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 statewide[1]:

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.

<u>Authority</u>
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.~~
> ~~(c)~~*(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 ~~(c)~~ *(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 ~~(c)~~ *(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~~.
~~(c)~~*(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 is 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 (c), 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 l2099(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"*; 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*"*;
(B) *"www.*800gambler.chat*"*; or,
(C) *"*Text ~~"~~SUPPORT~~"~~ to 53342*"*.
(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).

II. ORAL COMMENTS MADE DURING THE NOVEMBER 13, 2025, PUBLIC HEARING

During the requested public hearing held on November 13, 2025 (Agenda Item 3), the Commission received the following oral comments/objections/recommendations on staff's proposed modifications to the originally proposed 45-day text (v07-21-2025). The oral comments concerning David Fried's comment letter (11/10/2025) were responded to by the Commission under Agenda Item 4 (November 13, 2025, Commission Regulations Hearing). Staff have provided a summary of those comments and responses should the Commissioners wish to reference this information.

A. COMMENTS MADE ON STAFF'S PROPOSED CHANGES TO THE 45-DAY TEXT

The following oral comments were made at the November 13, 2025, Public Hearing concerning staff's suggested modifications to the originally proposed 45-day text (v. 07/21/2025).

1. Baro Covell representing Commerce Casino; David Fried representing California Grand Casino and Oaks Card Club; Heather Guerena; Tracey Buck-Walsh:

In general, the commenters expressed their support of staff's draft of the proposed modified text, noting that the modifications are clearer, easier to follow, and more consistent with other state laws. Commenter also noted the new draft is consistent with the original focus of the regulation on responsible advertising and allows for responsible application of the law.

Additionally, David Fried expressed the need for one additional change to Section 12097(d)(4) [formerly (d)(5)], referencing a November 10, 2025, Comment Letter submitted just prior to the hearing (received outside of any comment period). This change was also supported by Heather Guerena at the hearing.

Commission Staff's Response: These comments were accepted in part. Staff notes that David Fried's comment letter (11/10/2025) recommended reverting the word "and" back to "or" to ensure the provision did not conflict with the existing safe harbor in Business and Professions Code section 19943.5. While the Commission did not respond to David Fried's comment letter under this agenda item, staff did respond to Fried's comments under Agenda Item 4 (November 13, 2025, Commission Regulations Hearing). However, instead of replacing "and" with "or," staff recommended removing the potentially problematic language entirely. Meaning, "and is prohibited by Penal Code section 330" was deleted from the end of Section 12097(d)(4), as shown in the Modified Text (v. 11/13/2025). In addition to resolving Fried's concerns, this change also prevents the

regulation from unnecessarily duplicating what is already prohibited by the statute. This specific change is highlighted below.

> § 12097. Advertising Content and Dissemination.
> ...
> ~~(e)~~*(d)*
> ~~(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 is prohibited by Penal Code section 330~~.

III. COMMENTS MADE DURING THE NOVEMBER 13, 2025, COMMISSION REGULATIONS HEARING

The Commission received the following oral comments/objections/recommendations regarding staff's suggested changes to the originally proposed 45-day text (v. 7/21/2025) at the November 13, 2025, Commission Regulations Hearing (Agenda Item 4). This meeting was noticed for the Commission to deliberate on comments received during the 45-day comment period and was not in itself a public meeting to receive comments. However, while not required, Commission staff have provided a summary of the Bureau's comment and staff's response, which resulted in revisions to the text during the meeting. (The following does not reflect a summary of all comments received at the meeting.)

B. AMEND SECTION 12097. ADVERTISING CONTENT AND DISSEMINATION.

1. Yolanda Morrow representing the Bureau:

In response to one of staff's suggested modifications presented at the meeting, Yolanda Morrow raised concerns with the removal of "gaming activity" from Section 12097(d)(4) [formerly (e)(5)] as this would allow advertising anything appended to a controlled game that is not currently approved by the Bureau (e.g., jackpots, bonus bets, giveaways, etc.).

Commission Staff's Response: This comment was accepted. Commission staff notes that "or gaming activity" was originally suggested for removal because it was not consistent with Penal Code section 330, which only addresses prohibited games and not gaming activities. However, now that staff is recommending the reference to the Penal Code be removed, staff agrees that "or gaming activity" should be added back into this provision. This ensures that advertising an unapproved gaming activity remains part of the criteria the Bureau must consider in determining whether an advertisement is deceptive. See response to **Comment II.A.1** (above) for additional information and the text of the provision.

IV. 15-DAY WRITTEN COMMENTS

The California Gambling Control Commission (Commission) received the following written comments/objections/recommendations regarding the modified text (v. 11/13/2025) of the proposed action during the 15-day written comment period that commenced November 17, 2025, and ended on December 2, 2025.

A. COMMENTS MADE ON THE PROPOSAL IN GENERAL.

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

1. Chairman Reid Milanovich, representing the Agua Caliente Band of Cahuilla Indians; Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria; Chairman Robert Smith, representing the Pala Band of Mission Indians; Chairman Anthony Roberts, representing the Yocha Dehe Wintun Nation:

All four commenters expressed their support for the core goal of the rulemaking: preventing deceptive cardroom advertising and giving the California Department of Justice, Bureau of Gambling Control (Bureau) clear authority and criteria to disapprove deceptive advertisements. However, they are uniformly opposed to the proposed modified text, which they describe as a diluted version of the earlier draft (45-day text), weakening consumer protections, and undermining the Commission's own stated objectives around clear, consistent standards for determining deceptive advertisements. In general, they urge the Commission to restore most of the prior language in the originally proposed text.

Additionally, Chairman Greg Sarris and Chairman Robert Smith opined that the Commission did not provide any explanation or reasoning concerning the deletion of key provisions and significant changes made to the prior 45-day text.

Commission Staff's Recommended Response: This comment was considered but not incorporated. The significant text modifications were explained with rationale in the Commission's 45-day Comment Summaries and Responses document, which was considered by the Commission at the November 13, 2025, Commission Meeting. At that meeting, staff presented these changes for public discussion and the Commission's consideration.

In general, the changes provided in the proposed modified text are necessary to maintain consistency with the directives of Business and Professions Code (BPC) section 19841(f) and the Commission's authority under the Gambling Control Act (Act). Further,

modifications are necessary to ensure the regulations do not violate First Amendment protections and the rulemaking standards of the Administrative Procedure Act (APA). For responses to comments in opposition concerning specific sections of the proposed modified text, see Commission staff's responses to **Comments IV. B, C, and D.**

2. **Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria; Chairman Robert Smith, representing the Pala Band of Mission Indians; Chairman Anthony Roberts, representing the Yocha Dehe Wintun Nation:**

Three commenters objected to the timing and length of the second 15-day public comment period. They noted that the November 15-day notice contained substantial revisions to the proposed advertising regulations and was scheduled over the Thanksgiving holiday, which they believe limited stakeholders' ability to review the complex changes, consult internally, and prepare comments.

Commission Staff's Recommended Response: This comment was considered but not incorporated. The Commission conducted this comment period in compliance with the Administrative Procedure Act.

B. ADOPT SECTION 12096. SPECIFIC TPPPS BUSINESS REQUIREMENTS.

Section 12096, which was previously proposed in the 45-day text, would have provided specific advertising requirements and responsibilities for all TPPPS business licensees.

1. **Chairman Anthony Roberts, representing the Yocha Dehe Wintun Nation:**

Former Section 12096. This commenter questions why Section 12096 was eliminated, emphasizing that in their comment letter dated September 15, 2025, they had urged the opposite—the need for this section to be strengthened to disallow TPPPS from paying for cardroom advertising. They contend that deleting Section 12096 removes an important safeguard against TPPPS effectively sharing in the gambling enterprise by funding advertising, which is contrary to BPC section 19984.

Commission Staff's Recommended Response: This comment was considered but not incorporated. The Commission upholds its response to the Chairman's prior comment in the 45-day Comment Summaries and Responses (see **Comment I.B.1.**). Section 12270 of the Commission's regulations require that all financial arrangements between the cardroom business licensee and TPPPS business licensee must be disclosed in the TPPPS contract, including any payments for the reasonable share in the cost of advertising. 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 guardrails that already exist, this previously proposed section is unnecessary and risks creating unintended conflicts with long-established requirements.

C. ADOPT SECTION 12097. ADVERTISING CONTENT AND DISSEMINATION.

This section establishes content and dissemination requirements for gambling advertisements. This section also provides specified criteria the Bureau must consider in

determining whether an advertisement is deceptive consistent with the requirements of the Act and BPC section 19841(f).

1. **Chairman Reid Milanovich, representing the Agua Caliente Band of Cahuilla Indians; Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria; Chairman Robert Smith, representing the Pala Band of Mission Indians:**

   Section 12097(b)(4) [formerly 12097(c)(4)]. These commenters express concern with the modifications to Section 12097(b)(4), which reduced the prior requirements governing how Bureau-approved games must be referenced in advertising. They noted that the earlier language required use of Bureau-approved game names or approved alternative names and, when other names were used, the inclusion of specified safe-harbor statements (such as "California game" or "This cardroom does not offer banked games"). The commenters assert that the modified text, which allows any game name so long as a Bureau-approved identification number is included, eliminates important consumer-protection provisions, creates ambiguity for licensees and regulators, and may encourage the use of non-approved or misleading game names because an identification number alone has no clear meaning to the public. These commenters recommend that the Commission restore the prior version of Section 12097(b)(4) or, alternatively, clarify that only Bureau-approved game names or approved alternative names may be used in advertising.

   Commission Staff's Recommended Response: This comment was considered but not incorporated. The Commission upholds its responses to David Fried's related comments in the 45-day Comment Summaries and Responses (see **Comment I.C.4.**). In consideration of those comments, staff determined that the prior game name requirements risked being in violation of the applicable requirements of the APA, the First Amendment of the Federal Constitution, and Article 1, and Section 2(a) of the California Constitution.

   Commission staff notes that the government can regulate potentially misleading commercial speech only if: (1) the regulation serves a substantial government interest, (2) the regulation directly and materially advances the government's substantial interest, and (3) the regulation is narrowly tailored to serving that interest. *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n,* (1980) 447 U.S. 557, 566. The Commission did not have any evidence that the Bureau-approved game names and boilerplate disclaimers were necessary to advance the State's interest and would better protect and inform the public. Further, the lengthy disclaimers would have significantly interfered with an advertiser's intended message. Achieving compliance for space-limited digital ads on certain social media platforms would have been impractical if not impossible to achieve.

   The provision was modified to more appropriately require advertisements to include the Bureau-issued identification number in any reference to a specific Bureau-approved game. This simplified requirement provides a single and consistent method for identifying a specific game advertised and for obtaining the game rules. This change provides a more practical, clear, and less burdensome requirement and ensures the

required information does not unnecessarily interfere with the advertiser's intended message.

2. **Chairman Robert Smith, representing the Pala Band of Mission Indians:**

Section 12097(b)(5) [formerly 12097(c)(5)]. Chairman Smith opposes the modifications to Section 12097(b)(5), which now requires advertisements that reference a specific Bureau-approved gaming activity, simply include the Bureau-issued identification number. Chairman Smith contends the modified requirement has no clear and conspicuous immediate meaning to the reader or listener and does not provide the necessary guidelines to identify and prevent misleading and deceptive advertising.

Commission Staff's Recommended Response: This comment was considered but not incorporated. The Commission upholds its responses to David Fried's related comments in the 45-day Comment Summaries and Responses (see **Comment I.C.4.**). This section was modified to make the requirements for identifying gaming activities consistent with the requirements for identifying game names in Section 12097(b)(4). This modification provides additional clarity, simplicity, and uniformity to the requirements of subsection (b).

3. **Chairman Reid Milanovich, representing the Agua Caliente Band of Cahuilla Indians; Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria; Chairman Robert Smith, representing the Pala Band of Mission Indians; Chairman Anthony Roberts, representing the Yocha Dehe Wintun Nation:**

Former Section 12097(e)(3). All four commenters oppose the deletion of former Section 12097(e)(3), which had addressed the use of "Nevada" or "Vegas" in advertisements as criteria the Bureau must consider when determining whether an advertisement is deceptive. In general, they opine that such terms are commonly understood by the public to refer to Nevada-style, house-banked casino games that are prohibited in California cardrooms and reserved for tribal casinos under the California Constitution and Penal Code section 330. Therefore, their use in cardroom advertising is inherently deceptive within the meaning of BPC section 19841(f). The commenters expressed that removing this provision materially weakens consumer protections, creates regulatory ambiguity, and undercuts the Commission's stated goal of preventing deceptive advertising. They request that the Commission restore the prior "Nevada" / "Vegas" language, and some urge that the requirement be strengthened so that the use of these terms would constitute conclusive evidence of deceptive intent rather than merely one factor for the Bureau to consider.

In addition to restoring the provision, both Chairman Greg Sarris and Chairman Anthony Roberts recommend expanding the list to include the terms "21" and "blackjack" because cardrooms routinely advertise the play of that game and Penal Code section 330 makes it expressly illegal.

Commission Staff's Recommended Response: This comment was considered but not incorporated for the same reasons provided in the Commission's response under **Comment II.C.1.** The Commission stands by its prior responses to the related 45-day comments submitted by David Fried (see **Comment I.C.4.**). Staff maintain that the removal of former Section 12097(e)(3) is necessary to avoid potential conflicts with the requirements of the APA, Federal Constitution, and California Constitution.

4. **Chairman Robert Smith, representing the Pala Band of Mission Indians:**

Section 12097(d)(3) [formerly 12097(d)(4)]. Opposes the modifications to Section 12097(d)(3), which includes the deletion of "makes any" and "claims," expressing they preferred the originally proposed language.

Commission Staff's Recommended Response: This comment was considered but not incorporated. The Commission stands by its prior responses to the related 45-day comments submitted by David Fried (see **Comment I.C.4.**). Staff's modifications to this provision are necessary to provide better clarity and ensure consistency with other governing laws (First Amendment protections and BPC sections 17500 and 17508). Additionally, the changes are consistent with the language in Nevada Gaming Regulation Section 5.011(1.)(d).

5. **Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria; Chairman Robert Smith, representing the Pala Band of Mission Indians; Chairman Anthony Roberts, representing the Yocha Dehe Wintun Nation:**

Section 12097(d)(4) [formerly 12097(d)(5)]. All three commenters object to the removal of the reference to games prohibited by Penal Code section 330. In general, they contend that deleting the Penal Code reference undermines the regulations' ability to prevent cardrooms from advertising illegal games.

Chairman Greg Sarris and Chairman Anthony Roberts both urge the Commission not only to restore the deleted reference to the Penal Code but also to change the conjunction from "and" to disjunction "or" so that advertising a game or gaming activity is potentially deceptive when it is either not currently approved by the Bureau or is prohibited under Penal Code section 330.

Commission Staff's Recommended Response: This comment was considered but not incorporated. Removing the Penal Code reference prevents the regulation from unnecessarily duplicating what is already prohibited by statute and is consistent with the nonduplication standards of the APA. Additionally, staff notes that keeping the reference to the Penal Code and changing "and" to "or" in this provision creates a conflict with the existing safe harbor in BPC section 19943.5, as there could be a situation in which a Bureau-approved game advertised is later to be found in violation of Penal Code section 330.

D. ADOPT SECTION 12099. DISAPPROVAL OF ADVERTISING.

This section establishes procedures for the Bureau's disapproval of deceptive advertisements.

1. Chairman Reid Milanovich, representing the Agua Caliente Band of Cahuilla Indians; Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria; Chairman Robert Smith, representing the Pala Band of Mission Indians, Chairman Anthony Roberts, representing the Yocha Dehe Wintun Nation:

Former Section 12099(e). All four commenters oppose the deletion of former Section 12099(e) and request that it be restored. In general, they argue that removing this provision weakens oversight, reduces accountability for repeat violators, and undermines public confidence in the integrity of controlled gambling. Chairman Reid Milanovich emphasizes that suitability under the Act is inherently tied to honesty, integrity, and a history of compliance. Chairman Robert Smith urges not only that Section 12099(e) be restored, but also that the provision be strengthened from "may" to "will" in line with State Auditor recommendations. Chairman Greg Sarris likewise urges restoration and further requests a "scofflaw" provision be added that authorizes the immediate suspension of a cardroom's license after repeatedly being warned by the Bureau about their deceptive or misleading advertising. Chairman Anthony Roberts characterizes the deletion as unjustified and apparently designed to benefit cardrooms, urging that Section 12099(e) be restored.

Commission Staff's Recommended Response: This comment was considered but not incorporated. The Commission stands by its prior responses to the related 45-day comments (see **Comments I.D. 3. and 4.**). The requirements of former subsection (e) have been removed to align with other additional modifications proposed throughout Section 12099 to provide due process. The Commission notes that advertising as "commercial speech" is protected under the First Amendment of the Constitution and strong due process protections against prior restraints have been upheld by the United States Supreme Court. Commission staff agrees with the 45-day comments submitted by David Fried (et. al.), which contends that this section previously created an illegal prior restraint on speech by causing licensees to risk disciplinary action to challenge whether a Bureau notice of disapproval is valid.

However, Commission staff are proposing additional modifications to Section 12099. In short, instead of requiring the Bureau to obtain a judicial decision in a civil court, these modifications would require the Bureau to file an accusation so that the matter is resolved by an administrative law judge before the Bureau can take disciplinary action. This adjudicative procedure provides due process protections and is consistent with existing Bureau and Commission practices (for additional details, see **Comment V.A.1**).

V. OTHER WRITTEN COMMENTS RECEIVED OUTSIDE OF ANY COMMENT PERIOD (AFTER THE 1ST 15-DAY COMMENT PERIOD)

On December 30, 2025, the California Gambling Control Commission (Commission) received the following written comments/objections/recommendations from the Bureau regarding the modified text (v. 11/13/2025) of the proposed action. These comments were received outside of any written comment period. While not required, Commission staff have provided a summary and response to the Bureau's comment letter.

A. ADOPT SECTION 12099. DISAPPROVAL OF ADVERTISING.

This section establishes procedures for the Bureau's disapproval of deceptive advertisements.

1. Yolanda Morrow representing Bureau:

Section 12099(e). The Bureau notes that Section 12099(e) would require the Bureau to seek a court order rather than file a disciplinary action under Business and Professions Code (BPC) sections 19930 and 19931, as previously provided in subsection (f), which has since been stricken. The Bureau expresses that requiring the Bureau to file a civil action with the court may exceed its authority under the Gambling Control Act. BPC sections 19826, 19827, 19868, 19930, and 19931 set forth the Bureau's administrative powers and responsibilities; however, these statutes make no mention of the Bureau's authority to initiate a civil action. Conversely, BPC section 19824(g) expressly authorizes the Commission to institute civil action under the Act. The Bureau also notes that nothing in BPC 19841(f) indicates that the Bureau's determination is final or grants the Bureau ultimate authority to disapprove any given advertisement. The Bureau suggests the Commission may want to consider replacing the proposed court-based mechanism with an administrative appeal process that allows an applicant to challenge the Bureau's deceptive advertising determination before the Commission. The Bureau believes this approach would provide pre-restraint due process by giving affected parties a meaningful opportunity to be heard within the administrative framework before an advertisement is effectively halted. Furthermore, an appeal pathway to the Commission would also align with the Commission's express statutory authority to approve or disapprove matters under BPC section 19824(b) and (c). Finally, keeping the issue within the Commission's administrative process would preserve the judicial deference typically afforded to Commission and Bureau determinations under BPC section 19804—deference that may not apply if the Bureau acts to obtain a judicial determination under Section 12099(d) as currently drafted.

Commission Staff's Recommended Response: This comment was considered and accepted in part. While the Bureau suggests the regulations be amended to require the

Commission to conduct a hearing on the Bureau's finding of deceptive advertising so that the Commission can take the final action and decide whether or not to "disapprove" the advertisement, Commission staff believe that the directives of BPC section 19841(f) are unclear as to whether the Commission would have the authority to overrule the Bureau's finding of deceptive advertising, if necessary. Additionally, while this suggestion would provide procedural due process, it may not provide sufficient constitutional due process. As such, Commission staff are proposing a different solution in revising Section 12099 to avoid the prior restraint issue. Additionally, these modifications are consistent with current Commission and Bureau practices and utilize the existing procedures for filing accusations.

Specifically, subsection (a) is amended to replace the term "notice of disapproval" with "notice of deceptive advertising" when referring to the notification the Bureau may issue to a cardroom business licensee or TPPPS business licensee upon making an initial determination that an advertisement is deceptive. Corresponding changes have been made throughout subsection (b). Additionally, former paragraph (3) of subsection (a), which previously mandated compliance with the Bureau's initial determination by requiring the amendment or removal of the advertisement prior to a court action, has been removed to avoid prior restraint issues.

In subsection (b) [formerly (b)(1)], upon receipt of a notice of deceptive advertising, the back-and-forth process between the licensee and the Bureau, which allows for rebuttal and further consideration, is maintained. However, former paragraph (2) is removed, which previously provided for the stay of the notice of disapproval if written support is timely received by the Bureau. This provision is now unnecessary because the notice of deceptive advertising no longer includes an obligation to remove or amend an advertisement found to be deceptive (avoiding the prior restraint issue).

Similar to the prior version, subsection (c) requires the Bureau either: (1) uphold or amend its determination made in the notice of deceptive advertising, in which it will issue a final notice of disapproval of the deceptive advertisement, or (2) vacate its determination made in the notice of deceptive advertising, in which it will not issue a notice of disapproval. Notably, creating two distinct notices for the Bureau to issue at different stages (notice of deceptive advertising and notice of disapproval) helps to establish a clearly defined and simple procedure.

Additionally, subsection (d) previously authorized the Bureau to file a civil action with the court to obtain a final judicial decision on its determination if the licensee did not comply with the Bureau's final determination (notice of disapproval). Instead of requiring compliance with the Bureau's initial or final notice, this subsection is modified to authorize the Bureau to take disciplinary action and file an accusation under BPC section 19930 or 19931, or both (as it deems necessary) so that the matter is heard by an Administrative Law Judge (ALJ). Through the accusation process, the Bureau's proposed disciplinary action would be heard by an ALJ and could then be challenged by writ if necessary. Thereafter, the Commission would have the ultimate authority to decide the matter after receiving the ALJ's opinion. This adjudicative procedure provides due

process protections and is consistent with the Bureau's authority under BPC sections 19930 and 19931.

In alignment with the other changes made to avoid prior restraint, subsection (e) now specifies that a violation of this section occurs at the time the deceptive advertisement is published or disseminated, and that while fixing or removing the advertisement thereafter may reduce any potential penalties, it does not undo the violation. Using the words "published" or "disseminated" in this provision is consistent with the terminology used in the definition of an "advertisement."

Specifically, staff proposes the following changes to the text:

§ 12099. Disapproval of Advertising.
(a) If the Bureau determines an advertisement is deceptive in accordance with this article, the Bureau may issue a notice of ~~disapproval~~ *deceptive advertising* to the cardroom business licensee or TPPPS business licensee pursuant to Section 12006. The notice of ~~disapproval~~ *deceptive advertising* must include, at *a* minimum, the following:
(1) A citation of each specific legal provision that has been violated;
(2) A description of each part of the advertisement that is not compliant with this article*, and*;
~~(3) A specified deadline that provides at least 30 calendar days to comply with the notice of disapproval; and,~~
(3)~~(4)~~ An explanation of the cardroom business licensee's or TPPPS business licensee's right to submit written support to rebut the notice of ~~disapproval~~ *deceptive advertising*, consistent with subsection (b).
(b)~~(1)~~ The cardroom business licensee or TPPPS business licensee may submit written support to the Bureau to rebut the notice of ~~disapproval~~ *deceptive advertising* within 14 calendar days following the Bureau's service of the notice of ~~disapproval~~ *deceptive advertising* in subsection (a).
~~(2) If written support is timely received by the Bureau in accordance with paragraph (1), the notice of disapproval will be stayed.~~
~~(c) Within 30 calendar days following the timely receipt of the cardroom business licensee's or TPPPS business licensee's written support submitted in accordance with subsection (b), the Bureau must consider the information provided and respond to the cardroom business licensee or TPPPS business licensee with its final determination, pursuant to Section 12006. The Bureau's final determination will include a response consistent with one of the following:~~
~~(1) The Bureau's final determination to uphold or amend the notice of disapproval in subsection (a), including an updated deadline that provides at least 30 calendar days to comply with the Bureau's final determination; or,~~
~~(2) The Bureau's final determination to vacate the notice of disapproval in subsection (a).~~
(c)(1) If the cardroom business licensee or TPPPS business licensee does not submit timely support to the Bureau pursuant to subsection (b), the Bureau will

issue a notice of disapproval of the deceptive advertisement within 30 calendar days.
(2) If the cardroom business licensee or TPPPS business licensee submits timely written support to the Bureau pursuant to subsection (b), the Bureau must consider the written support provided. The Bureau must respond to the cardroom business licensee or TPPPS business licensee within 30 calendar days following the timely receipt of the written support, pursuant to Section 12006, of its determination to uphold, amend, or vacate the notice of deceptive advertising.
(A) If the Bureau upholds or amends its determination, it will issue a notice of disapproval of the deceptive advertisement.
(B) If the Bureau vacates its determination, it will not issue a notice of disapproval.
(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 cardroom business licensee or TPPPS business licensee does not comply by the applicable deadline specified by the Bureau, the Bureau may 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.~~ *Following the issuance of a notice of disapproval, the Bureau may proceed with taking action under Business and Professions Code sections 19930 and/or 19931, as it deems appropriate.*
~~(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) Violation of this section occurs at the time a deceptive advertisement is published or disseminated. Once a violation occurs, subsequent remedial actions cannot eliminate it but may be considered a mitigating factor regarding any imposition of discipline.
…

2. **Yolanda Morrow representing Bureau:**

Section 12099(f). The Bureau expresses the phrase "records issued or filed" in Section 12099(f) is ambiguous and recommends clarifying what exactly must be included in the Bureau report for the licensee's initial or renewal license application.

Commission Staff's Recommended Response: This comment was accepted. In response, staff suggests additional clarifying edits to Section 12099(f), which identify the specific records that must be included in the Bureau report. As applicable, these records include the Bureau notice of deceptive advertising, written support in rebuttal submitted by the licensee, Bureau notice of disapproval, and a summary of any subsequent actions taken by the licensee or Bureau regarding the Bureau's issued notice of disapproval. This additional specificity is necessary to clearly identify which records the Bureau must

include in the next Bureau report for the licensee's initial or renewal licensee application. Specifically, staff suggests the following modifications:

§ 12099. Disapproval of Advertising.

…

(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.~~ *Pursuant to this section, all the following must be included in the next Bureau report for the cardroom business licensee's or TPPPS business licensee's initial or renewal license application, as applicable:*

(1) Bureau notice of deceptive advertising;

(2) Written support in rebuttal to the notice of deceptive advertising submitted by the cardroom business licensee or TPPPS business licensee;

(3) Bureau notice of disapproval; and,

(4) A summary of any subsequent actions taken by the cardroom business licensee, TPPPS business licensee, or the Bureau regarding the Bureau's issued notice of disapproval.

VI. 2ND 15-DAY WRITTEN COMMENTS

The California Gambling Control Commission (Commission) received the following written comments/objections/recommendations regarding the 2nd Modified Text (v. 02/17/2026) of the proposed action during the 2nd 15-day written comment period that commenced March 4, 2026, and ended on March 19, 2026.

A. ADOPT SECTION 12097. ADVERTISING CONTENT AND DISSEMINATION.

This section establishes content and dissemination requirements for gambling advertisements. This section also provides specified criteria the Bureau must consider in determining whether an advertisement is deceptive consistent with the requirements of the Gambling Control Act (Act) and Business and Professions Code (BPC) section 19841(f).

1. **Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria:** Chairman Sarris largely repeated their prior comments by: (1) opposing the removal of previously proposed restrictions on advertising references to "Nevada" and "Vegas" and strongly urging the Commission to restore that language; (2) asserting that, because many cardrooms have long advertised illegal banked games in violation of state law and tribes' exclusive rights, the advertising regulations must directly address that history; and (3) objecting to the removal of language referring to gaming activity "prohibited by Penal Code section 330" and urging the Commission to restore that language and strengthen it by changing "and" to "or."

   Commission Staff's Recommended Response: These comments were considered but not incorporated. These comments repeat previous comments submitted by Chairman Sarris and are not directly related to the proposed 2nd 15-day changes. For related comment summaries and responses, see **Part IV, (1st) 15-day Written Comments on the (1st) Modified Text (v. 11/13/2025).**

B. ADOPT SECTION 12099. DISAPPROVAL OF ADVERTISING.

This section establishes procedures for the Bureau's disapproval of deceptive advertisements.

1. **Chairman Greg Sarris, representing the Federated Indians of Graton Rancheria:** Chairman Sarris repeated prior comments requesting the Commission to go further by adding a stronger enforcement mechanism: a "scofflaw" provision under which cardrooms repeatedly warned about deceptive or misleading advertising would face an immediate license suspension for a period of time.

   Commission Staff's Recommended Response: This comment was considered but not incorporated. This comment repeats previous comments submitted by Chairman Sarris.

For related comment summaries and responses, see **Part IV, (1st) 15-day Written Comments on the (1st) Modified Text (v. 11/13/2025).**

2. **David Fried, representing California Grand Casino and Oaks Card Club; California Gaming Association (CGA), representing various cardrooms statewide[1]:** David Fried asks the Commission to allow staff to revise section 12099 to address the concerns and proposed changes set out in his letter, which is summarized below.

   i. THE REGULATION NEEDS TO DEFINE BOTH THE NUMBER OF AND TIMING OF VIOLATIONS.

   David Fried opines that proposed Section 12099 should be modified to address two central issues: (1) how the number of potential violations will be counted; and (2) when a "violation" of the regulation occurs. David Fried argues that, without clear answers to those two questions, the regulation leaves too much discretion to the Bureau and creates the possibility of extreme penalty exposure, especially in the context of modern advertising formats where the same content may be broadcast, streamed, reposted, or served digitally to large audiences. David Fried further contends that this uncertainty has heightened significance because the regulation affects advertising speech and because the resulting penalties can influence both disciplinary exposure and future licensing determinations.

   The Counting Problem
   David Fried argues that the proposed regulation is unclear on how the number of violations is to be counted, including when a single advertisement is disseminated multiple times or across multiple platforms. David Fried illustrates the issue with examples involving repeated radio broadcasts, individually streamed audio ads, social media posts that are viewed and reposted, digital banner advertisements appearing across many websites, and television or online video ads viewed by large audiences. The same underlying content could theoretically be treated as one violation, dozens of violations, or hundreds of thousands of violations depending on how the Bureau counts dissemination events (e.g., number of broadcasts, streamers/listeners/viewers, reposts, variations, etc.).

   David Fried contends that leaving the number of violations unclear and to the Bureau's unconstrained discretion creates a serious enforcement risk because each violation may carry a financial penalty, meaning that one advertisement could expose a licensee to massive aggregate penalties before the licensee even receives the Bureau's first notice. Under the proposed regulations, the Bureau could characterize a single advertisement as resulting in dozens, hundreds, or even thousands of violations, thereby pressuring a licensee to settle and waive the right to challenge the Bureau's action in an administrative or judicial forum. According

[1] Per CGA's March 19, 2026, Comment Letter: "CGA supports and incorporates by reference the comments submitted by David M. Fried on March 18, 2026, concerning proposed Section 12099."

to David Fried, this is entirely consistent with the tendency of prosecutors to overcharge initially, then negotiate.

According to David Fried, the Commission recognized a similar problem when it adopted the disciplinary regulations in Section 12554(k), which treats a licensee's repeated practice in the conduct of controlled games as a single violation while allowing frequency and duration to serve as aggravating or mitigating factors. David Fried argues the same general approach should apply here, especially because the proposed advertising regulations regulate speech and should not be structured in a way that permits undue enforcement pressure on speakers (advertisers).

The Timing Problem

David Fried argues that the regulation improperly ties compliance obligations and penalty consequences to the Bureau's preliminary notice (notice of deceptive advertising), even though that notice is not final, may be amended or withdrawn, and may pressure the licensee into making costly advertising changes before any final Bureau determination (notice of disapproval) is made. Additionally, David Fried notes that the prior draft of the regulation provided licensees 30 days to comply with the *final* Bureau notice. In David Fried's view, it is unreasonable to expose a licensee to consequences based on the preliminary notice when that notice is not yet final and may change. The comment emphasizes the practical burdens this creates, noting that changing advertisements often requires lead time, coordination, expense, and production work, particularly for audio, video, and billboard advertising.

Further, tying penalties or compliance expectations to the preliminary notice creates due process and First Amendment concerns because the licensee may be pressured to alter or stop advertising before the Bureau's decision is final and before meaningful judicial review is available. David Fried characterizes this as a form of prior restraint and argues that it is improper to allow penalties to accrue before the final notice of disapproval is issued and before the advertiser has any way of obtaining judicial relief or has a reasonable opportunity to comply with that final determination.

Alternatives.

Without waiving the stated objections, David Fried proposes several alternative approaches. First, David Fried proposes that either: (1) there should be no violation and no aggravation of penalties until after a final Bureau action (issuance of the notice of disapproval); or, (2) there should be at most one violation before a final notice of disapproval, with no aggravation of penalties until 30 days after that final notice to allow time for compliance. Additionally, David Fried proposes that the frequency and duration of dissemination should be treated as aggravating or mitigating factors rather than counting each viewing of the advertisement as a separate violation. Lastly, David Fried proposes that the

existence or absence of prior precedential decisions addressing similar advertising should also be treated as an aggravating or mitigating factor.

David Fried includes illustrative draft modified language to subsection (e) of this Section reflecting those concepts (below):

> (e) For the purposes of Chapter 10 of this Division:
> (1) The use of advertising that is the subject of the Bureau's final notice of disapproval …
> **(option (a))**… shall not constitute a violation of this regulation until 30 days following the licensee's receipt of the Bureau's final notice of disapproval.
> (**option (b)**)… shall not constitute more than one violation of this regulation until 30 days following the licensee's receipt of the Bureau's final notice of disapproval.
> (2) Beginning 30 days after the licensee's receipt of the Bureau's notice of disapproval, use of the advertisement that is the subject of the Bureau's final notice of disapproval or use of the same content that is the subject of the Bureau notice of disapproval is …
> (**(option a)**… a violation of the regulation)
> (**(or option (b)**… an additional violation of the regulation)
> regardless of the number of times each advertisement is viewed or heard; however, the frequency and duration of the advertising will be treated as aggravating or mitigating factors.
> (3) The extent to which precedential decisions have addressed similar advertising will be treated as an aggravating or mitigating factor.

David Fried provides that the proposed approach would make the Bureau's final notice of disapproval the operative trigger for liability, would prevent each individual view or impression from becoming a separate violation, and would align advertising enforcement more closely with the Commission's existing disciplinary framework for repeated conduct (Section 12554(k)). David Fried says this would still allow the Commission to account for the seriousness and reach of the advertising, but without creating disproportionate and potentially coercive penalty exposure.

<u>Uncertain Enforcement Supports Tying Penalties to the Bureau's Notice of Disapproval.</u>

David Fried argues that further modifying the regulations to use the Bureau's final notice of disapproval as the trigger for liability is especially important because the proposed advertising standards are new and contain several categories that lack established precedent. David Fried contends that while there may be some clear cases, many applications of Section 12097 will require novel judgment calls by the Bureau, meaning licensees do not yet have reliable notice of what content will be treated as deceptive. For that reason, David Fried argues that advertisers should

not accumulate multiple violations before the Bureau has clearly and finally identified the content it believes is improper.

David Fried then provides several examples of how the four types of deceptive advertising criteria in Section 12097(d) may not necessarily be clear in practice. With respect to advertising that depicts gambling as a means of financial improvement, David Fried questions how far that concept reaches and whether ordinary depictions of winnings, jackpots, or successful poker players could become problematic. With respect to advertising that appeals to children, David Fried raises the example of joker imagery, noting that jokers appear in ordinary card decks and in certain approved games, and asks whether use of that imagery could be swept in as cartoon-style content. For false or materially misleading claims, David Fried argues that quantifiable claims may fit within more traditional false advertising principles, but that non-quantifiable claims lack clear precedent. And for ads depicting unapproved games or gaming activities, David Fried questions whether use of terms like "blackjack" could become problematic even though many approved games already use that term in their approved titles. These examples are used to support the broader point that the Bureau will be making quasi-legislative and individualized judgments in an area where the boundaries are not yet settled.

Commission Staff's Recommended Response: These comments were considered but not incorporated for the reasons that follow.

"The Counting Problem"
Commission staff notes David Fried's argument that the proposed regulation is unclear on how the number of violations are to be counted is novel and unfounded. Commission staff's review of other advertising regulations did not identify any comparable regulatory provisions addressing these concerns. This includes the regulations adopted by the California Horse Racing Board and the State Lottery Commission.[2]

The Act charges the Bureau with the authority to investigate and enforce the provisions of the Act and Commission and Bureau regulations. Further, BPC section 19841(f) requires the Commission to adopt regulations that:

> "Provide for the disapproval of advertising by licensed gambling establishments that is *determined by the department* to be deceptive to the public. Regulations adopted by the commission for advertising by licensed gambling establishments shall be consistent with the advertising regulations adopted by the California Horse Racing Board and the Lottery Commission. Advertisement that *appeals to children or adolescents or*

[2] Business and Professions Code section 19841, subdivision (f), specifies in part: "Regulations adopted by the commission for advertising by licensed gambling establishments shall be consistent with the advertising regulations adopted by the California Horse Racing Board and the Lottery Commission."

that offers gambling as a means of becoming wealthy is presumptively deceptive."

To accomplish the Commission's mandate, the Commission must adopt criteria for the Bureau's consideration in determining whether an advertisement is deceptive and establish related disapproval procedures. However, the Act does not authorize the Commission to make deceptive advertising determinations for the Bureau. Rather, the Act charges the Bureau with the ultimate authority and discretion to determine that an advertisement is deceptive. Due to its general investigation and enforcement authority and its explicit authority to make deceptive advertising determinations, the Bureau is the appropriate entity to assess whether and to what extent there has been a deceptive advertising violation and the number of violations that occurred.

"The Timing Problem"
Commission staff notes that once a deceptive advertisement is published or disseminated, the harm to the public cannot be undone. Therefore, tying the violation to any other point in time after publication and dissemination would be inappropriate and arbitrary.

Section 12099 requires several additional steps to take place before the Bureau's notice of disapproval is enforceable. The proposed 2nd Modified Text provides a multi-stage review and disapproval process and establishes two distinct notices that can be issued by the Bureau – the notice of deceptive advertising and the notice of disapproval. Notably, the preliminary notice (notice of deceptive advertising) is specifically intended to allow the licensee to rebut the Bureau's initial determination. Only after both notices are issued may the Bureau proceed to file an accusation under BPC sections 19930 and/or 19931. Through the accusation process, the Bureau's proposed disciplinary action must then be heard by an Administrative Law Judge (ALJ). Only after the ALJ issues its opinion, will the Commission have the ultimate authority to decide the matter, which may then be challenged by writ if necessary. These multiple levels of review established by the regulations—through an ALJ, the Commission, the court, and the appellate court if necessary—help ensure that the Bureau's determinations are not unconstitutional or unreasonable.

"Alternatives"
David Fried's proposed alternatives (options a and b) would not be as effective in implementing the requirements of BPC section 19841(f). Overall, a deceptive advertisement becomes problematic once it is published or disseminated. David Fried, by contrast, appears to argue that no penalty should be attached so long as the advertisement is subsequently removed. David Fried's approach would create a loophole in enforcement by allowing a cycle of noncompliance whereby licensees would repeatedly take down deceptive advertisements just prior to the Bureau's final action and, in the absence of precedential decisions, the Bureau

would be unable to rely on prior findings of deceptiveness in addressing future advertisements involving the same or similar deceptive content.

"Uncertain Enforcement Supports Tying Penalties to the Bureau's Notice of Disapproval."
David Fried largely reiterates his prior contention that liability should not be attached until the Bureau issues a final notice of disapproval. However, the fact that the Bureau will need to exercise judgment in applying Section 12097 does not render the regulation defective. Rather, that is the Bureau's statutory role, and the criteria set forth in Section 12097 provides sufficiently clear standards to place licensees on notice of the types of advertising content that may be found deceptive.

Moreover, the regulations already incorporate procedural safeguards. Section 12099 requires the Bureau to identify the specific legal provision violated, describe the noncompliant content, and advise the licensee of its right to submit written rebuttal; all prior to the possible issuance of a notice of disapproval and potential commencement of the process for filing an accusation to seek disciplinary action. By allowing the Bureau to exercise its discretion during the disapproval process and providing licensees with a rebuttal process, there is sufficient flexibility in the process to allow the parties to reach a mutually agreeable conclusion that avoids accusations and/or proposed settlements.

Accordingly, enforcement uncertainty at the margins does not warrant a regulation that postpones liability of deceptive advertising until the Bureau's final disapproval. Doing so would risk encouraging iterative noncompliance by either: (1) Allowing advertisers to publish questionable content without meaningful consequence until the Bureau completes the disapproval process, or (2) Creating a loophole where if the licensee ceases the advertising prior to the final Bureau action, there would be no violation. The better approach is the one reflected in the proposed text—a deceptive advertisement is problematic when published or disseminated, while the rebuttal and ALJ process provides a mechanism to test, clarify, and, where warranted, resolve disputes over the Bureau's application of the regulation.

ii. SUBSECTION (F) OF SECTION 12099 SHOULD BE MODIFIED.

David Fried states the Bureau should not include in renewal reports, instances where the Bureau has withdrawn a notice of deceptive advertising. Only notices of disapproval (final notices) should be included. Withdrawn notices should not be a subject for renewal licensing. Accordingly, David Fried proposes revised language that would limit reporting to cases in which the Bureau has actually issued a notice of disapproval:

> (f) Pursuant to this section, when the Bureau issues a notice of disapproval pursuant to subsection (d), all of the following must be included in the

next Bureau report for the cardroom business licensee's or TPPPS business licensee's initial or renewal license application, as applicable: …

Commission Staff's Recommended Response: This comment was considered but not incorporated. David Fried's comment is a matter of opinion as to what Bureau communications concerning a licensee should not be reported to the Commission, without providing any supporting rationale or necessity. Notably, withdrawn notices would not constitute derogatory information for future suitability determinations or discipline. However, the notice is a record of Bureau communication that provides details on a licensee's history and prior interactions with the Bureau and therefore, is appropriate to include in the Bureau Report.

iii. PROBLEMS UNDER THE ADMINISTRATIVE PROCEDURE ACT.

David Fried further argues that section 12099 presents defects under the Administrative Procedure Act (APA) standards of necessity, clarity, and consistency, and then ties the consistency discussion to constitutional concerns involving due process and speech. David Fried's position is that the proposed rule not only creates practical and fairness problems but also fails to satisfy the legal standards governing rulemaking.

Necessity.
David Fried argues that the rulemaking record does meet the necessity requirement of the APA (Gov. Code § 11349(a)). Specifically, the record does not demonstrate a sufficient need for treating each publication or dissemination of an advertisement as a separate violation. In the context of modern media, advertisements are often delivered to one person at a time through streaming, digital placement, or algorithmic distribution, so the possibility of counting each dissemination as a separate violation could multiply penalties dramatically without a demonstrated policy basis.

David Fried also contends that the Commission has not shown why advertising violations should be treated more harshly than violations involving the operation of gambling. David Fried again points to the Commission's existing regulation concerning repeated violations related to the conduct of a controlled game and argues that there is no demonstrated necessity for which advertising violations could yield penalties hundreds or thousands of times greater than violations concerning public safety, controlled games, or internal controls. Notably, advertising occupies a comparatively small place in the Act relative to the broader operational and licensing framework, which provides further evidence that the proposed penalty structure is not adequately justified.

Clarity.
David Fried argues that the regulation fails the clarity standard of the APA (Gov. Code § 11349(c)) because it is unclear in how the number of violations are to be counted.

Consistency.
Under the consistency standard of the APA (Gov. Code § 11349(d)), David Fried argues that the proposed regulation is not in harmony with other applicable legal principles, including constitutional due process requirements and First Amendment protections. A rule allowing speech-related liability to accrue before a final agency determination, and before a prompt hearing, is inconsistent with the legal protections that apply when government regulation affects speech. David Fried develops this argument through the following subparts below.

Due Process and The First Amendment
David Fried argues that due process in speech cases requires sufficient notice of what conduct will trigger liability under a new policy or interpretation. The proposed regulation authorizes the Bureau to classify content as deceptive in ways that go beyond historically established advertising law and that there is no directly applicable precedent for many of the decisions the Bureau may make under the new rule. Because of that uncertainty, licensees lack fair notice of what content will be deemed deceptive. On that basis, David Fried maintains that a violation, and certainly multiple violations, should not occur before the Bureau issues a final notice of disapproval.

Self - Censorship and the "Chilling" of Speech Without a Hearing.
David Fried argues that the structure of Section 12099 encourages self-censorship and chills speech because the risk of substantial penalties and licensing consequences will pressure advertisers to stop or alter speech even before a final determination is made. This concern exists both before and after an initial Bureau notice, because uncertainty about the Bureau's likely position may lead cautious advertisers to avoid borderline content altogether, while a preliminary notice may pressure them to abandon an advertising campaign before any adjudicative review occurs.

Self-Censorship: David Fried argues that licensees will not know in advance what language or imagery the Bureau will consider deceptive and thus may feel compelled to define the "gray area" broadly and censor themselves to avoid the risk of massive penalties or licensing consequences. David Fried also argues that even after the Bureau's initial notice, the regulation would still strongly incentivize the licensee to cease the advertising immediately rather than wait for a final determination, since penalties and renewal consequences may continue to loom in the background. David Fried notes that renewals and accusation proceedings can take years, meaning that the practical effect of the notice may suppress speech for an extended period before any final adjudication occurs.

Prior-Restraint: David Fried argues that when penalties effectively attach from the time of publication and a prompt hearing is not provided, the regulation functions as a prior restraint. David Fried reasons that the licensee should not have to risk denial of a license or disciplinary action merely to obtain an

administrative hearing on whether the Bureau's notice is valid. David Fried also argues it is especially problematic for the regulation to allow a brief consultation period between the licensee and the Bureau and yet still treat advertising during that period as punishable, even though the Bureau's position (notice of deceptive advertising) remains preliminary and unreviewable in court. David Fried contends that the Bureau's exchange-of-letters process does not amount to an adjudicative hearing and therefore does not cure the constitutional concern.

An APA Hearing should be required: Finally, David Fried argues that the regulations should expressly provide for a prompt hearing if the Bureau does not withdraw its initial notice after a timely objection. David Fried notes that the most recent revisions to Section 12099 were prompted by the Bureau's own letter dated December 30, 2025; however, the changes proposed in the latest draft of the regulation are not what the Bureau suggested. As David Fried describes it, the letter recognized that the Bureau lacked authority to initiate a civil judicial action on advertising disapproval and suggested the need for an administrative hearing before any disapproval decision became final. David Fried agrees with the premise that the Bureau's determination should remain preliminary until there has been a hearing.

David Fried further argues that neither a Gambling Control Act hearing under the license renewal process nor the accusation process is an adequate substitute because those avenues are not timely enough for disputes involving speech. A delay of several years before final adjudication is incompatible with First Amendment principles where penalties may accrue and where even an interim adverse notice can discourage protected speech. Because the Bureau is not structured to conduct adjudicative hearings, David Fried proposes that the hearing should be conducted by the Office of Administrative Hearings, with the regulations establishing a procedure for the licensee to request prompt review of the Bureau's preliminary determination.

Commission Staff's Recommended Response: These comments were considered but not incorporated for the reasons provided below and in Commission Staff's response to **Comment VI.B.2.i.**

"Necessity."
David Fried has not shown that Section 12099 fails the APA's necessity standard. The proposed regulations are necessary to implement the Commission's statutory duty to regulate deceptive gambling advertising by establishing substantive criteria the Bureau must consider in determining whether an advertisement is deceptive and by setting forth a process for notice, rebuttal, and final determination. The Commission also disagrees with David Fried's premise that the regulations require liability to be deferred until after a final notice of disapproval. A deceptive advertisement causes harm when it is published or disseminated to the public. For that reason, the proposed text reasonably treats publication or dissemination as the point at which the violation occurs, while still

allowing later remedial action to be considered in mitigation. Further, Commission staff does not agree with David Fried's contention that the regulations treat advertising violations more harshly than operational violations, as the proposed text does not mandate a specific level of discipline that is greater than the level set for operational violations. Instead, consistent with BPC section 19841(f), the regulations set forth criteria and procedures for identifying and addressing advertising that are determined by the Bureau to be deceptive to the public.

"Clarity."
David Fried has not established that the proposed regulations fail the APA's clarity standard. BPC section 19841(f) requires a process for the disapproval of advertising the Bureau finds to be deceptive. Sections 12097 and 12099 provide that process by identifying the criteria the Bureau must consider in determining whether an advertisement is deceptive and by prescribing the procedures the Bureau must follow in issuing notice, receiving rebuttal, and making a final determination. The Commission is not required to codify in the regulation every potential enforcement issue David Fried identifies, including a rigid methodology for counting violations across all possible advertising formats. The regulation is sufficiently clear in informing affected persons of the conduct regulated, the standards to be applied, and the process available to rebut a Bureau notice.

"Consistency."
The Commission does not agree that the proposed regulations are inconsistent with governing law. On the contrary, the regulations are consistent with the Act because they directly implement the Act's directive to regulate deceptive advertising and do so through standards and procedures tied to that statutory mandate. The regulations do not impose discipline automatically based solely on a preliminary Bureau position. Rather, the regulations require several additional steps take place before the Bureau's notice of disapproval is enforceable. These features are consistent with the Act and with principles of administrative due process.

Due Process and the First Amendment. The Commission does not agree that licensees lack fair notice of the conduct regulated by the proposed text. Section 12097 sets forth the criteria the Bureau must consider in determining whether an advertisement is deceptive, including whether the advertisement depicts gambling as a means of becoming wealthy or resolving a financial burden, targets or appeals to minors, makes false or materially misleading claims, or depicts unapproved gaming activity. These criteria provide adequate notice of the types of advertising content that may result in Bureau action. The fact that the Bureau must exercise judgment in applying those criteria does not render the regulations constitutionally defective. The exercise of such judgment is inherent in the enforcement of regulatory standards. Licensees remain able to evaluate the regulatory criteria in advance and to respond to any Bureau notice through the rebuttal process established in Section 12099.

Self-Censorship and Chilling Effect. The Commission does not agree that the possibility of self-censorship renders the regulations invalid. David Fried's argument, if accepted, would apply broadly to any regulation prohibiting deceptive advertising. The fact that a regulated party may choose to avoid questionable advertising content does not establish an APA defect or constitutional violation. Again, the harm caused by deceptive advertising occurs when the advertisement is published or disseminated to the public. For that reason, the Commission does not agree that a licensee should be able to avoid all regulatory consequences simply by removing the advertisement after dissemination has already occurred. The proposed regulations reflect a reasonable approach by recognizing publication or dissemination as the point at which the violation occurs, while allowing subsequent corrective action to be considered in mitigation.

Prior Restraint. The Commission does not agree that the proposed regulations constitute an impermissible prior restraint. The regulations do not prohibit speech in advance of publication; rather, they regulate deceptive advertising after it has been published or disseminated and establish procedures for the Bureau to identify the basis for its determination and for the licensee to respond. The Commission does not agree that liability must be postponed until after the Bureau issues a final notice of disapproval or until completion of some additional adjudicative proceeding. Such an approach would create a substantial loophole by allowing deceptive advertisements to be published, removed after notice, and republished without meaningful consequence. Commission staff concludes the proposed text appropriately recognizes that the violation occurs when the deceptive advertisement reaches the public, while preserving procedural protections through the rebuttal, final-determination, and accusation process.

APA hearing. The Commission does not agree that the regulations must establish a separate, prompt, APA hearing to review the Bureau's preliminary determination. Neither BPC section 19841(f) nor any other provision of the Act requires or contemplates a special preliminary adjudicative process to obtain an advisory ruling on whether an advertisement is deceptive. Advertising violations should be addressed through the Act's existing enforcement framework. Section 12099 provides for notice, rebuttal, final determination, and, where appropriate, additional disciplinary action under the Act. David Fried's proposed separate hearing mechanism would create a process not found in the statute and would effectively require an advisory determination outside the Act's established framework.