

CALIFORNIA GAMBLING CONTROL COMMISSION

INITIAL STATEMENT OF REASONS

CGCC-GCA-2013-02-R

HEARING DATE: **None Scheduled**

SUBJECT MATTER OF PROPOSED REGULATIONS: **Issuance of Subpoenas in Matters Before the Commission**

SECTIONS AFFECTED: **California Code of Regulations, Title 4, Division 18:
Section 12014**

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

INTRODUCTION:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the California Gambling Control Act (Act).¹ Under the Act, the Commission is authorized to issue subpoenas to compel attendance of witnesses and the production of documents and other things for meetings or hearings before the Commission or its committees. The Government Code² authorizes an agency to use the subpoena procedures of the Administrative Procedure Act (APA)³ in adjudicative proceedings not otherwise required to be conducted pursuant to the APA. Regulations concerning the issuance of subpoenas for Commission meetings have been prepared to implement subdivision (h) of section 19824 of the Business and Professions Code by utilizing the procedures established in Articles 11 and 12 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

PROBLEM ADDRESSED:

Currently, subdivision (h) of section 19824 of the Business and Professions Code provides the Commission authority to issue subpoenas and subpoenas duces tecum to compel attendance of witness and the production of documents at meetings and hearings, but provides no formal processes for doing so. There are currently no regulations that establish any procedures or guidance for parties to use in issuing or requesting the issuance of a subpoena in any non-APA proceeding before the Commission.

¹ Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

² Government Code section 11450.05, subdivision (b).

³ Chapter 5 (commencing with section 11500) of Title 2, Division 3, Part 1 of the Government Code.

PURPOSE:

This proposed regulation has been prepared to implement subdivision (h) of section 19824 of the Business and Professions Code by utilizing the existing procedures established in Articles 11 and 12 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. This regulation establishes clear direction by referencing and adopting a well-established subpoena process already used in administrative adjudicative proceeding under the APA. Providing clarity helps to ensure consistency and uniformity. The ability to require the attendance of witnesses or the production of documents is a vitally important part of ensuring that the Commission makes informed decisions and furthers the State's interest in fairly and effectively regulating gambling.

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

This proposed regulation will have the benefit of allowing subpoenas to be issued during the course of adjudicative proceedings before the Commission through specified procedures. These subpoenas will help to ensure that witnesses and records are available for review by all parties during the adjudicative process. Moreover, it will facilitate the production and presentation of all documents, testimony and other information which may be relevant and material to a Commission decision thereby enhancing the fairness of the decision and the legitimacy of the decision making process. In addition, this regulation will also enhance and ensure the due process rights for all parties

PROPOSED ACTION:

This proposed action will make changes within Chapter 1, Division 18, Title 4 of the California Code of Regulations. The proposed changes are as follows:

Adopt Section 12014. Subpoenas.

This proposed action would establish new Section 12014 within Chapter 1, Division 18, Title 4 of the California Code of Regulations. Section 12014 would provide rules governing the issuance of subpoenas in proceedings before the Commission by applying the provisions of Articles 11 and 12 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

Subsection (a) would provide direction and authorization for the Commission, any presiding officer or any party's attorney of record to issue a subpoena or subpoena duces tecum. The subsection would also provide a form that could be used for that purpose; however, the use of the form is intended to be optional and any other method that complies with Article 11 may be used. By providing clear authority, a timeline and guidance in the issuance of these subpoenas, it allows all parties to participate and understand their rights in Commission adjudicative proceedings.

Subsection (a) would provide all parties in an adjudicative proceeding before the Commission with the ability to exercise their due process rights by gaining access to the information they require to meaningfully present their case. The proposed method utilizes a pre-existing and known method of issuing and implementing the Commission's subpoena authority.

Subsection (b) would provide guidelines to those receiving subpoenas and subpoenas duces tecum for the making of motions in response to the received subpoenas. This subsection would also provide guidelines for the timing of a motion and any response to a motion, and specifies the actions the presiding officer may take in considering a motion. By providing clear guidelines for filing motions in response to receiving subpoenas and subpoenas duces tecum, it allows all parties and the recipients to participate and understand their rights.

Subsection (c) allows the presiding officer to modify the timelines on a showing of good cause. This enables the presiding officer to respond appropriately when conditions or circumstances do not allow adherence to the time periods specified in subsections (a) and (b), and a party makes a persuasive showing that those time periods should be modified.

UNDERLYING DATA:

Technical, theoretical, or empirical studies or reports relied upon:

No studies or reports were relied upon during the development of these regulations. Commission staff reviewed approved regulations for other agencies with similar regulatory authority to issue subpoenas and subpoenas duces tecum and the relevant sections of the Code of Civil Procedures, Evidence Code and Government Code.

BUSINESS IMPACT:

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

This proposed action imposes no mandatory requirement on businesses. The regulation simply provides a clear process to follow should a party to a proceeding wish to exercise their rights to present witnesses, information and documents in proceedings before the Commission. While there may be some cost to a business in issuing or requesting the issuance of a subpoena, the cost would be at the discretion of the party. In addition, any cost associated with the issuance of a subpoena by a business should be to that business's benefit in the adjudicative proceeding. Lastly, any business that has a subpoena issued to it would be able to recover at least some costs pursuant to section 11450.40 of the Government Code.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

These regulations do not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have any impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California.

This proposal is only directed at adjudicative meetings and hearings already being conducted by the Commission. These regulations would only be used by Commission staff, the Bureau of Gambling Control and applicants or their attorney of record. For applicants subject to an adjudicative proceeding, there is no requirement to obtain an attorney in order to request the issuance of a subpoena, as the Commission's presiding officer would be able to issue subpoenas on the applicant's behalf. The regulation simply provides a clear process to follow should a party to a proceeding wish to exercise their rights to present witnesses, information and documents in proceedings before the Commission.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or more cost-effective to affected private person and equally effective in implementing the statutory policy or other provision of law.

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

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