

# CALIFORNIA GAMBLING CONTROL COMMISSION

CALIFORNIA CODE OF REGULATIONS  
TITLE 4. BUSINESS REGULATIONS  
DIVISION 18. CALIFORNIA GAMBLING CONTROL COMMISSION

STATE DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS  
AND GAMBLING ADDICTION PROGRAM FUND ANNUAL FEE  
CGCC-GCA-2013-03-N

## SECTION 100. CHANGES WITHOUT REGULATORY EFFECT

Pursuant to Title 1, Division 1, Chapter 1, Article 2, Section 100(b)(3), of the California Code of Regulations (CCR), the California Gambling Control Commission (Commission) hereby submits this written statement explaining why the proposed changes to CCR Title 4, Division 18, Sections 12357, 12463, and 12464,<sup>1</sup> as detailed below, have no regulatory effect:

### **THE REGULATIONS ARE INCONSISTENT WITH AND SUPERSEDED BY STATUTORY AND REGULATORY CHANGES**

AB 75 (Committee on Budget, Chapter 22, Statutes of 2013) became effective June 27, 2013 with an operative date of July 1, 2013. This bill transfers the administration, treatment, and services provided by the State Department of Alcohol and Drug Programs (DADP) to other departments within the California Health and Human Services Agency. The DADP included the Office of Problem and Pathological Gambling which has been transferred to the State Department of Public Health (DPH).

In addition, the DADP adopted regulations, which became effective on June 6, 2013,<sup>2</sup> requiring that the Gambling Addiction Program Fund (GAPF) annual fees mandated by Business and Professions Code section 19954 be paid directly to the DADP.<sup>3</sup> This fee was being collected and deposited to the GAPF by the Commission through a Memorandum of Agreement with the DADP. Now that DADP's regulations have been adopted, the Commission will no longer collect the GAPF fees and the Commission's regulations must be amended accordingly. As these regulations were adopted prior to AB 75, they reference the DADP instead of the DPH.

Several sections contained in Division 18 of Title 4 are now inconsistent with and have been superseded by these recent statutory and regulatory changes. References to the DADP need to be

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<sup>1</sup> All references to the California Code of Regulations hereinafter apply to Division 18 of Title 4, unless otherwise specified.

<sup>2</sup> Office of Administrative Law File No. 2013-0515-02 S.

<sup>3</sup> While Title 9, CCR, Section 14220 currently specifies that the payment of the GAPF annual fee shall be submitted directly to the DADP, that agency has been replaced by the DPH and the DADP no longer exists. DPH has indicated that they will be submitting a Section 100 change to conform the newly adopted regulations to the recent reorganization and the statutory changes made by AB 75.

changed to DPH and the Gambling Establishment Annual Fee Calculation form, BGC-028, will need to have the references to the GAPF annual fee deleted.

As it relates to the Commission's Section 100 changes in Sections 12463 and 12464, and the Self-Restriction and Self-Exclusion forms, (CGCC-036 and CGCC-037, respectively), the relevant statutory changes included in AB 75 are as follows:

**Business and Professions Code**

Section 19954 was amended to reference the DPH instead of the DADP.

**Health and Safety Code**

Section 131055.2 was amended to succeed to and vest all duties, powers, purposes, functions, responsibilities, and jurisdictions of the DADP, including the Office of Problem and Pathological Gambling, in the DPH.

As it relates to the Commission's Section 100 changes to the Gambling Establishment Annual Fee Calculation form, BGC-028, incorporated by reference in Section 12357, the relevant regulatory changes in the California Code of Regulations are as follows:

**Title 9, Division 4, Chapter 11**

Section 14220 was adopted to require the payments specified in Business and Professions Code 19954 to be made directly to the DADP.

**THE COMMISSION HAS NO DISCRETION TO ADOPT A CHANGE THAT DIFFERS IN SUBSTANCE**

This proposed action will make conforming changes to Sections 12463 and 12464, as well as the Self-Restriction Form and the Self-Exclusion Form (CGCC-036 and CGCC-037, respectively) in Appendix A of Chapter 7, by changing references from the DADP to the DPH, as related to the consolidation and reassignment of responsibilities. These regulatory changes are consistent with and mandated by the recent amendment of Business and Professions Code section 19954 by AB 75.

Leaving the references in Sections 12463, 12464, and forms CGCC-036 and CGCC-037 unchanged would conflict with the current statutory provisions as described above. This would result in unnecessary confusion and complication in interpreting, applying, and enforcing these regulatory provisions. The only logical and practical solution available to the Commission is to amend its regulations to conform to the statutory changes enacted through AB 75.

This proposed action will also make conforming changes to the Gambling Establishment Annual Fee Calculation form, BGC-028, incorporated by reference in Section 12357, by removing the references to the GAPF annual fee from the form and updating the revision date in Section 12357 accordingly. These regulatory changes are consistent with and mandated by the regulations recently adopted by the DADP.

Leaving the Gambling Establishment Annual Fee Calculation form, BGC-028, unchanged would conflict with the current regulatory provisions as described above. This would result in unnecessary confusion and complication in interpreting, applying, and enforcing these regulatory provisions. The only logical and practical solution available to the Commission is to amend the Gambling Establishment Annual Fee Calculation form, BGC-028, and update Section 12357 accordingly, to conform to the regulatory changes adopted by the DADP.

### **SPECIFIC FINDINGS**

With respect to the foregoing, the Commission finds as follows:

#### **Necessity:**

Given the transfer in responsibilities in section 19954 resulting from the amendments made by AB 75, there is clearly a need to provide clarification in the Commission's regulations. There are several references in those regulations that incorrectly refer to the now defunct DADP. There is a compelling need to implement, interpret and make specific the provisions of Business and Professions Code section 19954 by the amendment of regulations that make reference to the proper entity responsible for specific functions.<sup>4</sup>

Additionally, information provided on the Gambling Establishment Annual Fee Calculation form, BGC-028, is inconsistent with the regulations recently promulgated by the DADP. It is necessary to conform BGC-028 to the DADP's new regulations to avoid confusion and duplicate GAPF annual fee payments.

#### **Consistency:**

With respect to references to the DADP, several sections of the Commission's regulations are not in harmony with, and conflict with, the provisions of section 19954 as amended by AB 75.<sup>5</sup> As discussed above, the amended statutory provisions transfer the responsibilities of the DADP to the DPH. This inconsistency could lead to unnecessary confusion.

With respect to the reference to collection of the GAPF fee in the Gambling Establishment Annual Fee Calculation form, BGC-028, this form is in conflict with the provisions of the regulations recently adopted by the DADP. In order to make the form BGC-028 consistent with the DADP's new regulations, that reference must be removed. This will also avoid unnecessary confusion or duplicate GAPF annual fee payments.

### **THE PROPOSED ACTION HAS NO REGULATORY EFFECT**

The proposed changes will not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision. These proposed changes simply

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<sup>4</sup> Government Code § 11349(a) and Title 1, California Code of Regulations, § 10.

<sup>5</sup> Government Code § 11349(d).

conform to the changes made by AB 75 in section 19954 and the regulations adopted by the DADP.

### **GRAMMATICAL AND EDITORIAL CHANGES**

This proposal also includes various grammatical and editorial changes not directly related to AB 75 or the regulations adopted by the DADP, that are merely clarifying and conforming in nature. None of these changes will alter any of the provisions of the affected sections. Because these changes will not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision, they will also have no regulatory effect.

### **SPECIFIC CHANGES**

This proposed action amends the following sections of Title 4, CCR, Division 18, to conform to the provisions of AB 75 and the regulations adopted by the DADP:

#### **Section 12357**

- Subsection (b) – The revision date of the Gambling Establishment Annual Fee Calculation form, BGC-028, is updated to conform to the change to the form resulting from the DADP’s adoption of Title 9, CCR, Section 14220 to provide for direct collection of the GAPF fee by the DADP.
  - **BGC-028**
    - The revision date of the application form is updated as a result of the changes being made.
    - In the introductory paragraph, the sentences referencing the collection of the Gambling Addiction Program Fund fee are deleted.
    - In the second paragraph, “Commission” is expanded to “California Gambling Control Commission” for clarity and accuracy.
    - In Section 2b on page 2, the word “TOTAL” is added to indicate the completed calculation of the annual fee.
    - Section 2c on page 2 is deleted in its entirety as the Commission will no longer collect the fee on behalf of the DADP. Pursuant to Title 9, CCR, Section 14220, the GAPF fee will now be submitted directly to the DADP.
    - Section 2d on page 2 is deleted in its entirety as the “TOTAL FEES DUE” will be specified in Section 2b.

#### **Section 12463**

- Subsection (a) – The word “such” is changed to “that” for improved grammar and sentence structure.
- Subsection (a), paragraph (2) – The quotation marks around the form title are deleted for consistency with other form titles throughout Division 18, and the revision date of the form is updated as a result of the changes being made.

○ **CGCC-036**

- In Section 4, the reference to the “Department of Alcohol and Drug Programs” is changed to the “State Department of Public Health,” pursuant to the changes made by AB 75, and the revision dates throughout the form are changed accordingly.
- Subsection (a), paragraph (4) – The phrase “gambling establishment” is replaced with the more accurate term “licensee,” as a licensee makes determinations for an entity, and the word “such” is changed to “the” for improved grammar and sentence structure.
- Subsection (a), paragraph (4), subparagraph (C) – The “Department of Alcohol and Drug Programs” is replaced with the “State Department of Public Health,” in accordance with the changes made by AB 75.
- Subsection (a), paragraph (7) – The phrase “gambling establishment” is replaced with the more accurate term “licensee,” as a licensee makes determinations for an entity.
- Subsection (b) – The phrase “gambling establishment” is replaced with the more accurate term “licensee,” as a licensee makes determinations for an entity.

**Section 12464**

- Subsection (a) – The quotation marks around the form title are deleted for consistency with other form titles throughout Division 18, and the revision date of the form is updated as a result of the changes being made.

○ **CGCC-037**

- In Section 4, the reference to the “Department of Alcohol and Drug Programs” is changed to the “State Department of Public Health,” pursuant to the changes made by AB 75, and the revision dates throughout the form are changed accordingly.
- Subsection (a), paragraph (4) – The “Department of Alcohol and Drug Programs” is replaced with the “State Department of Public Health,” in accordance with the changes made by AB 75.
- Subsection (a), paragraph (6) – The phrase “gambling establishment” is replaced with the more accurate term “licensee,” as a licensee makes determinations for an entity.
- Subsection (b) – The phrase “gambling establishment” is replaced with the more accurate term “licensee,” as a licensee makes determinations for an entity.