

ADVERTISING

CGCC-GCA-2025-02-R

COMMENT SUMMARIES AND RECOMMENDED RESPONSES FOR THE PROPOSED REGULATIONS

I. 45-DAY WRITTEN COMMENTS

The California Gambling Control Commission (Commission) received the following written comments/objections/recommendations regarding the text of the proposed action during the 45-day written comment period that commenced August 1, 2025, and ended on September 15, 2025.

A. COMMENTS MADE ON THE PROPOSAL IN GENERAL.

These comments are made on the proposed action and are not directed at any specific regulatory section.

1. David Fried, representing California Grand Casino and Oaks Card Club; California Gaming Association (CGA), representing various cardrooms statewide¹:

The Commission did not give adequate consideration to alternatives.

The comments contend the Commission failed the Administrative Procedure Act (APA) requirement that an Initial Statement of Reasons (ISOR) describe “reasonable alternatives to the regulation” (including alternatives that would lessen small-business impacts) and explain why they were rejected, as also reinforced by Gov. Code §11346.9(a)(3).

As evidence, the letter lists specific, feasible alternatives the Commission either did not analyze or gave only cursory treatment:

- Add exceptions for space-limited digital ads and revise the gaming-activity provisions, as specified;
- On social-media pages, allow only one problem-gambling reference, permitting cardrooms to hyperlink to the cardroom’s website when only one link is available, and removing the translation requirements, as specified;
- Allow disclosures to be posted on websites instead of into every ad;
- Narrow the deception standard to “materially false factual statements;”
- Require greater specificity in Department of Justice, Bureau of Gambling Control (Bureau) disapproval notices and provide an immediate judicial hearing on the merits, as specified;

¹ Per CGA’s September 12, 2025 Comment Letter: “[CGA] hereby joins in and adopts as its own the comments, recommendations, including all supporting documents and declarations submitted by David Fried concerning the advertising regulation proposed by the [Commission].”

- Remove the “Nevada” and “Vegas” references from the deceptive advertising criteria and substitute clear, specifically prohibited claims (e.g., explicitly offering “craps” or banked card games);
- Limit Sections 12097(c)(4)(C) and (e)(3) to games actually played as banked games in Nevada; and
- Limit Sections 12097(c)(4)(C) and (e)(3) to the exact game names listed in Penal Code section 330.

Commission Staff’s Recommended Response: This comment was considered but not incorporated. The Commission has either:

- Addressed these alternatives (directly or indirectly) and provided its reasons for rejecting them in the ISOR under the “Consideration of Alternatives” section;
- Addressed these alternatives and provided its reasons for rejecting them herein; or,
- Has addressed these alternatives by providing additional 15-day changes to the text upon further consideration as explained herein.

Notably, Government Code section 11346.2(b)(4) specifies that an agency is not required to artificially construct alternatives or describe unreasonable alternatives. The alternatives must be equally effective in achieving the purpose of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific.

2. **David Fried, representing California Grand Casino and Oaks Card Club; CGA, representing various cardrooms statewide:**

The comment letter argues that the Fiscal and Economic Impact Estimates in the Notice of Proposed Action (NOPA), Economic Impact Assessment in the ISOR, and Economic Impact Statement in the STD. 399 and exhibits (together “EIS”) fail the APA’s requirements to identify affected persons/businesses/public agencies and to estimate compliance costs and financial impacts (including effects on industry revenues, wages, indirect losses, and local tax revenues). The letter contends that the proposed regulation meets the definition of a “major regulation” and therefore the Commission must prepare a Standardized Regulatory Impact Analysis (SRIA). If the EIS is erroneous the regulation may be invalidated.

The Bureau’s 2024 Economic Impact Study of Regulations on California Cardrooms (BEAR Report) and Market Size.

The Commission’s EIS omitted basic information regarding the size of the overall market and the direct and indirect revenues from the cardroom industry. As a result, the EIS does not contain any market-baseline or estimates in what percentage change in cardroom revenues would trigger a major regulation.

Respectively, the BEAR Report found \$1.35 billion in annual direct cardroom gaming revenue, nearly \$800 million for Third-party Provider of Proposition Player Services (TPPPS) (58% of cardroom revenue), and \$4.5 billion total economic output, implying that relatively small percentage declines in revenue (.09 to 1.2% annually) could trigger the \$50 million “major regulation” threshold and need for a SRIA.

Gambling Advertising Studies Omitted from the EIS.

Contrary to the EIS’s assertion about the lack of pertinent gambling-advertising studies and evidence, the comment letter cites a literature base, including a meta-analytic review of 23 related studies, showing statistically significant links between gambling advertising and behavior, with one study involving three US states finding a 0.1 to 0.24% revenue increase per 1% increase in advertising expenditure.

EIS Ignored the Cardroom Survey Data.

On May 14, 2024, the Commission sent a survey to cardrooms (with the draft regulation text attached) requesting estimated fiscal impacts from the regulation, and attaching the text of the regulation.

- **Reported revenue impacts.** 17 cardrooms submitted over 100 pages of material and 10 of those quantified second-year revenue losses totaling approximately \$26 million (about 1.8% of industry revenues). This exceeds the threshold of a major regulation without counting the other 45 active cardroom or TPPPS businesses that did not submit responses. The EIS dismissed this reported data based on alcohol/tobacco studies and generic critiques, despite respondents providing rationales, calculations, and customer-acquisition evidence.
- **Commission’s Compliance Cost Estimates.** The Commission’s own estimates for only 10 cardrooms added \$10+ million in first-year compliance costs and \$3.5 million in year two, putting the first-year total near \$25 million and the second-year total near \$30 million for just those 10 cardrooms. The ISOR acknowledges that scaling to all cardrooms yields losses “in the tens of millions.”
- **What the survey requested.** The Commission’s spreadsheet required a “Rationale, Calculations, Costs Breakdown, Methodology” column with specific calculations (e.g., staff hours and rates). Several cardrooms populated the cells and attached narratives with figures on new-customer acquisition, economic value, and how the regulation would depress ad effectiveness.
- **Examples of the reported impacts:**
 - One cardroom modeled a 10 to 30% reduction to new-player advertising, quantified a 25% drop in first-visits (200 to 150/month at approximately \$80/visit), and added long-term-customer losses to reach \$348,000 in year-one revenue loss.
 - Another projected compounding effects: fewer new players, weaker word-of-mouth/social media, and crossover declines into poker, yielding \$3.99 million in year-two losses.

- A third explained that forcing long, unfamiliar game names would confuse audiences (analogy to using scientific names instead of common names), causing drop-offs during ads and fewer repeat visits.
- **The EIS is erred.** Despite these submissions, the EIS dismissed the survey data as lacking “facts and evidence,” and instead cited national alcohol/tobacco studies to claim revenue losses could be ignored. The comment letter contends this claim is baseless given what the Commission itself asked respondents to provide and what they actually provided.

Marketing Experts.

The comments cite declarations by experienced casino marketers and cardroom operators, which opine that the mandated disclaimers and naming restrictions will materially reduce ad effectiveness. Specifically, these experts estimated that the regulations will reduce new player attendance by 10 to 25%, and revenues by 3 to 5% annually in the first two years, exceeding the threshold for a major regulation / SRIA.

2025 Consumer Survey.

The 2025 Consumer Survey indicates the proposed disclaimers stigmatize cardroom games – 17% of respondents assumed “California Games” as second-rate with similar results for “This cardroom does not offer banked games.” The responses also show that the disclaimers generate doubt, uncertainty, and confusion that diminishes consumer willingness to visit or play.

Forecasting v. Speculation.

The EIS is wrong to disregard as “speculation,” some of the estimates provided by respondents to the industry economic impact survey. The comment distinguishes evidence-based forecasting from speculation, arguing the industry’s economic forecasts are grounded in data concerning new player acquisition and value, expert analysis, and studies, all of which are standard methods for completing fiscal analyses and SRIAs.

TPPPS Losses.

The EIS wrongfully assumes \$0 in TPPPS revenue losses because those licensees did not submit responses to the economic impact survey. However, this is because TPPPS businesses do not advertise and do not track new player visits. Therefore, it makes sense that TPPPS businesses did not submit responses because they cannot estimate impacts on cardroom attendance, which would result in TPPPS revenue losses. Further, the EIS is inconsistent with the BEAR Report, which found that TPPPS revenue losses are estimable based on decreased patronage, and equal 58% of cardroom revenue. As such, the TPPPS losses cannot be ignored because their revenue is mechanically tied to cardroom patronage.

Blackjack and Pai Gow.

The Commission’s industry economic impact survey was circulated with the draft regulation text. However, while the text does not clearly state that advertising using the word “Blackjack” and “Pai Gow” may be prohibited, the ISOR and NOPA indicate that

such advertising could in fact be barred. Because respondents relied on the draft text, their lost revenue projections likely did not account for the impacts of prohibiting “Blackjack,” and potentially “Pai Gow,” in advertising. This undermines the survey’s reliability and has caused the impacts indicated by the respondents to be understated. Based on the data in the BEAR Report, if cardrooms can no longer advertise “Blackjack,” \$21 to \$42 million in additional annual revenue will be lost, in addition to the estimated losses identified in the survey responses.

The EIS omits other impacts which must be listed on the STD 399.

The required determinations provided in the Commission’s STD. 399 (impact on jobs, investment, local government tax revenues, competition with businesses in other states) incorrectly concluded no negative impacts. The comment asserts that, on the contrary, the regulations would reduce employment, capital spending, and cardroom gross-revenue taxes, and that competition with out-of-state casinos (e.g., Nevada) is real because customers have cars and do cross state lines to gamble.

The EIS’s reliance on alcohol and tobacco studies was grossly misplaced.

The EIS’s reliance on data from national alcohol and tobacco advertising studies to invalidate the cardroom industry’s reduced player participation estimates is inapt. This is because alcohol and tobacco products have inelastic demand and lack close substitutes, whereas cardrooms directly compete with nearby tribal and Nevada casinos. Moreover, the studies cited in the EIS acknowledge advertising only shifts share among competitors and not total consumption nationwide.

The comparison to the New York rulemaking is misplaced.

The comment contends the Commission misinterpreted similarities with New York’s (NY) economic impact estimates. The NY regulation is not comparable because: (1) It focuses on national advertising that crosses state lines while California cardroom advertising is localized; (2) All competitors in NY are treated the same unlike California tribal casinos and cardrooms; (3) There is no evidence that NY’s required disclaimer “this promotion is not offered in New York” impacts advertising in the same way the Commission’s regulation would by stigmatizing all player-dealer cardroom games as inferior; (4) NY’s required disclaimer is not confusing, while the Commission’s disclaimer is not understood by viewers; and, (5) The NY Regulatory Impact Statement has only a conclusion based on the NY State Gaming Commission’s experience regulating gaming activities within the state, not on factual support – this would not satisfy California’s APA requirements.

Commission Staff’s Recommended Response: This comment was considered but not incorporated. Commission staff maintains that its economic and fiscal impact estimates provided in the ISOR and initial draft of the STD. 399 were accurate and based on sound evidence. Many of the costs reported by the industry were based on invalid methodologies and were not directly related to complying with the regulations, including significant litigation costs for challenging the regulations in court. Further, Commission staff reiterate that there were no costs reported by TPPPS business licensees in response to the Commission’s economic impact survey and thus, there was no reason to assume

otherwise. David Fried’s objections to the Commission’s evidence supporting its cost estimates, which included alcohol and tobacco studies and the New York rulemaking on sports wagering advertising, are matters of opinion and are unpersuasive. Notably, many of the comments contending the proposed action should be treated as a “major regulation” will no longer be applicable given the significant 15-day changes being proposed to the text. These changes address a majority of David Fried’s concerns and significantly reduce the estimated economic impact on the industry.

B. ADOPT SECTION 12096. SPECIFIC TPPPS BUSINESS REQUIREMENTS.

- 1. Chairman Anthony Roberts (representing the Yocha Dehe Wintun Nation):** This section allows a TPPPS to “create, purchase, place, or disseminate” cardroom advertisements, as long as the advertising costs and scope of services to be performed are “included” in the TPPPS contract. The word “included” in the regulation is vague (e.g., who pays, and who controls the scope of services). Further, advertising is an incident of operating a cardroom and when a TPPPS funds a cardroom’s advertising, they effectively become partners. As such, the regulations should prohibit TPPPS payments to a cardroom to avoid violating BPC 19984.

Commission Staff’s Recommended Response: This comment was considered and accepted in part. The Commission notes that the use of “included” is clear in consideration of the more specific TPPPS contract requirements concerning the share of advertising costs in existing Section 12270(c). Additionally, proposed Sections 12096 (a) and (b) were not intended to conflict with the requirements of BPC section 19984. Rather, these provisions were drafted with the intent of aligning with the requirements for TPPPS contract provisions and cardroom advertising reporting requirements located in existing Commission and Bureau regulations. However, upon further consideration, given the Bureau has the ultimate authority over approving the terms specified in a TPPPS contract with a cardroom, and the presence of clear statutory and regulatory requirements that already exist, this section is unnecessary and risks creating unintended conflicts with long-established requirements. As such, Commission staff propose to remove Section 12096 from the regulations entirely:

~~**§ 12096. Specific TPPPS Business Requirements.**~~

~~(a) A TPPPS business licensee:~~

~~(1) Will not create, purchase, place, or disseminate any advertisement for a cardroom business licensee unless it has a TPPPS contract with that cardroom business licensee and the advertisement costs and scope of advertising services to be performed are included in the TPPPS contract.~~

~~(2) Must provide the cardroom business licensee copies or transcripts of all advertisements used to promote a gaming activity that the TPPPS business licensee has, or has caused to be, created, purchased, placed, or disseminated for the cardroom business licensee for purposes of complying with Title 11, CCR, Section 2072, subsection (e).~~

- 2. Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria:** The comment letter urges improvements to the regulations governing advertising by a

TPPPS. Given broader concerns that TPPPS effectively “bank” games in violation of state law, the letter recommends the regulations prohibit all licensees from advertising illegal activities by modifying Section 12096 to require the TPPPS to include a disclaimer that they do not participate in or provide banked games at licensed cardrooms. More generally, the comment calls for greater TPPPS disclosures to promote greater transparency and consistency in cardroom advertising.

Recommended Response: This comment was dismissed due to being irrelevant and not directly related to the proposed action. The recommendations in this comment are based on unrelated claims concerning the alleged illegal operation of TPPPS businesses. These issues are not directly relevant to the proposed action, the purpose of which is to regulate deceptive advertising. Additionally, see response to **Comment I.B.1.**

- 3. Chairman Robert Smith (representing the Pala Band of Mission Indians):** The comment opposes Section 12096, which would authorize a TPPPS to participate in cardroom advertising and bear the associated costs. Doing so would cause the cardroom to have an indirect financial interest in the funds wagered, lost, or won by a TPPPS, which violates BPC section 19984.

Commission Staff’s Recommended Response: This comment was considered and accepted in part. Proposed Section 12096 was not intended to conflict with the requirements of BPC section 19984. Rather, it was drafted with the intent to align with the requirements for TPPPS contract provisions and cardroom advertising reporting requirements located in existing Commission and Bureau regulations. See response to **Comment I.B.1.**

C. ADOPT SECTION 12097. ADVERTISING CONTENT AND DISSEMINATION.

- 1. David Fried, representing California Grand Casino and Oaks Card Club; CGA, representing various cardrooms statewide:** David Fried raised concerns about the feasibility of complying with Section 12097(b)’s translation requirements for space-limited digital ads on websites (concerning the minimum age disclosure in 12097(c)(2) and the problem gambling disclosure in Section 12461(b)(1)). (For the related summary and response regarding the disclosures required by Section 12461, see **Comment I.E.1.**)

Commission Staff’s Recommended Response: This comment was considered and accepted. Former subsection (b) requires advertisements to present the age restriction and problem gambling disclaimers in all languages used in the advertisement. This provision is unnecessary due to the prevalence of automated website and browser translation options. Additionally, requiring the inclusion of this information in all languages used in an advertisement, which may consist of only a single character in a foreign language (e.g. symbol or word), is impractical and likely impossible to comply with for certain advertisements due to space constraints when applicable. The Commission proposes to remove subsection 12097(b). All subsequent subsections in 12097 would be renumbered accordingly. See Commission staff’s proposed modifications to Section 12097 at the end of **Comment Section I.C. (this section), starting on page 23.**

2. **David Fried, representing California Grand Casino and Oaks Card Club; CGA, representing various cardrooms statewide:** This comment contends that Section 12097(c) should allow the required information to be placed on cardroom websites rather than in each advertisement. Website notices reach more consumers than ads and have adequate space to provide a clear and meaningful explanation of complex concepts like player-dealer games. Further, the ISOR lacks supporting evidence to justify its claim that not requiring the disclaimers in advertisements would diminish fairness and transparency and reduce the effectiveness of the regulation. According to the 2022 Consumer Survey, the proposed disclaimers (e.g., California Game) are not understood by more than 95% of consumers. For these reasons, the proposed requirements should be modified to require the disclosure information to be included on cardroom websites instead of within each advertisement, which is a more reasonable and effective alternative.

Recommended Response: This comment was considered and accepted in part. The Commission has proposed modifications to the text to allow the required information to be located on the cardroom website instead of within a digital advertisement or social media page that has space limitations (as specified). However, for other advertisements where space constraints are not a factor (e.g. billboards, print ads, television, etc.), the evidence is not compelling enough to modify the regulations to require all the information to be located exclusively on the cardroom website. Notably, these requirements already exist in some form within Section 12461(c) and this comment seeks to reverse those existing requirements, which would reduce public protections already deemed necessary. See Commission staff's related responses under **Comments I.C.1., I.C.3., and I.C.4.** See Commission staff's proposed modified text to Section 12097 at the end of **Comment Section I.C. (this section), starting on page 23.**

3. **David Fried, representing California Grand Casino and Oaks Card Club; CGA, representing various cardrooms statewide:** Per the comment, the proposed regulation imposes requirements that are impractical for space-limited digital ads. Section 12097(c) would require every advertisement to include five items: (1) the name, nickname or alias of the cardroom; (2) a statement that participants must be 21 years or older to gamble; (3) problem gambling referral information; (4) in any reference to any game approved by the Bureau of Gambling Control (Bureau) the official approved game name or a specified disclaimer; and, (5) for any gaming activity, the Bureau approved name or identification number.

Per the comments, the proposed regulation does not extend the exception provided in current Section 12461(e)(1) and (2) for digital ads to the new requirements in paragraphs (1), (4), and/or (5), despite the ISOR's own recognition of space limitations for including problem gambling information in thumbnails and banners.

Smartphone banner ads are often less than 1 cm tall, so even short lines become hard to read. The comment includes examples showing that adding a cardroom name plus a disclaimer or full game name would add approximately 40 to 50 characters, making the ad unreadable and without enough space remaining for a cardroom's chosen message.

Since consumers visit a cardroom’s website before visiting the cardroom’s physical location, including disclaimers in every ad is unnecessary if the ad links to the cardroom’s website.

As such, Section 12097(d) should be modified to make paragraph (2) similar to paragraph (1) as follows:

12097.

...

(d)(1)...

(2) The requirements of paragraphs ~~(2) and (3)~~ *(2) through (5)* of subsection (c) do not apply to any digital material where the inclusion would be impracticable due to limited characters or spaces if a link to a website that *has the information required by subsection (c) and* complies with subsection (b) of Section 12461 ~~is included in the advertisement.~~

Additionally, the ISOR does not address whether small digital ads actually have enough space for including the newly required information. As such, Section 12097(c)(5) should be amended to require either the approved gaming activity name or approval number (not both).

Commission Staff’s Recommended Response: This comment was considered and accepted in part. Commission staff note that the suggested revisions provided in the comment do not clearly specify the applicable digital advertisement must link to a website containing the required information. As such, the Commission proposes additional modifications to David Fried’s suggested changes to 12097(d)(2), renumbered to (c)(2), to specify the advertisement must link to a compliant website (e.g., the cardroom’s website containing the required information). Additionally, for better consistency, the reference that requires the ad to link to the information required by 12461(b) has been modified to reference the requirements of subsection (b) of this section. This change ensures space-limited digital ads still provide the viewer a way to access the same information required for other advertisements (via a linked website) and that compliance can be reasonably achieved without interfering with the advertiser’s intended message. See Commission staff’s proposed modified text to Section 12097 at the end of **Comment Section I.C. (this section), starting on page 23.**

4. David Fried, representing California Grand Casino and Oaks Card Club; CGA, representing various cardrooms statewide:

Necessity

The rulemaking record does not meet the “necessity” standard of the APA (Government Code section 11349 (a)) concerning the following proposed provisions.

The proposed requirements to use Bureau-approved game names, mandated disclaimers, and restrictions on references to “Nevada” and “Vegas” lack necessity, are unsupported by substantial evidence, and conflict with First Amendment standards. Instead, the

rulemaking relies on assumptions regarding how consumers interpret generic card game names, how they would understand the proposed disclaimers such as “California game” or “banked game,” how they would perceive references to “Vegas” or “Nevada,” and whether any of these perceptions meaningfully influence consumer choice or behavior. Neither the use of full game names nor disclaimers conveys to consumers whether games are house-banked or player-dealer, disclaimers are poorly understood and ineffective, and references to “Vegas” or “Nevada” are not misleading. The rulemaking record shows no consumer complaints or data supporting the asserted harms, while surveys and expert testimony confirm that the regulation’s assumptions are false. Accordingly, Sections 12097(c)(4) and (e)(3) should be withdrawn or substantially revised to align with statutory and constitutional requirements.

Requirements for referencing games

The regulation would require advertisements to use either the full Bureau-approved game name, an approved alternative name, or else carry disclaimers. However, neither the long Bureau-approved names (e.g., “Three Card Poker 1.3” or “EZ Baccarat with Dragon Bonus”) nor shorter generic names (“Three Card Poker” or “Baccarat”) disclose whether a game is player-dealer or house-banked. The proposed rule therefore does not advance its stated purpose. In fact, consumer survey evidence shows that longer approved names can confuse consumers further, sometimes leading to greater misunderstanding of wagering formats.

Disclaimers

The proposed disclaimers (“California game” or “this cardroom does not offer banked games”) are not supported by evidence of effectiveness. Surveys demonstrate that fewer than 2% of consumers correctly understood the meaning of these disclaimers, and most found them confusing or irrelevant. Expert declarations confirm that such disclaimers use industry or legal jargon unfamiliar to consumers, and that mandated disclaimers in advertising are often ineffective at conveying meaningful information. Studies also show disclaimers describing what something is not tends to mislead or confuse rather than clarify.

Illegal Game References

Section 12097(c)(4) would allow an ad to reference an unapproved or prohibited game, such as “craps,” so long as a disclaimer is added. This undermines enforcement, as disclaimers do not prevent the appearance of illegal game names in ads. This concern is already directly addressed by Section 12097(e)(5), which prohibits advertising of illegal and unapproved games. Therefore, the broader Section 12097(c)(4) is duplicative and unnecessary.

Space-Limited Digital Ads

The proposed regulation imposes requirements that are impractical for space-limited advertising formats, such as digital ads and social media. The record does not explain why tangible items may omit certain information while digital ads cannot, nor why disclaimers and full game names should take priority over problem gambling messages,

even though the Legislature explicitly prioritized problem gambling disclosures in Business and Professions Code section 19841(f).

References to “Nevada” and “Vegas”

The regulation presumes deception when ads reference “Nevada” or “Vegas,” unless the ad expressly distinguishes cardroom games from Nevada-style banked games. Yet there is no evidence that such terms mislead consumers into believing cardrooms offer banked games. Expert testimony explains that consumers interpret “Vegas” or “Nevada” as shorthand for entertainment and excitement, not as a representation of wagering format. Cardrooms often reference Las Vegas simply to evoke the fun of casino play, not to imply equivalence with house-banked games. Surveys confirm that consumers do not associate these terms with wagering format, and decades of advertising using these terms have not generated consumer complaints.

Burden of Proof under the APA and First Amendment

Under the APA, an agency must support regulations with “facts, studies, and expert opinion” rather than speculation. Additionally, any evidence of necessity must conform to the tests for advertising regulation under the First Amendment, which acts as a limit on state advertising laws and regulations. Courts have repeatedly held that assumptions about potential consumer deception cannot substitute for evidence. When regulations restrict commercial speech, the burden is higher: the government must show that harms are real and that the regulation materially alleviates those harms. The Commission provides no evidence of actual consumer confusion, no complaints from the public, no data showing the proposed disclaimers would improve understanding, and no expert studies supporting the assumptions. Instead, the available evidence, including empirical findings showing no consumer complaints, survey results demonstrating that disclaimers are not understood and that wagering format is immaterial to consumer choice, and expert testimony confirming that consumers do not focus on game rules, directly undermines the premises on which the regulation is based.

Redundancy and Overbreadth

The regulation unnecessarily duplicates existing prohibitions on advertising unapproved games and broadly restricts references to “Nevada” and “Vegas” when narrower, targeted measures would suffice. For example, specific misuses could be prohibited (e.g., “Vegas banked games” or claims to offer games only legal in Nevada), rather than broadly disfavoring all references to Nevada or Las Vegas.

Identification of Approved Games

Finally, requiring the use of both the approved gaming activity name and approval number is unnecessary. Either one alone would allow the Bureau to identify the game at issue.

Authority

The APA requires that an agency’s regulation be grounded in legal authority. A regulation must fall within the scope of statutory authority, be consistent with governing law, and be reasonably necessary to effectuate the statute’s purposes. (Gov. Code section

11349(b); *Bearden v. U.S. Borax, Inc.* (2006) 138 Cal.App.4th 429, 435–36.) A court must declare a regulation void if it exceeds the authority conferred by the Legislature or conflicts with statutory standards. (*Associated Gen. Contractors of Cal., Inc. v. Dep’t of Indus. Rels.* (2025) 108 Cal.App.5th 243, 265.)

The proposed advertising provisions are inconsistent with the Legislature’s clear limits in Section 19841(f), unsupported by Penal Code section 330, and based on assumptions that cannot withstand constitutional scrutiny. They also improperly assume Bureau authority under Section 19826(g). The Commission’s authority is narrow: to provide procedures for Bureau disapproval of deceptive advertising, to ensure consistency with the Lottery and the Horse Racing Board, and to enforce presumptions regarding underage and problem gambling advertising. By expanding the scope of regulation to generic game names, disclaimers, and geographic references, Sections 12097(c)(4) and (e)(3) exceed both statutory and constitutional authority.

Business and Professions Code Section 19841(f) Does Not Authorize the Proposed Regulation

Sections 12097(c)(4) and (e)(3) of the proposed regulations are inconsistent with, unauthorized by, and not reasonably necessary to implement BPC section 19841(f). Business and Professions Code section 19841(f) contains three narrow directives. The proposed regulation strays far beyond this limited scope.

- **Delegation to the Bureau.** The statute assigns the Bureau—not the Commission—the authority to determine whether advertising is deceptive. The Commission has no statutory role in dictating the Bureau’s determinations. The Department of Justice already enforces statewide deceptive advertising laws under Business & Professions Code section 17500 et seq., and the Commission lacks experience or expertise in this domain.
- **Consistency with Other Agencies.** The statute requires consistency with advertising standards of the Horse Racing Board and the Lottery Commission. This should be strictly interpreted because the law of commercial speech requires equal treatment within the same market. The proposed provisions are not aligned with either.
- **Expansion of Presumptively Deceptive Categories.** The Legislature expressly identified two types of presumptively deceptive advertising: underage and problem gambling. The Commission cannot expand the scope of deceptive advertising regulations to include generic game names or geographic references. Long-settled principles in case law of statutory interpretation bar an agency from expanding a specific statutory list. The agency cannot construe the statute to include other things.
- **Categorical Determinations.** The regulation declares that any advertisement that does not use the approved game name is deceptive unless accompanied by a disclaimer; however, the statute only lists two other presumptively deceptive

categories. There is no authority for the Commission to make a categorical determination that using generic game names is deceptive unless a disclaimer is added. Under California law the legal determination of whether advertising is deceptive is fact and context based.

In short, Section 19841(f) authorizes only a narrow regulatory scheme. The Commission may not rewrite the statute to expand its substantive scope, nor may it substitute its own judgment for the Bureau's role. Courts give no deference to such expansive interpretations, particularly where the statute is clear and non-technical. (*Californians for Pesticide Reform v. Dept. of Pesticide Regulation* (2010) 184 Cal.App.4th 887, 899; *Our Children's Earth Found. v. State Air Resources Bd.* (2015) 234 Cal.App.4th 870, 886.)

The regulation cannot be justified by the argument that legal games must be distinguished consistent with gaming laws regardless of whether the ads are deceptive. The ISOR suggests the regulation can be justified because advertisements "depicting or referring to" prohibited banking games must be curtailed under Penal Code section 330. That interpretation misstates the statute.

- Scope of Penal Code section 330. The Penal Code prohibits the play of banking and percentage games, not the advertising of generic games that may be legally offered as player-dealer games. By statute, games such as Pai Gow or Three Card Poker are lawful when conducted in a player-dealer format. (Penal Code section 330.11.) An advertisement for "Three Card Poker" cannot be presumed to promote an illegal banking game.
- First Amendment Principles. The government may regulate only explicit solicitations of unlawful activity. (*In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1274–75; *Lorillard Tobacco Co. v. Reilly* (2001) 533 U.S. 525, 561.) Where a card game may be played legally or illegally, advertising its generic name cannot be treated as solicitation of illegality absent express language promoting a prohibited format.

As such, Penal Code section 330 does not authorize the proposed requirements in Sections 12097(c)(4) and (e)(3).

Additionally, the ISOR asserts that deceptive advertising is unprotected. However, the ISOR omits that the legal test for deceptive advertising is based on whether the advertising is deceptive on its face or only potentially misleading. Instead, proposed Sections 12097(c)(4) and (e)(3) rest on the claim that generic game names or geographic references "can" be misleading depending on consumer assumptions.

The U.S. Supreme Court has held that potentially misleading commercial speech remains protected and may be regulated only if the state satisfies the *Central Hudson* test. (*Peel v. Attorney Reg. & Discip. Comm'n* (1990) 496 U.S. 91, 110; *Ibanez v. Fla. Dep't of Bus. & Prof'l Regulation* (1994) 512 U.S. 136, 146; *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n* (1980) 447 U.S. 557, 566.) Under this test, the government must show that

the harms are real and that the regulation will materially alleviate those harms. Here, there is no evidence in the rulemaking record that consumers are misled by generic names or references to Nevada, and no showing that disclaimers or restrictions would improve understanding. Regulations that rely only on what advertising can mean to some consumers, without evidence of actual deception, fail constitutional scrutiny.

Business and Professions Code section 19826(g).

Section 12097(c)(4) and (c)(5) refer repeatedly to “the name of the Bureau-approved game” or gaming activity, which assumes the Bureau has authority to approve game and gaming activity names. While the Gambling Control Act (Act) charges the Bureau with approving games for play and impose conditions on gameplay (BPC section 19826(g)), the Act does not authorize the Bureau to name the games, create alternative names or even create a list of the “approved” names. By relying on such a premise, the proposed rule exceeds statutory authority.

Clarity

Government Code section 11349(c) requires that a regulation’s meaning be “easily understood by those persons directly affected,” including the people the rule is meant to benefit. The comments argue the draft fails this “clarity” test in several places. Across the subsections discussed below, the comments conclude that insider terminology, undefined approval processes, unbounded enforcement discretion, and unresolved questions about imagery and nomenclature leave advertisers and viewers unable to discern what is required or prohibited—failing the statutory clarity standard.

Section 12097(c)(4). Game Names and Disclaimers.

- Viewers don’t understand the mandated disclaimers. The required “game name” disclaimers rely on insider terms—e.g., “California game” and “banked game”—that intended beneficiaries (ad viewers/players) do not understand. The ISOR itself acknowledges “California game” is an industry term, yet the ISOR states using it in ads is “necessary to provide notice,” conflating industry knowledge with consumer comprehension. Using “California game,” a term only recently defined in industry regulation, or “banked game,” a legal term defined in Court of Appeal decisions, does not provide clarity for persons interested in card games. The comments contend this fails clarity because the audience lacks familiarity with industry and agency-defined terminology.
- The Bureau “approved name” for games and gaming activities is unclear. Section 12097(c)(4) and (5) repeatedly refers to “the name of the Bureau-approved game” or “gaming activity;” however, there is no published process or regulation for approving game and gaming activity names, leaving advertisers unsure what the “approved” name is or how alternative names are treated.
- Underground regulation risk. By incorporating an unstated name-approval process, the section introduces ambiguity and potential “underground regulation” because there are no rules constraining how game or gaming activity names are

fixed or approved by the Bureau, nor are there any rules for the approval of alternative names.

- Unclear impact on existing social media. Unlike billboards/TV spots, social posts persist. This section does not say whether past posts must be revised or removed to meet new naming/disclaimer rules—potentially requiring costly review, re-design, and re-posting of extensive historical content.

Section 12097(e). Criteria.

The subsection lists factors the Bureau must “consider” in judging deception but provides no regulation or standard for the Bureau’s decision.

Section 12097(e)(3). “Nevada” and “Vegas.”

This provision creates a presumption against using “Nevada/Vegas” without explaining or making it clear when their use is impermissible. The comments question whether phrases like “experience all the fun of Vegas” or “all the Vegas action you love” would trigger disciplinary action under the regulations, emphasizing that it is unclear for the regulated public to know what may be expected of them. Prior Office of Administrative Law (OAL) decisions on other state agency rulemaking submittals are cited concerning the need for regulations to articulate how the agency’s discretion will be exercised. Additionally, this section is unclear on what kind of “distinction” using the terms “Nevada” or “Vegas” is permitted. The section’s vague treatment of subjective comparisons and statements of opinion raises both clarity and First Amendment concerns.

Section 12097(e)(4). “False and Misleading.”

It is unclear whether the intent of this provision is to incorporate existing state advertising law or to create a new, undefined standard. The comment references earlier comments in the letter expressing this provision should be revised to conform with existing state advertising laws to satisfy clarity.

Section 12097(e)(4) should be revised to authorize Bureau action when an advertisement makes any “materially false or misleading factual claims,” rather than “any false or misleading claims.” Nevada gaming regulations have adopted a similar standard to prohibit “advertising that is false or materially misleading.” California law and precedent make clear that advertising is only deceptive when it involves factual statements that are both false and material to consumer decision-making. For example, the California Supreme Court has held that commercial speech loses First Amendment protection only when it concerns material facts, and state statutes such as Business and Professions Code sections 17500 and 17508 impose similar limits. Revising the regulation to match these authorities would ensure consistency with governing law, safeguard lawful speech, and provide clearer, legally sound guidance for future Bureau notices and Commission proceedings.

Section 12097(e)(5). “Prohibited Games”

- Subsection (e)(5) addresses advertisements that depict prohibited games but provides no guidance on how to determine whether text or imagery depicts an

illegal game. Many card games can be played as either player-dealer games or banked games being identical in imagery. For example, an image of the felt/cards/chips for Three Card Poker doesn't reveal wagering format. The regulation is unclear on how to tell if an image/text "depicts" a prohibited game, and whether such images require a Section 12097(c) disclaimer. OAL precedent is cited that the regulations must clearly explain how determinations will be rendered.

- Subsection (e)(5) is unclear on whether use of the word "Blackjack" is prohibited. Penal Code section 330 lists prohibited games by name; "Blackjack" is not listed. The ISOR nonetheless treats "Blackjack" as interchangeable with "21," even though "Blackjack" as a casino game name did not emerge until the 1930s and modern blackjack differs materially from "21" as it was played in the year 1885 (when "21" was barred by Penal Code section 330). As such, the regulations are unclear on whether "Blackjack" can be used within ads in any form, such as in short form to reference various Blackjack style games or when the term is part of the Bureau-approved game name. More broadly, it is unclear whether names not listed in Section 330, yet used today as synonyms/partials of listed games, would be prohibited. The draft provides no clear test for how common the usage must be, or from which era common usage should be measured (25, 50, 75, 150 years ago).
- The NOPA suggests even game names that are not listed in Penal Code section 330 games could be treated as misleading when combined (e.g., "Pai Gow" [and] "Poker"), despite their origins and uses. This as another clarity gap in the regulations concerning permissible nomenclature.

Consistency

The comments argue the proposal fails the APA's "consistency" standard, which requires regulations to be in harmony with existing statutes, court decisions, and other provisions of law (Gov. Code §11349(d)).

Section 12097(c)(4)(C) and Section 12097(e)(3) - (5).

- These subsections are not consistent with Business & Professions Code sections 19841(f) and 19826(g), for reasons detailed above.
- The subsections exceed the scope of California's false-advertising framework; to be consistent, subsection 12097(e)(4) should track the NOPA and state law by limiting enforcement to "materially false or misleading factual claims."
- The ISOR and text of the regulation are inconsistent regarding what information does not have to be included in space limited digital advertisements.
- The ISOR and text diverge on which game names are prohibited under Section 12097(e)(5).

- Although the ISOR says regulation is needed to address ads that “depict... banking or percentage card games” prohibited by Penal Code section 330, the regulation instead targets uses of “Nevada” or “Vegas” and generic game names, instead of explicit statements advertising banked games.
- “Blackjack” is not listed in Penal Code section 330; nonetheless the ISOR treats it as a prohibited advertising term, creating a conflict between the ISOR and the text in Section 12097(e)(5).
- These sections conflict with constitutional limits on commercial-speech regulation. California false-advertising laws are interpreted in line with the First Amendment and the state cannot ban truthful information about lawful commercial activity. Further, any regulation of potentially misleading speech must satisfy the *Central Hudson test*—serve a substantial governmental interest, directly and materially advance that interest, and be narrowly tailored (with the same standard applied to advertising restrictions on “vice” activities like alcohol or gambling). Subsections (c)(4)(C) and (e)(3) fail this test and the proposed disclaimers unduly and needlessly interfere with non-misleading ads. Restating the purpose of the regulation in the NOPA and ISOR does not establish necessity or effectiveness.
- Constitutionality must also be assessed by whether other gambling operators in California are similarly regulated (even if the Commission’s jurisdiction is limited to cardrooms); the comments contend this rule fails that comparison.

Non Duplication

Section 12097(e)(1) and the first sentence of subsection (2) repeat section 19841(f).

Commission Staff’s Recommended Response: These comments were considered and accepted in part. Commission staff propose several modifications to Section 12097 to address David Fried’s arguments that several provisions violate the requirements of the Act, APA, Federal Constitution, and California Constitution. These changes are described below. In addition to these responses, see responses to **Comments I.C.1. through I.C.3.** For Commission staff’s proposed modified text to Section 12097, see edits at the end of **Comment Section I.C.4. (this section), starting on page 23.**

Consistency with the advertising regulations adopted by the California Horse Racing Board and State Lottery

David Fried commented that the proposed action does not align with the directives of BPC section 19841(f), which requires the Commission’s advertising regulations to be consistent with the advertising standards of the California Horse Racing Board (CHRB) and the Lottery Commission (Lottery). This comment was considered but not incorporated.

The Lottery has not adopted any regulations concerning advertising. The CHRB has several regulations related to advertising; however, many of these regulations are

inapplicable to controlled gambling, such as the requirements for advertising signage on jockey clothing or the prohibition on the use of a stable name registration for advertising purposes. Although the Commission's proposed regulations exceed the scope of the regulations adopted by the CHRB and the Lottery, the argument that the regulations are therefore not consistent with the regulations adopted by the CHRB and the Lottery is unpersuasive due to the misinterpretation of the phrase "consistent with" in BPC section 19841(f).

The APA defines "consistency" as "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law" (Government Code section 11349(d)). The Commission's proposed regulations are in harmony with, and are not in conflict with or contradictory to regulations of the CHRB or the Lottery.

Additional support for the interpretation of the phrase "consistent with" in BPC section 19841(f) as "in harmony with, and not in conflict with or contradictory to," is provided by the legal record. A court's primary objective in interpreting a statute is to determine and give effect to the underlying legislative intent. *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n*, 164 Cal.App.4th 1, 8 (Cal. Ct. App. 2008) (*Muzzy Ranch*). Courts begin by examining the statutory language, giving the words their usual, ordinary meaning. *Id.* "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible... each sentence must not be read in isolation but in the light of the statutory scheme; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed." *Id.* "If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs." *Id.* Courts will "seek to adopt a construction that will render the statute 'reasonable, fair and harmonious with its manifest purpose.'" *Id.* at 11.

In *Muzzy Ranch*, appellant argued that the requirement that the Travis Air Force Base Land Use Compatibility Plan (TALUP) be "consistent with" the Air Installation Compatible Use Zone Planning (AICUZ) meant that the TALUP must literally "adopt" or "incorporate" the provisions of the AICUZ. *Id.* The court stated that appellant's construction of the statute "finds some support in dictionary definitions of 'consistent' as 'coherent and uniform' or 'marked by harmony, regularity, or steady continuity throughout.'" *Id.* at 8-9 (citing the American Heritage Dictionary and Webster's Third New International Dictionary).

The court continued, "however, the word is also commonly defined as meaning 'compatible' or 'coexisting and showing no noteworthy opposing, conflicting, inharmonious, or contradictory qualities.'" *Id.* at 9. The court noted that, "Webster's emphasizes that when the word means 'compatible' it is usually used with 'with.'" *Id.* "As pertinent, 'compatible' means 'capable of existing together without discord or disharmony.'" *Id.* The court held that "although the consistency requirement could be interpreted to mean that the safety and noise standards in a TALUP land use plan must be

identical to those in the relevant AICUZ, use of the phrase ‘consistent with’ suggests that the standards in the plan need only be compatible with those in the AICUZ.” *Id.*

The APA definition of “consistency” as “in harmony with, and not in conflict with or contradictory to” and the court’s analysis in *Muzzy Ranch* that “consistent with” means “compatible” and not “uniform” is appropriately applied to the Commission’s proposed advertising regulations for the following reasons:

- BPC section 19841(f) uses the phrase “consistent with,” which favors an interpretation that means “compatible” or “not in conflict with or contradictory to,” and not “uniform.” As discussed in *Muzzy Ranch*, Webster’s emphasizes that when the word “consistent” means “compatible,” it is usually used with “with.” *Id.* Here, Section 19841(f) uses the phrase “consistent with” and not just “consistent.” As a result, the use of the phrase “consistent with” suggests that the advertising regulations adopted by the Commission need only be compatible with those adopted by the CHRB and the Lottery.
- There are no regulations that have been adopted by the Lottery. If the commenter’s interpretation of “consistent with” meaning “having only immaterial or insubstantial deviations” or “adhering to the same principles” is applied to BPC section 19841(f), then the Commission could not adopt regulations related to advertising because the Lottery has not adopted any regulations. This would be an irrational result.
- The regulations related to advertising adopted by the CHRB address issues not intended to be covered by Commission regulations. The CHRB has adopted regulations on a variety of issues related to advertising, including the requirements and limitations for advertising signage on jockey clothing and the prohibition on the use of a stable name registration for advertising purposes. Controlled gambling does not have jockeys or stables. If the commenter’s interpretation of “consistent with” meaning “having only immaterial or insubstantial deviations” is applied, the Commission would have to adopt regulations related to advertising that do not, and cannot, take place in controlled gambling. Again, this would be an irrational result.
- If the Legislature wanted to bind the Commission to the regulations adopted by the CHRB and the Lottery regarding the regulation of advertising, it could have done so. The Legislature could have used language requiring the Commission to adopt regulations “identical to those adopted by the CHRB and the Lottery.” The Legislature did not. Instead, the Legislature merely required that the regulations for advertising shall be “consistent with” the advertising regulations of the CHRB and the Lottery.
- The primary purpose of BPC section 19841(f) is to provide for the disapproval of deceptive advertising by the Bureau, which would be impossible if the Commission could not adopt regulations that go beyond the scope of the

regulations adopted by the CHRB and the Lottery.

Furthermore, the first part of BPC section 19841(f) provides that the Commission shall adopt regulations to “provide for the disapproval of advertising by licensed gambling establishments that is determined by the department to be deceptive to the public.” This is the Legislature’s mandate for the Commission. The CHRB and the Lottery have not adopted regulations providing for the disapproval of advertising. As a result, if the commenter’s interpretation of BPC section 19841(f) prevails, it would be impossible for the Commission to address its statutory requirement to provide for the disapproval of advertising because its regulations could not go beyond the scope of the regulations adopted by the CHRB and the Lottery. The commenter’s interpretation of BPC section 19841(f) would undermine the primary mandate of BPC section 19841(f), which would be an irrational result.

Neither the CHRB nor the Lottery expressly addresses deceptive advertising. The primary purpose of BPC section 19841(f) is to provide for the disapproval of deceptive advertising. Additionally, BPC section 19841(f) includes examples of presumptively deceptive advertising. If the commenter’s interpretation of BPC section 19841(f) were correct, the Commission’s regulations could not expressly address deceptive advertising. This is an irrational result.

The Commission’s proposed regulations are compatible with, and not conflicting or inharmonious with the regulations adopted by the CHRB and the Lottery, which follows the court’s sensible analysis in *Muzzy Ranch*. The Lottery has not adopted regulations. The only CHRB regulations that appear to be relevant to the Commission’s advertising regulations are the requirements that (1) all advertisements contain a statement that persons under 21 are not allowed access to the minisatellite wagering site; and (2) all advertisements contain contact information for a recognized problem-gambling support organization. The Commission has included similar requirements in its proposed advertising regulations, which are consistent with the CHRB regulations.

The remainder of the Commission’s proposed advertising regulations is still compatible with the regulations of the CHRB and the Lottery. Neither the CHRB nor the Lottery have adopted any regulations that conflict with, are inconsistent with, or are incompatible with the proposed regulations of the Commission.

Non Duplication - former Section 12097(e)(1) and (2), renumber to 12097(d)(1) and (2)
David Fried commented that paragraph (1) and the first sentence of paragraph (2) repeat BPC section 19841(f). This comment was considered but not incorporated.

While these provisions contain similar language, the Commission’s regulations do not repeat the statutory language verbatim. Rather, the regulations provide additional clarity and specificity, including examples of ads that appeal to underage persons and ads that suggest gambling as a means to resolve a financial burden.

Former Section 12097(c)(4), renumbered to (b)(4)

David Fried's comments on this section were accepted in part. This provision contains several requirements for referencing a Bureau-approved game or group of games within an advertisement. This includes requirements for using either the name of the Bureau-approved game or group of games, Bureau-approved alternative name, or one of the specified disclaimers or safe harbor statement(s) when any other name is used.

- David Fried cited several issues with the requirements of this section, including conflicts with the Act, APA, Federal Constitution, and California Constitution. The Bureau does not currently have any regulations that provide a process for establishing approved names, alternative names, or other safe harbors for identifying a Bureau-approved game or group of games, nor does the Act explicitly require it. Further, the disclaimers in clauses (1) and (2) would likely interfere with the advertiser's intended message and no studies have been found to justify these disclaimers would be effective in preventing an advertisement from being deceptive. Additionally, if an advertisement uses a mixture of generic game names and official names of Bureau-approved games, the ad may be less clear to the viewer as to what information needs to be searched to obtain the game rules for a specific game listed (displayed name or the I.D. number).

The Commission proposes to replace the existing requirements of paragraph (4) to instead require advertisements include the Bureau-issued identification number in any reference to a specific Bureau-approved game. These modifications provide a more practical, clear, and achievable requirement and ensure the regulations do not violate other existing laws including commercial speech rights. Additionally, for those who are aware that the game rules can be obtained from the cardroom or the Bureau, these modifications make doing so possible with the inclusion of the I.D. number.

- Additionally, David Fried commented that this section does not state whether past social media posts must be revised or removed to meet the new naming and disclaimer rules—potentially requiring costly review, re-design, and re-posting of extensive historical content. This comment was accepted.

Commission staff note that statutes operate prospectively unless Congress has clearly manifested its intent to the contrary. That is, the legal effect of conduct should ordinarily be assessed under the law that existed at the time of the conduct. *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840-41. The same applies to the proposed advertising regulations, which are prospective by default unless otherwise specified. Meaning, any new requirements implemented by these regulations would not apply to advertisements including social media posts disseminated to the public prior to the effective date of these regulations.

Former Section 12097(c)(5), renumbered to (b)(5)

David Fried's comments on this section were accepted in part. This provision includes requirements for referencing Bureau-approved gaming activities in advertisements. This

section is modified to be consistent with the proposed modifications to paragraph (4) and for similar reasons discussed under former Section 12097(c)(4), renumbered to (b)(4). The modification provides additional clarity, simplicity, and uniformity across the requirements under subsection (c). Specifically, paragraph (5) would be modified to require advertisements to include the Bureau-issued identification number in any reference to a specific Bureau-approved gaming activity.

Former Section 12097 (e), renumbered to (d)

David Fried's comments on this section were considered but not incorporated. This provision specifies an advertisement must not be deceptive and provides criteria the Bureau is required to consider in determining whether an advertisement is deceptive. David Fried contends that this subsection lists factors the Bureau must "consider" in judging deception but provides no regulation or standard for the Bureau's decision. The Commission cannot create mandatory criteria that determines what is deceptive for the Bureau. Doing so would not be consistent with the directives of BPC section 19841(f), which charges the Bureau with the authority to determine if an advertisement is deceptive.

Former Section 12097 (e)(1) and (2), renumber to (d)(1) and (2)

David Fried's comments on this section were considered but not incorporated. David Fried commented that paragraph (1) and the first sentence of paragraph (2) repeats BPC section 19841(f). While these provisions contain similar language, the Commission's regulations do not repeat the statutory language verbatim. Rather, the regulations provide additional clarity and specificity, including examples of ads that appeal to underage persons and ads that suggest gambling as a means to resolve a financial burden.

Former Section 12097(e)(3)

David Fried's comments on this section were accepted. This provision provides that in determining whether an advertisement is deceptive, the Bureau must consider if the advertisement uses the terms "Nevada" or "Vegas" to describe any of the games, group of games, or gaming activities offered at the cardroom. Additionally, this paragraph exempts these criteria if the terms are used to draw a distinction between the games or gaming activities offered at the cardroom versus a Nevada casino.

Commission staff proposes to remove paragraph (3) entirely to avoid potential conflicts with the requirements of the APA, Federal Constitution, and California Constitution. Subsequent paragraphs under this subsection have been renumbered.

Former Section 12097(e)(4), renumbered to (d)(3)

David Fried's comments on this provision were accepted in part. This provision provides that in determining whether an advertisement is deceptive, the Bureau must consider if the advertisement makes any false or misleading claims. David Fried raised clarity issues with this section, arguing that this provision should be revised to conform with existing state advertising laws to authorize Bureau action when an advertisement makes any "materially false or misleading factual claims," rather than "any false or misleading

claims.” Commission staff notes that the phrase “materially false” as suggested is unclear because there are no gradations of “false.”

As such, Commission staff proposes to modify this provision to read “[t]he advertisement is false or materially misleading.” This change will provide better clarity and is consistent with Nevada Gaming Regulation Section 5.011(1)(d), which was supported by David Fried’s comment.

Former Section 12097(e)(5), renumbered to (d)(4)

David Fried’s comments on this provision were accepted in part. This provision provides that in determining whether an advertisement is deceptive, the Bureau must consider if the advertisement depicts, illustrates, portrays, or references a game, group of games, or gaming activity that is not currently approved by the Bureau for the cardroom advertised. David Fried raised clarity concerns and pointed out inconsistencies in the ISOR and text regarding what game names are prohibited under Penal Code section 330. Commission staff notes that David Fried’s comments appear to conflict with each other. In one section of his letter, he argues Section 12097(c)(4) is unnecessary because its purpose is already “served by” and “directly addressed” in (e)(5) (this provision). However, when objecting to the language in (e)(5) he contends that this section does not meet the clarity standards of the APA.

Regardless, to reduce the potential ambiguity of this provision, Commission staff proposes modifications to this provision to target ads that “clearly and conspicuously” advertise a prohibited game and to remove “group of games” from the provision. Additionally, “gaming activity” is removed due to clarity concerns as Penal Code section 330 lists prohibited games, not gaming activities. Notably, this section contains an additional change to replace the word “and” with “or” as explained in the response to **Comment I.C.9.**

As discussed above, Commission staff propose the following modifications related to the comments submitted by David Fried on Section 12097:

§ 12097. Advertising Content and Dissemination.

...

~~(b) Advertisements must present the information required by paragraph (2) of subsection (c) of this section and paragraph (1) of subsection (b) of Section 12461 in all of the languages used in the advertisement.~~

~~(e)(b)~~ All advertisements must include:

- (1) The name, nickname, alias, or any other name by which the gambling establishment is commonly known; ~~and,~~
- (2) A statement that participants must be 21 or older to gamble;
- (3) Information required by paragraphs (1) and (3) of subsection (b) of Section 12461;
- (4) In any reference to a specific Bureau-approved game, the Bureau-issued identification number; ~~either:~~

~~(A) The name of the Bureau-approved game or group of games;~~

- ~~(B) The Bureau-approved alternative name for the Bureau-approved game or group of games; or,~~
~~(C) If the game or group of games is identified by a name other than that which is in accordance with items (A) and/or (B), the advertisement must state one of the following:~~
- ~~1. “California game” or “California games”;~~
 - ~~2. “This cardroom does not offer banked games”; or,~~
 - ~~3. Any other safe harbor statement(s) published by the Bureau at its discretion.~~
- ~~(5) In any reference to a specific Bureau-approved gaming activity, the Bureau-issued identification number. either:~~
- ~~(A) The name of the Bureau-approved gaming activity; or,~~
~~(B) Any gaming activity name with the Bureau-approved identification number.~~
- ~~(d)(c)(1) The requirements of paragraphs (2) through (5) of subsection (e)-(b) do not apply to any small tangible items upon which the information required would be impracticable to print, display, or present, including, but not limited to: apparel, hats, pens, key chains, dishware, drinking glasses, coffee mugs, etc.~~
~~(2) The requirements of paragraphs (2) and (3) through (5) of subsection (e)-(b) do not apply to any digital material where the inclusion would be impracticable due to limited characters or spaces if a link the advertisement links to a website that complies with subsection (b) ~~of Section 12461 is included in the advertisement.~~~~
- ~~(e)(d) An advertisement must not be deceptive to the public. The Bureau must consider the following criteria in determining whether an advertisement is deceptive:~~
- ~~(1) The advertisement depicts gambling as a means to become wealthy or resolve a financial burden.~~
 - ~~(2) The advertisement targets or appeals to children or adolescents or encourages persons under 21 years of age to engage in controlled gambling. Examples of this include, but are not limited to:~~
 - ~~(A) The advertisement uses depictions, images, appearances, or voice-over services of anyone under 21 years of age.~~
 - ~~(B) The advertisement uses objects such as toys, inflatables, movie characters, cartoon characters, or any other display, depiction, or image designed in a manner likely to be substantially or predominately appealing to minors or anyone under 21 years of age.~~
 - ~~(C) The advertisement is used on the premises of any day care center, youth center, preschool, or school providing instruction in any grades kindergarten to 12, or at any function for a school providing instruction to any grades kindergarten to 12, or at any function that is held primarily for persons under the age of 21.~~
 - ~~(3) The advertisement uses either of the following terms when describing any of the games, groups of games, or gaming activities offered at the gambling establishment, unless the use of the term draws a distinction between the term and the games or gaming activities offered at the gambling establishment:~~
 - ~~(A) “Nevada”; or,~~
 - ~~(B) “Vegas”.~~

- (4)(3) The advertisement ~~makes any is~~ false or *materially* misleading ~~claims~~.
- (5)(4) The advertisement *clearly and conspicuously* depicts, illustrates, portrays, or refers to a game, ~~group of games, or gaming activity~~ that is not currently approved by the Bureau for the cardroom advertised ~~and or~~ is prohibited by Penal Code section 330.

5. Chairman Greg Sarris (representing the Federated Indians of Graton Rancheria):

Per the comment letter, the prior draft of the regulations included “Nevada style” and “Vegas style” in defining potentially deceptive advertising. However, these phrases have been changed in the latest draft to the terms “Nevada” and “Vegas,” seemingly due to cardrooms previously commenting that these phrases are vague. The comment recommends the Commission make explicit that the requirement continues to cover the use of “Nevada style” or “Vegas style,” because allowing “style” phrasing could create a loophole (E.g., banning “Vegas Blackjack” while tolerating “Vegas-style Blackjack.”) The comment contends that the intended viewers of cardroom advertisements reasonably associate “Nevada” and “Vegas” with house-banked gambling (e.g., Blackjack, baccarat, roulette, craps, sports betting, and slots), which are illegal at cardrooms (apart from traditional, non-banked poker). Cardrooms advertising that they offer “Nevada style” or “Vegas style” games at their establishment would be misleading to the public.

Additionally, this section of the regulations provides an exception that permits use of “Nevada” or “Vegas” if the advertisement “draws a distinction” between those terms and the games actually offered. The comment contends this carve-out is vague and could be exploited, such as a cardroom advertising that a game has only minor differences from a Vegas game. The comment recommends narrowing the exception so that it applies only when the advertisement clearly confirms the cardroom does not offer Nevada or Vegas style games.

Commission Staff’s Recommended Response: This comment was considered but not incorporated. Due to the related and compelling arguments presented by David Fried, the requirements of this paragraph likely fall short of the APA standards concerning clarity (as this comment highlights), consistency, and necessity, and push beyond the constitutional limits of commercial-speech regulation. Additionally, the prohibition of “Nevada” and “Vegas” (as specified) would likely fail the *Central Hudson* test due to the lack of clear evidence that the prohibition of such words is narrowly tailored to materially advance a substantial governmental interest.

6. Chairman Robert Smith, representing the Pala Band of Mission Indians: The current requirements do not go far enough in preventing deceptive and misleading advertising. Specifically, the regulation would not prevent deceptive advertising that states “Blackjack” in large print while muting clarifying text (e.g., “21.5,” “California-style”). The commenter recommends adding clarifying language [e.g., in Section 12097(e)] to specify that advertisements with altered content to imply the offering of an illegal game or that make required clarifications less clear and conspicuous are deceptive.

Commission Staff’s Recommended Response: This comment was considered but not incorporated. Outside of providing clearly indicated modifications to the text, the changes

this comment recommends appear to fall short of the APA standards concerning necessity and clarity.

7. **Chairman Robert Smith, representing the Pala Band of Mission Indians:** Section 12097(c)(5)(B) enables gaming activities in advertisements to be referenced vaguely, with any gaming activity name and "the Bureau-approved identification number." The meaning of this will not be clear and conspicuous to viewers. The commenter urges deleting this subdivision or revising it to prevent misuse of gaming activity names in ways that could mislead patrons.

Commission Staff's Recommended Response: This comment was considered but not incorporated. The name of a Bureau-approved gaming activity does not provide adequate clarity to the viewer of an advertisement as to the official rules, nor does it logically signal to the viewer that there is any sort of approval process or publication of rules associated with the activity. In this regard, the Commission has proposed modifications to require the Bureau-issued gaming activity be included in ads that reference a gaming activity. Including the identification number in ads is consistent with long-standing Bureau guidelines for advertising gaming activities.

8. **Chairman Robert Smith, representing the Pala Band of Mission Indians:** The regulation should require Bureau review of existing game names and gaming-activity names to ensure they are not deceptive and do not promote illegal gambling.

Commission Staff's Recommended Response: This comment was considered but not incorporated. Existing game names and gaming-activity names have already been approved by the Bureau. As such, the suggested requirement is superfluous.

9. **Chairman Anthony Roberts, representing the Yocha Dehe Wintun Nation:** The comment letter objects to Section 12097(c)(4), which allows advertising a game by using either the name of the Bureau-approved game, one of the three alternative disclaimers, or any other safe harbor published by the Bureau at its discretion. The comment claims that because the Bureau has admitted it approved illegal games and cardrooms continue to play them, permitting ads to use "Bureau-approved" game names is inherently deceptive. The comment further explains that "California game" is susceptible to misuse given the game baccarat lacks a true player-dealer position and that cardrooms do not actually rotate the player-dealer in blackjack. Likewise, the disclaimer "this cardroom does not offer banked games" is meaningless because the cardrooms, with the assistance of the TPPPS', do play Blackjack in a banked format.

Additionally, the comment contends that the use of the conjunctive "and" in 12097(e)(5) is problematic because it would make the requirement apply only when the advertised activity is both not currently approved by the Bureau and is prohibited by Penal Code section 330. The comment alleges that because the Bureau has improperly approved some illegal games in the past, use of the word "and" could prevent this requirement from being triggered even though the game is prohibited by the statute.

The comment recommends at minimum, the regulation be modified to specify that an advertisement is deceptive if it states or suggests that a cardroom offers any version of the games of twenty-one, blackjack, or baccarat. Additionally, the regulation should prohibit advertising any card game in which the player-dealer position does not actually rotate to another player (who is not a TPPPS employee) at least every two hands.

Further, Section 12097(e) only makes the inclusion of the words “Vegas” or “Nevada” and depictions of games prohibited by Penal Code section 330 merely as factors (criteria) for the Bureau to consider in determining whether an ad is deceptive. The comment argues such terms or depictions should automatically render an ad deceptive.

Commission Staff’s Recommended Response:

- Regarding the comments and related recommendations based on allegations that the Bureau approved illegal cardroom games, these comments have been determined to be outside the scope of the proposed action.
- Concerning the comment related to modifying the regulations to automatically determine for the Bureau, a deceptive advertisement, this comment was considered but not incorporated. This comment conflicts with the directives of BPC section 19841(f), which provides the Bureau with the authority to determine whether an advertisement is deceptive, not the Commission. As such, the Commission has drafted the related requirements to stay within the directives of the statute.
- The comment regarding the use of the conjunctive “and” in 12097(e)(5) is problematic because it would make the requirement apply only when the advertised activity meets both conditions is accepted in part. The Act requires the Bureau to approve games and Penal Code section 330 lists specific games that are prohibited. As such, the criteria in regulation should be written to provide the Bureau the ability to deem an advertisement deceptive based when either of those conditions are met—either the game is not currently approved by the Bureau or the game is prohibited by Penal Code section 330. This modification is necessary so that the regulations are consistent with existing statute. For Commission staff’s proposed modified text to Section 12097(e)(5), which includes this and other related edits, see recommended responses and proposed modifications under **Comment Section I.C.4.**

10. Department of Justice, Bureau of Gambling Control (Bureau): Proposed Section 12097(c)(4)(A) – (C) requires ads to include the name of the Bureau-approved game or “group of games;” however, the phrase “group of games” is unclear. The comment recommends the regulations be modified to provide additional clarity as to what constitutes a “group of games” (e.g., “Baccarat-style,” “Blackjack-style”) to eliminate ambiguity.

Commission Staff’s Recommended Response: This comment was accepted in part. Commission staff agrees including “group of games” is unclear. Because there are no regulations that exist for establishing approved names for referencing groups of games

that have been approved by the Bureau, and due to other modifications to this section, the Commission proposes to remove this language from the related provisions due to concerns over failing to meet APA standards concerning necessity, clarity, and specificity. See related responses to **Comment I.C.4.** for additional information.

- 11. Department of Justice, Bureau of Gambling Control (Bureau):** Proposed Section 12097(c)(4)(B) requires the Bureau to approve an alternative name. Although the Bureau does not currently approve alternate game names within game rules, it could update its processes to allow an alternate name to be used for advertising. To ensure consistency for compliance and enforcement, the comment recommends modifying the text to require the Bureau-approved identification number (BGC ID) be listed for each game on all advertisements, in alignment with subdivision (c)(5)(B). The BGC ID could be used by viewers of the ad to obtain the Bureau-approved alternative name from the Bureau or the cardroom.

Commission Staff’s Recommended Response: This comment was accepted in part. See related responses to **Comment I.C.4.**

D. ADD SECTION 12099. DISAPPROVAL OF ADVERTISING.

- 1. David Fried, representing California Grand Casino and Oaks Card Club; CGA, representing various cardrooms statewide:** Section 12099 should be revised to ensure that Bureau notices disapproving advertisements provide both specificity and due process. Although the NOPA and ISOR indicate that notices should give “clear and specific guidance” and cite the legal provisions relied upon, the current regulation does not actually require the Bureau to reference specific legal provisions. Without precise citations and explanations, licensees are left to guess at the Bureau’s concerns, rendering the process ineffective and undermining due process. Case law, such as *Smith v. State Bd. of Pharmacy* (1995) 37 Cal.App.4th 229, confirms that notices must identify the exact statutes or rules allegedly violated. Accordingly, Section 12099 (a)(1) should be modified to be consistent with the NOPA and ISOR as follows:

(a)(1) A ~~legal~~ citation ~~of the violation~~ to each specific legal provision that has been violated with an explanation of why a specified part of the advertisement violates the specified legal provision(s).

Commission Staff’s Recommended Response: This comment was accepted in part. The Commission notes that Section 12099(a)(2) of the draft already requires the Bureau to provide a description of each part of the advertisement that is not compliant. This language ensures the licensee is clear on each correction needed. However, to ensure the licensee has a clear understanding of the specific provisions violated, the Commission proposes modifications below to provide additional specificity to the requirements for citing violations of this article (Article 5). The existing language in paragraph (2) combined with the modifications to paragraph (1) below eliminate any guesswork by the licensee and make the additional changes suggested by the comment unnecessary.

As discussed above, Commission staff propose the following modifications:

§ 12099. Disapproval of Advertising.

(a) ...

(1) A ~~legal~~ citation of ~~the violation~~ each specific legal provision that has been violated;

(2) A description of each part of the advertisement that is not compliant with this article;

2. **David Fried, representing California Grand Casino and Oaks Card Club; CGA, representing various cardrooms statewide**: The regulation would cause licensees to risk disciplinary action in order to get a hearing on whether a Bureau notice is valid. The regulation does not provide notice of a pending judicial hearing, nor does it provide for a prompt hearing. As such, this section violates due process and acts as an illegal prior restraint.

Commission Staff’s Recommended Response: This comment was accepted. To ensure the regulations provide due process, Commission staff propose modifications to this section to require the Bureau to file an action with the court to obtain a judicial hearing. The Bureau’s final determination is stayed until the court issues its final judicial decision. Former subsection (e) is removed to align with these modifications. Instead, new subsection (e) specifies that only if the court’s decision upholds the Bureau’s final determination, may the Bureau take disciplinary action as it deems appropriate. Further, former subsection (f) is stricken because it is unnecessary as this authority is already vested in the Bureau. Removing this also avoids the possible misinterpretation that this provision preserves the Bureau’s right to take disciplinary action even if a court dismisses the Bureau’s determination. Instead, new subsection (f) is added to provide clarity to the requirements concerning the records that must be included in the Bureau report (all records issued and filed under this section).

Additionally, while not in response to any specific comment, Commission staff has replaced all references to the term “owner category licensee” with “cardroom business licensee” and “TPPPS business licensee” throughout the proposed regulations, including this section. This change is consistent with the existing advertising requirements in Section 12461, which currently apply to cardroom business licensees and TPPPS business licensees. This change appropriately holds the licensed business ultimately responsible for the advertising from which it benefits.

As discussed above, Commission staff propose the following modifications:

§ 12099. Disapproval of Advertising.

...

(d) If either a notice of disapproval is issued in accordance with subsection (a) or a final determination is issued in accordance with subsection (c), and the ~~owner category~~ cardroom business licensee or TPPPS business licensee does not comply by the applicable deadline specified by the Bureau, the Bureau may ~~take additional disciplinary action as it deems appropriate~~ file an action with the court

to obtain a final judicial decision regarding the Bureau's final determination. The Bureau's final determination will be stayed until the court issues its final judicial decision.

(e)(1) If the court's final judicial decision upholds the Bureau's final determination, the Bureau may take additional disciplinary action as it deems appropriate.

(2) If the court's final judicial decision dismisses the Bureau's final determination, the final determination will be deemed withdrawn and no disciplinary action will be pursued by the Bureau.

~~(e) Any failure to comply with the notice of disapproval pursuant to subsection (a), any failure to comply with the final determination pursuant to subsection (e), instances of repeated violations of this article, and any subsequent action by the owner category licensee and/or Bureau, must be included in the next Bureau report for the owner category licensee's initial or renewal license application and may be considered a factor in determining suitability for licensure.~~

(f) All records issued or filed under this section, and any subsequent actions taken by the cardroom business licensee, the TPPPS business licensee, or the Bureau, must be included in the next Bureau report for that licensee's initial or renewal license application.

~~(f) Nothing in this article will be construed to limit the Bureau from filing a disciplinary action under Chapter 10 of this division and/or under Business and Professions Code sections 19930 and 19931.~~

3. Chairman Greg Sarris (representing the Federated Indians of Graton Rancheria):

The commenter finds the discipline requirements for repeat offenders in this section are not stringent enough. While the draft regulations would treat a history of misleading ads as one factor in future licensing decisions, the letter recommends adding a "scofflaw" provision so that any cardroom repeatedly warned about deceptive advertising would face immediate license suspension until it demonstrates full compliance (in accordance with existing notice and hearing requirements).

Commission Staff's Recommended Response: This comment was considered but not incorporated. This comment conflicts with the Bureau's authority provided in the Act. The Bureau has the sole authority to file an accusation and issue emergency orders under BPC sections 19930 and 19931. The recommended change is unnecessary because existing statutes and regulations already provide the Bureau with the necessary authority and flexibility to take disciplinary actions with varying levels of degree, including immediate license suspension for repeated violations if appropriate.

4. Comments Submitted by Tribal Chairman Robert Smith (representing the Pala Band of Mission Indians):

In Section 12099(e) the comment recommends the word "may" be replaced with "will" to ensure that violations of this Article will be considered a factor in determining licensing suitability. The Commission's discretion to ultimately determine how the violation would impact license suitability would be maintained. This

change would ensure all licensees are treated uniformly and fairly, consistent with California State Auditor recommendations.

Commission Staff's Recommended Response: This comment was considered but not incorporated. The recommended change is unnecessary and conflicts with the Commission's authority and duties under the Act. The Commission is made up of five individual commissioners, each of which independently vote on licensing decisions. Changing "may" to "will" would undermine the expertise of the Commission. The severity of advertising violations can vary widely and as such, the regulations should continue to provide enough flexibility for the Commission to exercise its discretion in accordance with the Act and Commission regulations. Not all advertising violations may rise to the level of impacting license suitability.

E. ADD SECTION 12461. ADVERTISING CONTENT AND DISSEMINATION.

- 1. David Fried, representing California Grand Casino and Oaks Card Club; CGA, representing various cardrooms statewide:** Section 12461 conflicts with platform limits by holding social media pages to the same requirements as cardroom websites, despite their differing constraints. To comply with state law, the regulation must be shown to be reasonably necessary and narrowly tailored to address a specific problem, and should therefore be revised.

The proposed regulations would require the social media landing page to have: (1) a hyperlink to the Office of Problem Gambling (OPG), (2) a second problem gambling referral, and (3) both websites and social media landing pages would have to include additional languages consistent with section 12097(b).

Cardrooms do not control the rules established by social media platforms and these rules can change at any time. Some social media platforms contain character and hyperlink limits, which would prevent cardrooms from including both required problem gambling information and basic business details. Further, some platforms may not support alternative languages. For example, Instagram allows only 150 characters and one clickable link in the "bio" section, making compliance impossible without sacrificing essential information like the cardroom's website or phone number. This means that a cardroom would no longer be able to include a clickable link to the cardroom's website on the social media static section because the regulation requires that the only clickable link be for the OPG.

For example, the following complies with the regulation but does not comply with Instagram's text limits (192 characters total, which is 42 over the limit):

California Grand Casino www.californiagrandcasino.com 5988 Pacheco Blvd, Pacheco, CA (925) 685-8397. Must be 21+ to gamble. Gambling Problem? Call 1-800-Gambler or www.problemgambling.ca.gov

The need for requiring two contact references for accessing problem gambling information (as opposed to one required by current regulations) is not supported by evidence in the rulemaking file. Especially since a person can access problem gambling information via a smartphone just as easily as a person using a desktop device.

Further, requiring translations for all required information is unworkable within the social media platform character limits and unnecessary given built-in translation tools. Instead, social media pages should be required to link to the cardroom's website where all required information can be provided. The regulation also should refer to the "social media page" rather than "landing page" since some sites have an "about" tab which a user has to click to reach.

Additionally, the proposed regulations (problem-gambling messaging, specified links, etc.) are inconsistent the Lottery's own practice, which omits this information. This shows inconsistency with existing governmental usage and does not meet the APA's consistency standard. The Commission's proposed requirements unfairly impose burdens on private cardrooms that the Lottery's own social media accounts do not follow, which is illegal because a state agency cannot justify imposing advertising restrictions on private entities that the State itself does not observe.

There is no evidence to support the necessity of requiring social media landing pages to provide two contact points for problem gambling resources or to allocate a hyperlink to the OPG. No data show that such measures improve access to resources, that cardroom patrons experience higher problem gambling rates than Lottery or Tribal Casino patrons, or that any benefits outweigh the burdens imposed on licensees. Nor is there evidence that translations should be required when automated tools are available. The absence of supporting evidence is underscored by the Lottery's own social media pages, which provide no problem gambling contact information or hyperlinks.

The comment includes the following suggested amendment:

§ 12461. Posting Referral Information.

...

(b) Any website ~~or social media landing page~~ operated by or under the control of any cardroom business licensee or TPPPS business licensee must, in accordance with subsection (a) and (b) of 12097, contain the following information in writing:

- (1) A responsible gambling message;
- (2) A hyperlink to the Office of Problem Gambling at www.problemgambling.ca.gov (or its successors) that provides information and referral services for problem gamblers, and,
- (3) At least one of the following information and referral services for problem gambling approved by the Office of Problem Gambling (or its successors):
 - (A) 1-800-Gambler;
 - (B) 800gambler.chat; or,
 - (C) Text "SUPPORT" to 53342.

(c) Any social media page for a gambling establishment operated by or under the control of any cardroom business licensee or TPPPS business licensee must have a link to a website that complies with subsection 12097(a) and subsection (b)(3) of this section.

Commission Staff’s Recommended Response: This comment has been accepted in part. References to the “social media landing page” in this section were modified to “social media page” to avoid any potential conflicts given the wide range of social media platforms that exist today. The “http://” in the link to OPG’s website is removed to reduce the number of characters and because it is unnecessary.

Regarding the comments that oppose providing two contact references for problem gambling information, because individual preferences vary, Commission staff emphasize the importance of providing multiple contact channels to reach different groups. Furthermore, given recent U.S. helpline turbulence around ownership and routing of 1-800-GAMBLER, listing at least two avenues [OPG’s website and one of three referral services listed in paragraph (3)] will reduce service-disruption risk for consumers. However, in order to prevent the problem gambling requirements from conflicting with the varying degree of limitations imposed by different social media platforms, Commission staff propose to add an exception in new subsection (c). This exception is written to be consistent with the exceptions for space-limited digital ads located in Section 12097(c)(2) (formerly 12097(d)(2)) so that the exception only applies to a social media page when character or space limitations are an issue. The proposed modifications will ensure these social media pages still provided viewers access to the problem gambling information by requiring the inclusion of a link to a website containing the information required by this section.

Additionally, Commission staff propose other nonsubstantive changes to this section that are not related to any specific comment. The word “hyperlink” is reverted back to “link” as it reads in current regulation. This change is necessary to ensure the requirement is achievable across all types of ads under Section 12097, such as ads where including a clickable hyperlink may not be possible (e.g., printed ads). Other changes provide for better clarity, readability, and consistency with the existing requirements. Due to the proposed removal of the translation requirements of Section 12097(b), the corresponding reference in Section 12461(b) is being removed – see **Comment I.C.1.** for additional details on this change.

As discussed above, the Commission staff propose the following modifications:

§ 12461. Posting Referral Information.

...

(b) Any website or social media ~~landing~~-page operated by or under the control of any cardroom business licensee or TPPPS business licensee must, in accordance with subsection (a) ~~and (b)~~ of Section 12097, contain the following information in writing:

(1) A responsible gambling message;

- (2) A ~~hyper~~link to the Office of Problem Gambling at ~~<http://www.problemgambling.ca.gov>~~ (or its successors) that provides information and referral services for problem gamblers, currently ["www.problemgambling.ca.gov"](http://www.problemgambling.ca.gov); and,
- (3) At least one of the following information and referral services for problem gamblers approved by the Office of Problem Gambling (or its successors) currently:
- (A) ["1-800-GAMBLER"](tel:1800GAMBLER);
 - (B) ["www.800gambler.chat"](http://www.800gambler.chat); or,
 - (C) ["Text "SUPPORT" to 53342"](text:SUPPORT).
- (c) The requirements of subsection (b) do not apply to any social media page where the inclusion would be impracticable due to limited characters or spaces if the social media page includes a link to a website that complies with subsection (b).*