value, substantially disproportionate and reasonable. The proposed revisions are necessary so that the new paragraphs (3) and (4) can clarify the restrictions.
- A new paragraph (3) limits payments for services and facilities to their established value. This is necessary because services and facilities are items with a more abstract expense associated with them. There will likely not be a purchase order or receipt to show the cost. While value is a concept currently in use, clarity is provided through the contract approval process where the TPPPS is required to provide, to the Bureau's satisfaction, a methodology that determines the value of each service and facility in order to show how that payment was arrived at and that it is not excessive or disproportionate under Section 12274.
- A new paragraph (4) relocates the provisions moved from paragraph (21) of subsection (b) of the current regulation and limits payments for advertising and equipment, to a proportionate share of the actual costs of each item that is directly related to the benefit to the TPPPS. This is necessary because the costs of advertising and equipment are known costs and therefore do not require the use of any methodology to establish their value; only the TPPPS' proportionate share. Accordingly, the application review process is modified to include substantiation of these costs.
- Through the new paragraphs (3) and (4), any TPPPS payment is limited to the costs generated by the TPPPS (services and facilities provided by the gambling enterprise to the TPPPS), and acknowledges the mutual interest in promoting and maintaining the game (advertising and equipment), but does not connect the gambling enterprise to the results of a controlled game. This is necessary to maintain the required separation between the parties and the gambling enterprise from the funds wagered, lost, or won.

- **Option 2** would modify the current restrictions and provide a “safe harbor” calculation under which a contract would be considered appropriate.
 - Current subsection (c) contains only associated paragraphs and no direct provisions. The second and third sentences of paragraph (1) are moved to subsection (c). Together, these provide clarity that the contract must include all direct payments between the TPPPS and the gambling enterprise.
 - The first sentence of paragraph (1) of subsection (c) in the current regulation provides that payments may not be based on the profits or revenues of the TPPPS, unless expressly authorized. While this restriction is important, and is replaced by a similar provision, the qualification of “[e]xcept as expressly authorized...” has no meaning as there is no exception included in the current, or amended regulations. This restriction is maintained as paragraph (1) but modified to more closely meet the restriction provided for in section 19984 as restricting interest in the funds wagered, lost or won. The first half of paragraph (2) is then incorporated with the clarification that the gambling enterprise cannot receive money based upon a percentage of the TPPPS’s profits and wagers. These modifications provide a limitation to reimbursement more closely aligned with the Act, and provide a clear separation between the banking of a game and the offering of a game.
 - The last sentence of the current paragraph (1) requires that a detailed list, excluding specific costs, be included in the contract. This provision is removed. The limitation of excluding specific costs is also removed. The proposed paragraph (3) provides situations where should the contract amount be below one of the provided methods the contract amount need not be further justified. Therefore, it is unnecessary that specific contract considerations be provided for those contracts.
 - The current paragraph (1) also includes a restriction of payment to three categories: services, facilities and advertising. Additionally, the last sentence of the current paragraph (2) limits the payment to a fixed amount for the services and facilities and to a reasonable share of advertising. Finally, the first sentence of the current paragraph (3) disallows payments for services and facilities that are substantially disproportionate to their value. These three provisions provide an unclear limitation of the payment amount, using undefined concepts of value, substantially disproportionate and reasonable. The new paragraphs (2) and (3) provide new restrictions.
 - A new paragraph (2) establishes that if the contract amount is below a specific value then the payment in the contract is considered acceptable. The specific value is calculated by multiplying the total yearly operating expenses of the gambling enterprise by the TPPPS table ratio. This represents the TPPPS

reimbursing the gambling enterprise for half of those costs associated with the offering of the controlled game and source of business of the TPPPS. Many gambling enterprise owners also separately own other businesses that may offer services (such as the facility). To protect the TPPPS from such inter-related transactions being used to inflate the operating expenses of the gambling enterprise, the Bureau is provided the option of examining those transactions. If the transactions are substantially disproportionate to the standard cost of such a service, the Bureau may disallow its consideration when determining the operating expenses.

- A new paragraph (3) provides the calculation for the TPPPS table ratio. This ratio establishes the percentage of TPPPS participation at the gambling enterprise based upon collection fees. This calculation is necessary in order to determine the overall presence and participation of the TPPPS in relation to the overall business of the gambling enterprise.
- **Option 3** would repeal all current language and replace it with a prohibition of any payment between the gambling enterprise and TPPPS. This is necessary if the Commission should decide that the exchange of funds between the two parties has proven to have caused the gambling enterprise to have an interest in the funds wagered, lost, or won because of the business relationships that have been created through the contracts.
- **Option 4** would modify and clarify the current restrictions.
 - Current subsection (c) contains only associated paragraphs and no direct provisions. The second and third sentences of paragraph (1) are moved to subsection (c). Together, these provide clarity that the contract must include all direct payments between the TPPPS and the gambling enterprise.
 - The first sentence of paragraph (1) of subsection (c) in the current regulation provides that payments may not be based on the profits or revenues of the TPPPS, unless expressly authorized. While this restriction is important, and is replaced by a similar provision, the qualification of “[e]xcept as expressly authorized...” has no meaning as there is no exception included in the current, or amended regulations. This restriction is maintained as paragraph (1) but modified to more closely meet the restriction provided for in section 19984 as restricting interest in the funds wagered, lost or won. The first half of paragraph (2) is then incorporated with the clarification that the gambling enterprise cannot receive money based upon a percentage of the TPPPS’s profits and wagers. These modifications provide a limitation to reimbursement more closely aligned with the Act, and provide a clear separation between the banking of a game and the offering of a game.

- The last sentence of the current paragraph (1) requires that a detailed list, excluding specific costs, be included in the contract. This provision is modified and renumbered as paragraph (2) of subsection (c) to require a detailed list of all items provided for in the contract. The limitation of excluding specific costs is removed. This is necessary because the Bureau has expressed concern that the restriction was making it difficult for a review to be conducted to ensure that payment was consistent with the other requirements. It is a requirement of section 19984 to prohibit the connection of the gambling enterprise with the results of the play of a controlled game and, the Bureau must ensure this by analyzing the contract. Restricting the information provided to the Bureau limits their ability to ensure compliance.
- The current paragraph (1) also includes a restriction of payment to three categories: services, facilities and advertising. Additionally, the last sentence of the current paragraph (2) limits the payment to a fixed amount for the services and facilities and to a reasonable share of advertising. Finally, the first sentence of the current paragraph (3) disallows payments for services and facilities that are substantially disproportionate to their value. These three provisions provide an unclear limitation of the payment amount, using undefined concepts of value, substantially disproportionate and reasonable. The proposed revisions are necessary so that the new paragraphs (3) and (4) can clarify the restrictions.
- A new paragraph (3) limits any payment to a maximum dollar amount related to the number of tables that the TPPPS provides service for the gambling enterprise.

Subsection (d) of the current regulation imposes a restriction preventing the parties from agreeing to any limitation on communications with the Bureau and the Commission, or taking any retaliatory action should those communications occur. This is changed to expand the agencies that are covered by this restriction beyond just the Bureau and Commission to include other licensing and law enforcement agencies. It is of paramount importance that any licensed party be able to communicate with any licensing or law enforcement agency without restriction or fear of retaliation.

Subsection (e) is consistently amended to clarify that a gambling *enterprise*, not a gambling *establishment*, is a party to the contract. These are minor technical, grammatical, conforming changes that have no regulator effect. Additionally, clarifying language is added to show that a gambling enterprise may not bank a game in its own gambling establishment.

Subsection (g) is consistently amended to clarify that a gambling *enterprise*, not a gambling *establishment*, is a party to the contract. These are minor technical, grammatical, conforming changes that have no regulator effect.

Option 5 – Adopt Section 12272. Bid Submittal and Review.

This proposed action establishes a new section that adds a new bid requirement to the contract process. The gambling enterprise would be required to create two separate committees, one that accepts the bids and one that reviews the bids. This would allow for the selection of a TPPPS based upon the payment and the level of services offered without foreknowledge of which TPPPS is associated with the bid.

New subsection (a) provides that the gambling enterprise must create two committees who, for the purposes of bid selection, are segregated from each other. This means that members of different committees could not discuss the bids received until after the selection of a TPPPS unless the regulations allow for it. This is necessary to separate the selection of a TPPPS from the specific company information to ensure that the process is untainted. The two committees created are the review committee and the selection committee.

New subsection (b) establishes the role of the review committee, which is to prepare the request for bid, review the submitted bids and conduct any TPPPS interviews, and prepare all documentation for the selection committee. This is necessary to define the specific tasks that this committee is responsible for as part of the overall process.

New subsection (c) establishes the role of the review committee. This is necessary to define the specific tasks that this committee is responsible for as part of the overall process.

New subsection (d) establishes the minimum requirements of the bid request. This is necessary to ensure that the information requested; and, therefore provided is consistent with the requirements of the Act and regulation.

New subsection (e) establishes the acceptable method of communication between the review committee and the selection committee. This is necessary to ensure that the review committee remains separated from any bidder identities so that it can make an impartial decision based solely on the information presented in the bids.

Adopt Section 12274. Review and Approval of Initial and Renewal Proposition Player Contracts.

This proposed action would renumber Section 12200.9 as Section 12274. This proposed action modifies and clarifies those processes and procedures the Bureau must follow when reviewing and approving a contract. Additionally, this section is expanded to include the requirements for the renewal of a contract which limits duplicative language in the chapter.

Paragraph (1) of subsection (a) in the current regulation provides that the TPPPS may not perform services for a gambling enterprise until after a contract has been approved by the Bureau, and that to perform services without approval is a violation. Additionally, this subsection provides a list of conditions that must be met. The last sentence is amended to clarify that the conditions listed must all be met before a contract can be approved or renewed.

- Subparagraph (A) is revised to provide clarity that the contract must be consistent with all provisions of a contract.
- Subparagraphs (B), (C) and (D) of the current paragraph (1) are moved to a new paragraph (2).
- New subparagraph (B) clarifies that the TPPPS must have a valid license or registration before a contract can be approved. This ensures that only authorized persons are applying for approval of contracts to offer third-party services, and streamlines the Bureau's review processes as they are not required to review a TPPPS contract unless those services could actually be provided.
- A new subparagraph (C) is added which works in conjunction with the new paragraph (3) of subsection (c) of Section 12270.
 - **Option 1** requires that the values for services and facilities determined and provided for in the contract not be higher than their justified value. Additionally, the incorporated form BGC-APP-030 is modified to reflect the changes to the regulations and to incorporate the non-duplicative information of form BGC-APP-031, with that form being repealed.
 - **Option 3** requires that for the Bureau to approve the contract it cannot contain a payment between the TPPPS and gambling enterprise. This is necessary as the contract is not allowed to contain a payment, and so a contract with a payment should not be approved.
- A new subparagraph (D) is added which works in conjunction with paragraph (4) of subsection (c) of Section 12270.
 - **Option 1** requires that the documentation provided to substantiate payments or reimbursements for advertising or equipment do not exceed a proportionate share of the actual costs related to the benefit received by the TPPPS.
 - **Option 3** has no separate subparagraph (D) and so subparagraph (E) is renumbered.
- A new proposed subparagraph (E) is added to move the provision from subsection (c) that limits the term of a contract to a two-year period. Moving this provision simplifies the number of places in the regulations that include limitations to the Bureau's approval of the contract.
- **Option 5** would add a new subparagraph (F) that requires the Bureau to only approve contracts that have been properly bid and selected pursuant to the requirements of

Section 12272. This is necessary to ensure that an approved contract is consistent with all requirements.

Paragraph (2) of subsection (a) in the current regulation is repealed as it is redundant. This paragraph just introduces and requires that a specific form be submitted. This is redundant to the current paragraph (3) which requires that the same form be submitted as part of a complete application. As previously noted, a new paragraph (2) would provide a list of items that a contract cannot include. As noted, the new subparagraphs (A), (B) and (C) correspond to the relocated subparagraphs (B), (C) and (D) from paragraph (1) with only minor non-substantive grammatical, editorial changes that have no regulatory effect. Additionally, an option is included:

- **Option 6** would add subparagraphs (D) and (E) which would provide a restriction that would instruct the Bureau to not approve a contract if approving that would allow a specific situation to exist.
 - The first situation [new subparagraph (D)] is where an owner of a TPPPS contracts for third-party services with an owner of a cardroom and each owner already has an approved contract. In this contract the owner of the TPPPS represents the cardroom in the other contract and the owner of the cardroom represents the TPPPS in the other contract.
 - The second situation [new subparagraph (E)] is where an owner of a TPPPS contracts for third-party services with an owner of a cardroom, and the two owners are also both owners in common of another TPPPS company, gambling business or gambling enterprise. The regulations, current and proposed, attempt to create a structure consistent with section 19984, which requires separation of the interests of a gambling enterprise from the outcome or wagers of a controlled game. The existence of a direct financial or controlling interest in a licensed business may create an environment where the two parties can independently determine the value of a third-party contract.
- **Option 7** would only provide for the prohibition of the second situation [new subparagraph (D)].

Paragraph (3) of subsection (a) in the current regulation is renumbered as subsection (b) and provides a list of the items that must be provided to the Bureau, along with the contract, in applying for initial approval. In addition, the incorporation of the contract approval application form (BGC-APP-030) is moved to this paragraph, as a result of repeal of paragraph (2) of subsection (a) in the current regulation.

- Subparagraph (B) of paragraph (3) in the current regulation requires the submittal of an Appointment of Designated Agent form (BGC-APP-031). This provision is repealed, as that form is being merged with the contract approval application form (BGC-APP-030) and will no longer exist.

- A new paragraph (6) is added which will work in conjunction with the new paragraph (3) of subsection (c) of Section 12270.
 - **Option 1** requires that a methodology be submitted that shows how the value of any services and facilities being provided in the contract were determined. It is outside the Bureau's current scope of expertise to determine the local costs of rent, cleaning services or the multitude of services that could be provided to the TPPPS by the gambling enterprise in the contract. This requirement places the burden on the TPPPS to justify that they are not paying more than is appropriate for the level of services and facilities.
 - **Option 3** has no separate paragraph (6); therefore, paragraph (8) is renumbered.
- A new paragraph (7) is added which will work in conjunction with the new paragraph (4) of subsection (c) of Section 12270
 - **Option 1** requires that documentation be provided that establishes the actual costs of advertising and equipment. Requiring the parties provide the documentation to the Bureau allows the Bureau to validate the reimbursement.
 - **Option 3** has no separate paragraph (7); therefore, paragraph (9) is renumbered.
- A new paragraph (8) is added to expand upon a new subsection (j) of Section 12280. This provision requires that a full disclosure of any financial arrangements entered into within three years prior to the contract term must be provided to the Bureau. Current regulations only require arrangements that exist concurrent with the contract, to be provided to the Bureau. This provision will allow the Bureau to ensure that no inappropriate consideration may have influenced the creation of the contract. The period of three years is proposed as it is consistent with other statutes requiring financial statements, such as sections 19880(b)(10), 19890(e)(1) and 19890.5(e)(1).
- A new paragraph (9) provides clarity that the Bureau is able to request additional information, as needed, so that the Bureau can substantiate that the contract is not in violation of any provision of law. This is necessary so that the regulations cannot be interpreted to limit the Bureau's investigatory authority.
- **Option 5** would add a new paragraph (10) that would require that when the parties submit a contract for Bureau approval, the TPPPS must also submit all of the documentation related to the gambling enterprise's bid request and review. This is necessary so that the Bureau can review the gambling enterprise's processes and ensure that they properly followed the requirements of the regulation.

A new subsection (c) is added to provide that a complete application for approval of the renewal of a contract would follow the same requirements as an initial application with the exception of the requirement to provide copies of the playing book forms. The different playing book form requirement reflects that the TPPPS is currently operating in the gambling establishment and copies can be provided that have already been completed. This allows the Bureau to see the practical use of the playing book form instead of just a blank copy. The process of contract renewal remains unchanged with the exception of those changes also being made on initial applications. Combining the two sections removes the need for repetitiveness.

Paragraph (4) of subsection (a) in the current regulation is renumbered as subsection (d), and details the method the Bureau must follow when either approving or disapproving the contract. This provision is modified to remove an unnecessary reference to amendments that is not appropriate in the initial/renewal approval process.

Current subsection (b) requires that an executed copy of the contract and any amendments along with any Bureau notices be maintained at the gambling establishment for review or copying by the Commission or Bureau. This provision is repealed as representatives of the Commission and Bureau already have access to these documents, and the gambling enterprise should not be required to maintain them for the Commission's or Bureau's use. This change would not prevent local agencies from requiring that these documents be maintained on site, nor would it prevent the gambling enterprise from choosing to maintain the documents at their establishment.

Current subsection (c) requires that the contract term not exceed two years and that specific amendments may not be made without prior written approval of the Bureau. The portion of this subsection dealing within amendments is repealed. This is a non-substantive technical, editorial change as this part of the provision is duplicative of Section 12200.11. The part of this subsection limiting a contract to no more than a two-year term is retained and relocated to subsection (a) as subparagraph (E) of paragraph (1).

A new subsection (e) requires that a copy of the Bureau's notice of approval or disapproval be provided to the Commission. This moves the current requirement from subsection (b) of Section 12200.10C. Due to the renewal provisions being moved to this section, this change also includes the requirement that the Bureau provide the Commission a copy of any notice of approval or disapproval for renewal applications.

Adopt Section 12276. Expedited Review and Approval of Proposition Player Contracts.

This proposed action would renumber Section 12200.10A as Section 12276. This renumbered section continues the current expedited contract approval procedures and expands upon them.

Paragraphs (1) and (2) of subsection (a) provide the conditions that must be met in order for a contract to be eligible for expedited review.

- Current regulation allows for the contract to be submitted if third-party services had been offered during the 60 days preceding the contract submittal. This condition is maintained in paragraph (1) of subsection (a), but it is revised to combine the current paragraph (1) with the provision of current paragraph (2). This is a non-substantive, editorial change without regulatory effect.
- Current paragraph (2) of subsection (a) would be repealed as it would become redundant to the proposed revision to paragraph (1). A new Paragraph (2) of would add a new condition through which a contract could be reviewed as part of the expedited process. This new condition would allow for a contract to be eligible for expedited review if it is with the current provider and there is 120 days or less remaining in the current contract. This provision is necessary as it streamlines the contract renewal process in situations where a contract has not been substantively changed, and meets all other conditions of expedited review.

Paragraph (3) of subsection (a) provides that for an expedited review, the contract must be substantially identical to the current contract. Each of options 1-3 proposes revisions to this paragraph.

- **Option 1** would revise the paragraph to include the contract amount as a factor that must be substantially identical to the previous contract. This is necessary because option 1 adds requirements to the contract process, such as financial explanations by the parties that could require significant review by the Bureau. If the contract amount is changed, the TPPPS would be required to provide the relevant information and the review of such is inconsistent with both the concept and timeline provided by the expedited review.
- **Option 2** would revise the paragraph to include the contract amount as a factor that must be substantially identical to the previous contract. This is necessary because Option 2 adds requirements to the contract process, such as financial explanations by the parties that could require significant review by the Bureau. If the contract amount is changed, the TPPPS would be required to provide the relevant information and the review of such is inconsistent with both the concept and timeline provided by the expedited review.
- **Option 3** would propose no revisions to this paragraph.
- **Option 4** would revise the paragraph to include the contract amount as a factor that must be substantially identical to the previous contract. This is necessary because option 1 adds requirements to the contract process, such as financial explanations by the parties that could require significant review by the Bureau. If the contract amount is changed, the TPPPS would be required to provide the relevant information and the review of such is inconsistent with both the concept and timeline provided by the expedited review.

A new paragraph (4) is added to subsection (a). The expedited review process requires that the new contract be substantially similar to the existing contract except that the TPPPS is different. In order to ensure that any newly approved contract is consistent with any changes to law or regulation, it might be necessary to prevent a contract from being approved under the expedited process. This paragraph provides this clarifying requirement, by preventing a contract from being approved if the Act or regulations are substantively revised.

A new paragraph (5) is added to subsection (a). Paragraph (1) of subsection (a) of Section 12274 provides a general requirement that all contracts must be approved by the Bureau and specifies a number of other requirements, such as the contract cannot undermine the public trust, or cannot exceed a two-year term. The expedited review process is separate from the regular contract approval process, but there are still aspects that are relevant. This paragraph provides clarity that the separation of the processes is about the review and approval process and not the minimum standards a contract must meet.

Subsection (b) is revised to change the term “house” to “gambling enterprise.” This change maintains consistency with other changes and clarifies that the contract is with the gambling enterprise and not the house. Section 19805 defines “house” as “...the gambling enterprise, and any owner, shareholder, partner, key employee, or landlord thereof.” In the context of identifying the parties to the contract, the house is not the appropriate entity to fill that role. A key employee is just an employee of the business and while that person may be authorized to act in specific roles on behalf of the business, they are not a party to the contract or responsible for fulfilling the contract. Conversely, gambling enterprise, also defined in section 19805, means “...a natural person or an entity... that conducts a gambling operation...” As the party conducting the business, gambling enterprise is the more specific and relevant term to use to refer to a party to the contract.

Subsection (c) is revised with a non-substantive formatting correction. Additionally, paragraphs (1) through (5) of subsection (c) are deleted and replaced with a reference to the requirements of a complete application pursuant to paragraph (2) of subsection (a) of Section 12274. The previous list was an unnecessary duplication, and therefore the removal of the duplicative language is non-substantive. Paragraph (6) of subsection (c) is the only provision that is different from the other list, and is retained and renumbered accordingly.

A new subsection (d) added. This provision is consistent with the new subsection (c) of Section 12274, and necessary for the same reasons.

Adopt Section 12278. Review and Approval of Amendments to Proposition Player Contracts.

This proposed action would renumber Section 12200.10B as Section 12278. This renumbered section continues the current amendment approval procedures and expands upon them.

Subsection (a) establishes the approval process for standard contract amendments. This provision is amended to clarify that any amendments, except for those provided for in subsection (b), must be approved by the Bureau before becoming effective. Additionally, non-substantive grammatical, editorial changes in reference to the required form are made. Language is added to provide clarity that the amendment process cannot be utilized to circumvent the minimum standards provided for in paragraph (1) of subsection (a) of Section 12274. Finally, in conjunction with the repeal of Section 12200.10C, and with the changes in Sections 12274 and 12200.10, a requirement for Commission notification is added.

Subsection (b) provides an alternative approval process for a select list of contract terms. This approval process allows for the terms to be modified without Bureau approval and instead only requires notification within 10 days of the execution of the revised contract. This exception streamlines the approval process for these items, while still ensuring they are consistent with the contract protections of paragraph (1) of subsection (a) of Section 12274.

Current subsection (b) provides that paragraphs (3), (4) and (6) of Section 12200.7, renumbered as (3), (4) and (7) of subsection (b) of Section 12270 are subject to this process.

A new paragraph (1) is proposed that would allow for contract revisions without Bureau approval if the term in the contract is unrelated to the Commission's regulations. Contracts often include other provisions, such as issues related to insurance, and it is not necessary for the TPPPS to go through the contract approval process for changes where the Commission has no interest and the Bureau is not required to review. This provision streamlines the contract revision process and simplifies the Bureau's review.

A new paragraph (2) is proposed to allow for the listing of derivative parties and affiliates of specified persons to be revised without Bureau approval. This revision is necessary so that the proposed regulations do not interfere with the lifestyles of the individuals associated with the gambling enterprise or TPPPS. For example, the listing of affiliated parties requires that a child of an owner be listed. If that child were to move home, not only would the list need to be updated but without this provision the move couldn't be completed until after the Bureau had reviewed and approved the change. This is unnecessary as by only requiring notification of the change, the Bureau can limit any review to just those situations where it feels that someone of sufficient influence is now in a position to impact the gambling enterprise or TPPPS and should therefore be investigated further.

Additionally, many of the more complicated additions of individuals to the list of derivative parties and affiliates of specified persons could be in conjunction with another review. For example, if an individual were to purchase a portion of the gambling enterprise they would become a derivative party and need to be included. However, this purchase will have been reviewed as part of the transaction approval and licensing processes and the additional consideration of the contract revision may be duplicative of these processes.

Additional new paragraph(s) have been proposed in conjunction with the options.

- **Option 1** would move the procedural exemptions from subsection (b) to paragraph (3) and add a new paragraph (4).
 - The addition of a new paragraph (3) of subsection (b) of this section adds new paragraphs (5) and (6) and current paragraph (8) of subsection (b) of Section 12270 to this exception. Paragraphs (5), (6) and (8) of subsection (b) of Section 12270 deal with issues unrelated to the play of the game or any payment and so are items less likely to violate the provisions of paragraph (1) of subsection (a) of Section 12274. Notification to the Bureau allows for the monitoring of the contract while acknowledging that it is unlikely these issues present a danger to the public.
 - A new paragraph (4) is added to provide that payments made by the TPPPS to the gambling enterprise for advertising and equipment may be amended with only notification to the Bureau. These payments are restricted to no more than a proportionate share of the actual cost of the advertising or equipment, and the parties must provide documentation to show the actual cost. The Bureau will then be able to verify that payment does not exceed the appropriate amount. Streamlining the process for these reimbursements allows the parties to be able to effectively and efficiently operate their businesses without the additional burden of pre-approval. Verifying after the fact ensures compliance with the Act and regulations.
- **Option 2** would move the procedural exemptions from subsection (b) to paragraph (3) and add a new paragraph (4).
 - The addition of a new paragraph (3) of subsection (b) of this section adds new paragraphs (5) and (6) and current paragraph (8) of subsection (b) of Section 12270 to this exception. Paragraphs (5), (6) and (8) of subsection (b) of Section 12270 deal with issues unrelated to the play of the game or any payment and so are items less likely to violate the provisions of paragraph (1) of subsection (a) of Section 12274. Notification to the Bureau allows for the monitoring of the contract while acknowledging that it is unlikely these issues present a danger to the public.
- **Option 3** would move the current sectional allowances to paragraph (3).
 - The adoption of a new paragraph (3) of subsection (b) of this section adds new paragraphs (5) and (6) and current paragraph (8) of subsection (b) of Section 12270 to this exception. Paragraphs (5), (6) and (8) of subsection (b) of Section 12270 deal with issues unrelated to the play of the game or any payment and so are items less likely to violate the provisions of paragraph (1) of subsection (a) of Section 12274. Notification to the Bureau allows for the monitoring of the contract while acknowledging that it is unlikely these issues present a danger to the public.

- **Option 4** would move the procedural exemptions from subsection (b) to paragraph (3) and add a new paragraph (4).
 - The addition of a new paragraph (3) of subsection (b) of this section adds new paragraphs (5) and (6) and current paragraph (8) of subsection (b) of Section 12270 to this exception. Paragraphs (5), (6) and (8) of subsection (b) of Section 12270 deal with issues unrelated to the play of the game or any payment and so are items less likely to violate the provisions of paragraph (1) of subsection (a) of Section 12274. Notification to the Bureau allows for the monitoring of the contract while acknowledging that it is unlikely these issues present a danger to the public.

Adopt Section 12280. Compliance.

This proposed action would renumber Section 12200.21 as Section 12280. This section provides general guidelines and restrictions for the TPPPS contract process, including those provisions previously in the contract that are not contractual terms between the parties but regulatory restrictions placed on the parties. The proposed action also provides additional requirements or clarifications, many of which have been removed from other sections and amended into this section.

Subsection (a) provides a general requirement that TPPPS employees follow the game rules approved by the Bureau. Additionally, it allows a contract to contain provisions regarding the assignment of a permanent seat to the TPPPS, and exclusion of other TPPPS and gambling businesses. These last two provisions are deleted and moved to subsection (b) of Section 12270 as new paragraphs (5) and (6).

The current text of subsection (b) becomes paragraph (1), without change, and new paragraphs (2) through (5), are added.

The new paragraph (2) of subsection (b) provides guidance that individuals with a “higher” level of licensure can also serve the functions of “lower” level licenses. This provision currently exists twice in the regulations, as subparagraph (C) of paragraph (12) of subsection (b) of Section 12200 and the first portion of subparagraph (C) of paragraph (23) of subsection (b) of Section 12200. These provisions provide clarification to both the licensed and registered individuals. These are functional provisions and not part of a definition and the inclusion twice is redundant. By moving the provisions to this section, unnecessary language is removed from the regulation and the clarification is put in a section more suitable to its function. This is a non-substantive technical, editorial change and has no regulatory effect.

The new paragraph (3) of subsection (b) provides a restriction to individuals who hold approvals to function both as a TPPPS employee and a gambling enterprise employee. This restriction prevents an individual from utilizing their third-party proposition player status

within any gambling enterprise where they are employed. This restriction currently exists as paragraph (10) of subsection (b) of Section 12200.7. Currently this restriction is included in the contract; and, therefore is an issue enforced by the parties of the contract. This restriction addresses the possible perception that gambling may not be fairly administered and should be monitored and enforced by the Bureau. By moving this provision out of Section 12200.7 and into Section 12280, it becomes clear that the Bureau may investigate and enforce violations of this restriction. Since this provision has merely been relocated without change, the relocation has no regulatory effect.

The new paragraph (4) of subsection (b) limits the presence of the TPPPS at any specific table to no more than representative. A restriction currently exists as paragraph (5) of subsection (b) of Section 12200.7 that limits each TPPPS to one individual from each license type. Currently this restriction is included in the contract; and, therefore is an issue enforced by the parties of the contract. This restriction addresses with the possible perception that gambling is not being fairly administered and should be monitored and enforced by the Bureau. By moving this provision out of Section 12200.7 and into Section 12280, it becomes clear that the Bureau may investigate and enforce violations of this restriction. Since this provision has merely been relocated without change, the relocation has no regulatory effect. Additionally, by removing the possibility of a TPPPS having more than one representative at the game, the TPPPS is limited to the same interest in the game as any other player and is unable to function as the player-dealer any more times than any patron per rotation.

The new paragraph (5) of subsection (b) limits a TPPPS employee from playing at multiple tables at the same time. This is necessary to ensure that TPPPS is not provided with any special treatment as part of the play of the game. A participant must be present at the time of play, and by participating at the play in two games an individual is present at neither.

The new subsection (c) provides clarification that the TPPPS shall pay the same collection rate as any other participant in a controlled game. This restriction currently exists as paragraph (12) of subsection (b) of Section 12200.7; however, the language has been modified to provide clarity. The Bureau has the authority to approve collection rates³ for a game, which provide for the fees collected by the gambling establishment. These rates are generally based upon the position (player or player-dealer) of an individual and may also depend on the amount being wagered by the individual. This provision provides clarity that, for the purposes of the payment of collection fees, the TPPPS is considered the same as any other player, which includes paying the same collection rate.

The new subsection (d) requires that any legal dispute between the parties needs to be reported to the Bureau. This provision currently exists as paragraph (16) of subsection (b) of Section 12200.7; however, the language has been modified. The requirement to report to the Commission has been eliminated in the revised language. Following implementation of the Governor's Reorganization Plan No. 2 of 2012 (GRP No. 2), the Bureau has been given the exclusive responsibility of investigating issues and reporting to the Commission. Therefore,

³ Section 19826, subdivision (g) and Penal Code section 337j, subdivision (f)

it is not necessary or appropriate that legal disputes be reported to the Commission, as the Bureau should first investigate before reporting to the Commission.

The new subsection (e) provides that if any employee of the TPPPS is arrested in or removed from the gambling establishment or is involved in a dispute with a patron that results in the removal of one or more individuals, the parties must provide a report to the Bureau. This provision currently exists as paragraph (17) of subsection (b) of Section 12200.7; however, the language has been modified. The requirement to report to the Commission has been eliminated in the revised language. Post GRP No. 2, the Bureau has been given the exclusive responsibility of investigating issues and reporting to the Commission. Therefore, it is not necessary that removals be reported to the Commission, as the Bureau should first investigate before reporting to the Commission.

The new Subsection (f) provides that any incident of cheating reported by the TPPPS to the gambling enterprise must be reported to the Bureau within five days. This provision currently exists as paragraph (18) of subsection (b) of Section 12200.7; however, the language has been modified. The requirement to report to the Commission has been eliminated in the revised language. Post GRP No. 2, the Bureau has been assigned the exclusive responsibility of investigating issues and reporting to the Commission. Therefore, it is not necessary or appropriate that cheating be reported to the Commission, as the Bureau should first investigate before reporting to the Commission.

The new Subsection (g) provides guidelines for any tipping arrangement put in place as part of, or in addition to, the contracting process. Currently paragraph (20) of subsection (b) of Section 12200.7 provides that the tipping arrangement must be included as part of the contract. This provision caused confusion, as in some cases parties wanted to only allow for the TPPPS to tip at its discretion. As this wasn't an actual arrangement, the parties found it unclear what should be included and would only state that tipping is discretionary. This lack of specificity does not provide the Bureau with the information it requires to monitor the relationships between the two parties so additional clarity is required. These restrictions deal with the perception that gambling is not being fairly administered; therefore, it should be monitored and enforced by the Bureau. By moving this provision out of Section 12200.7 and into Section 12280, it becomes clear that the Bureau may investigate and enforce violations of this restriction.

Paragraph (1) of the new subsection (g) requires the TPPPS to provide its tipping policy as an addendum to the contract. The revisions to paragraph (20) of subsection (b) of Section 12200.7 remove the requirement that the tipping policy be included as part of the contract. Paragraph (1) of subsection (g) replaces that old requirement with a new one that allows for a tipping arrangement to be included in the contract, as is currently required, but also provides an additional requirement to cover situations where the parties have agreed to allow tipping but not to have a pre-arranged system. A TPPPS, as a business organization, would not allow its employees ultimate discretion to tip with company money, so this proposed new requirement would require disclosure of the policy implemented by the TPPPS. It is critical that the Bureau have a complete understanding of the financial arrangements between the

two parties, as is referenced many times throughout this proposed action, so that the Bureau can ensure that the relationship appropriately separates the financial interests of the gambling enterprise from the money wagered, won, or lost by the TPPPS.

Paragraph (2) of the new subsection (g) continues the restriction already present in paragraph (20) of subsection (b) of Section 12200.7, restricting any tipping arrangement or policy from including any percentage calculation.

Paragraph (3) of the new subsection (g) requires that the employee classifications of the gambling enterprise that are included in the tipping policy be provided. This information is required as further provisions limit the types of employees eligible to receive tips.

Paragraph (4) of the new subsection (g) prohibits any tipping arrangement or policy from providing tips to any employee of the gambling enterprise that is exercising any supervisory responsibility or any authority to make discretionary decisions that affect the result of the game during that particular shift. This restriction is critical, as it removes potential concerns that the TPPPS may be providing tips as a method of gaining advantage or influencing decisions. While it is common practice for any player in any particular game to tip as they desire, the TPPPS is, in most cases, the player most often present. Even if the TPPPS is tipping at a lower rate than any other individual player, when those players leave, the TPPPS is still present at the table. Therefore, it is a concern that the gambling enterprise employees may provide greater deference to the needs of the TPPPS as they come to understand that over the long run the TPPPS potentially provides a significant portion of their tip income. By restricting tips from those with authority over the game, this potential incentive can be reduced and made clear that it is a reward for service and not any measure of earning interest in the game.

Paragraph (5) of the new subsection (g) provides clarity that a tip can be considered any monetary asset and not just a gambling chip or currency. This clarification is needed to minimize attempts to circumvent the provisions in this subsection and ensure the fairness of gambling in California.

The new subsection (h) provides that a TPPPS may not purchase, lease or control any gambling equipment related to a controlled game at a gambling establishment. This restriction currently exists as the second sentence of paragraph (21) of subsection (b) of Section 12200.7. This restriction deals with the perception that gambling is not being fairly administered; and, therefore should be monitored and enforced by the Bureau. By moving this provision out of Section 12200.7 and into Section 12280, it becomes clear that the Bureau may investigate and enforce violations of this restriction.

The new subsection (i) provides that it is the responsibility of the gambling enterprise to ensure that the TPPPS follows all laws and regulations pertaining to controlled gambling. The addition of this provision is in conjunction with the repeal of paragraph (8) of subsection (b) of Section 12200.7. This repealed provision required that the parties agree in the contract that the services provided will be in compliance with all requirements of controlled

gambling. This restriction deals with the perception that gambling is not being fairly administered, and should therefore be monitored and enforced by the Bureau. By moving this provision out of Section 12200.7 and into Section 12280, it becomes clear that the Bureau may investigate and enforce violations of this restriction. Additionally, the provision has been modified. Instead of requiring a mutual agreement between the parties that they will follow the law, this provision would place the requirement on the gambling enterprise. The gambling enterprise is the licensed entity offering the game and has the responsibility of enforcing the rules in all cases; not just when related to proposition player services. This change makes the provision consistent with the status of the gambling enterprise managing the game for which proposition player services are included.

The new subsection (j) provides that financial arrangements, relationships or transactions entered into during the contract period between the TPPPS and gambling enterprise or any of their designated derivative parties or persons affiliated with them, must be disclosed to the Bureau with 10 days of their execution. This requirement provides the Bureau with the ability to ensure that the gambling enterprise is sufficiently distanced from the funds wagered, won, or lost as part of a game; and, therefore should be monitored and enforced by the Bureau. By moving this provision out of paragraph (15) of subsection (b) of Section 12200.7 and into Section 12280, it becomes clear that the Bureau may investigate and enforce violations of this restriction.

The previous inclusion as part of the contract required that any new arrangement also requires an amendment to the contract. This is unnecessary as the scope of the notification has been broadened. Additionally, the change to notification is consistent with other changes included as part of this proposed action. This provision has also been modified in addition to its move. The requirement to disclose financial arrangements has been clarified to require other financial relationships and transactions. This helps to ensure that a full financial picture of the relationship between the two parties is clear to the Bureau.

Finally, in conjunction with other changes to the regulation, the scope of this financial disclosure has been broadened to include the derivative parties and the affiliates of any specified persons. This broader scope of information will assist the Bureau in ensuring that there is no attempt to circumvent the intent of these provisions and the Act, namely the illicit transfer of money from those participating in the game (the TPPPS) and those offering the game (the gambling enterprise).

The new subsection (k) provides that the TPPPS shall not provide rebates. The addition of the TPPPS to the preclusion of providing rebates is necessary due to their role in the game. While the TPPPS is a business that is licensed or registered with the Commission, during the play of the game it serves in the same role as any other individual participating in the game and not as an operator or in any other segregated role. Procedurally, it is strange to allow for one player in a game to provide rebates to another player while not giving that same option to every player.

The proposed changes in Chapter 10 are as follows:

Amend Section 12560. Disciplinary Guidelines for Third-Party Providers of Proposition Player Services Licensees or Registrants.

This section contains non-substantive revisions to correct and conform the references in paragraphs (7), (8), (9), (10), (11), and (19) of subsection (b) and paragraph (8) of subsection (d) to numerous changes made to the specified sections in Chapter 2.1. Additionally, to be consistent with subsection (k) of Section 12280, paragraph (19) of subsection (b) and paragraph (8) of subsection (d) of this section are revised to conform with the prohibition of rebates in all cases.

Economic Impact to the Private Sector:

An initial consideration of the possible economic impact of each of the options was conducted. All financial information utilizes information from gambling enterprises' 2013 fiscal year as this was the most recent available information at the time this document was created. When determining the impact of a financial change, only required changes are considered and all impacts are twice the actual dollar amount as they effect both the TPPPS and the gambling enterprise.

Option 1 – Require More Information under the Current System

This option would modify the current system to require more detailed reporting of specific services that are included in the contract. While the standards of the contract are substantially similar, there are some minor differences; therefore, there should not however be any significant impact. However, the Bureau has theorized in previous testimony that current contract amounts are inflated beyond what is allowed in current regulation due to the lack of reporting of specific services. As this inflation is unknown, any impact is also unknown, though this option may have a cost impact due to the option providing a more focused review than current regulation.

Option 2 – Provide “Safe Harbor” if Contract Amount below Operating Cost Threshold

This option has been considered in various forms throughout this regulatory process. Often referred to as twenty or twenty-five percent of operating costs, this option deals with the TPPPS being allowed to pay some portion of the gambling enterprise's operating costs. The original proposal, received as a comment in the initial stages, only presumed twenty-five percent as a starting point assuming that gambling enterprises incur half their costs from both California games and poker. And, that the TPPPS could share half the California games portion.

This proposal does not use a fixed percentage, but instead creates a unique percentage for each gambling enterprise. Presuming that costs are associated to income (collection fees), this option creates a percentage that compares collection fees from California games with the collection fees from poker games. If a gambling enterprise receives sixty percent of its collection fees from California games, then the maximum the contract amount could be would be thirty percent of operating costs. If the gambling enterprise only received twenty percent from California games, the contract would be capped at ten percent of operating costs.

When this option is applied to the contract amounts of 2013, only seven contracts would be required to be reduced, for a total reduction of under **\$1.5 million**. Even after additional economic considerations, it is unlikely that this option would qualify as a major regulation.

Option 3 – Disallow Contract Payment

This option would disallow payments in the contract for any purpose. In 2013, the combined total of all contract payments exceeded \$66 million. This would make the total direct economic impact alone over **\$132 million** before any consideration of employment, taxes or secondary spending. This would be considered a major regulation.

Option 4 – Per Table Fee

The economic impact of this option is not fully understood. While the current contract amounts are known, what is not known are the maximum numbers of tables currently being operated by TPPPS'. Currently, contracts often include all of a gambling enterprise's tables in the contract. Assuming this, **any per table amount under \$31,000** will be a major regulation and anything under **\$53,000 per table** will meet the Department of Finance's recommended \$20 million threshold. Any effort to more accurately require the reporting of tables will alter these thresholds.

Option 5 – Bid Submittal and Review

This option would create a new process for many of the 55+ cardrooms that currently have a contract with a third-party provider. Even those that currently have a similar process would be required to add the additional steps required to both conform to the specific process and report to the Bureau. Additionally, this would increase the fees and Bureau's processing time. The exact time and cost required is unknown at this time.

Option 6 – Cross-banking and associated banking are prohibited

There are currently two contracts that would meet the standard of cross-banking. Initially, neither of these contracts would be affected; however, the first contract that would require renewal would not be eligible for such. Long term, only one of these contracts would be allowed under the proposed regulations.

Option 7 – Cross-banking is permitted, but associated banking is prohibited

The disallowance of associated banking is consistent with past Commission action and therefore there should be no impact.