

LICENSING

CGCC-GCA-2020-01-R

COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS

III. 15-DAY WRITTEN COMMENTS

The Commission received the following written comments/objections/recommendations regarding the text of the proposed action during the 15-day written comment period that commenced September 11, 2020 and ended September 28, 2020:

A. ADOPT SECTION 12005. PROHIBITED PLAYER-DEALER POSITION.

This section provides a prohibition from participating, either as an owner or as an employee, in any group or entity that provides proposition player services without having a TPPPS business license and TPPPS contract.

1. 1. Comment made on this section, in general, [pg. 9, line 14].

- a. **David Fried, representing Oaks Card Club and California Grand Casino:** Mr. Fried suggested that the section is ambiguously worded and could apply to any persons employed by or contracted with any kind of business, and or apply to any person playing voluntarily outside of their job or contractual duties. Additionally, Mr. Fried suggested that the proposed change is far broader than has been noticed and therefore does not meet the requirements of the rulemaking process.

Recommended Response: This comment is not germane to the modified text of the proposed action. The modifications noticed for 15-day comments changes three instances of “participation in the play of” to “the play as a participant in” and one instance of “without an approved TPPPS contract” to “except as authorized in an approved TPPPS contract.”

B. AMEND SECTION 12006. SERVICES OF NOTICES, ORDERS, AND COMMUNICATIONS.

This section provides standards for notices that are required by Commission regulation.

1. Comment made on this section, in general, [pg. 9, line 29]

- a. **David Fried, representing Oaks Card Club and California Grand Casino:** Mr. Fried repeated his 45-day comment, found in I.C.1.a. Mr. Fried provided additional documentation to support his previous comment. Finally, Mr. Fried suggested that the administrative record does not reflect the Commission’s consideration of an alternative allowing an applicant, licensee, or designated agent to require notification by both mail and email.

Recommended Response: This comment is not germane to the modified text of the proposed action.

In regards to the first comment, for the record, the Commission disagrees that the information provided by the commenter accurately reflects either the full staffing or work of the Nevada Gaming Control Board and Nevada Gaming Commission. The information provided by the commenter shows that there is a 15 employee team called the Employee Registration Unit who process approximately 3,000 “transactions” per month. Additionally, their hours of operation appears to be 24/7/365. This is different from what was reflected by the commenter in his 45-day comment and repeated in his 15-day comment which made reference to “registrations.” Information publically available on the Nevada Gaming Control Board’s website reflects that there are 400 full-time budgeted positions, which is much more expansive than the comment purports. There are 121 personnel in the Investigations and Administration Divisions, which perform other tasks necessary for application reviews such as Licensing Investigations, Applicant Services, and Registration Investigations. There is a separate division for audits and other services such as tax and compliance. The website further reflects 2,912 various license types issued and active in for fiscal year 19/20.

Finally, for the second comment, the standards for notification (mail or email) was not noticed as part of this rulemaking. The standards of this section, providing that hardcopy mail is the default notice standard unless the applicant, licensee, or designated agent requested email to be the default notice standard is pre-existing. The only noticed amendment to this section was to add holders of a work permit to ensure that it covered equally all types of persons who may receive notice from the Commission. Therefore, there was never a requirement, as part of this rulemaking record, that the Commission consider providing a third default notice standard.

C. AMEND SECTION 12112. INITIAL LICENSE APPLICATIONS; REQUIRED FORMS.

This section provides a single consistent application process for initial licenses.

1. Subsection (b), paragraph (2) [pg. 22, line 1 and pg. 215] provides the supplemental application Individual Owner/Principal: Supplemental Information, CGCC-CH2-07.
 - a. **Alan Titus, representing Artichoke Joe’s**: Mr. Titus expressed a concern that the modifications incorrectly referenced Penal Code section 1203.4a as 1203.4A and suggested that the letter “a” should be lowercase, not uppercase.

Recommended Response: This comment was considered but was not incorporated. The commenter is correct that the reference is Penal Code section 1203.4a, with a lowercase “a.” However, that is what has been provided on the form. The form uses a format function where even lowercase numbers are displayed as a smaller uppercase letter; this is the same format that has been used on many Commission forms in the past. More plainly stated, lowercase is displayed as 1203.4A while uppercase would be 1203.4A; this font is clear and consistently applied in the font throughout the document.

- b. **David Fried, representing Oaks Card Club and California Grand Casino**: Mr. Fried repeated his 45-day comment, found in I.L.5.a, which suggested that the request for contracts should not include contracts for personal or household use or should include a minimum threshold. Mr. Fried additionally provided new comments related to the rulemaking process where he suggests that the Commission did not adequately consider the lesser standard.

Recommended Response: This comment is not germane to the modified text of the proposed action. This portion of the form was not altered in the modified text as noticed on September 11, 2020. The response to the original comment can be found in response to comment I.L.5.a.

2. Subsection (b), paragraph (3) [pg. 22, line 2 and pg. 231] provides the form Key Employee or TPPPS Supervisor: Supplemental Information, CGCC-CH2-08.

- a. **Alan Titus, representing Artichoke Joe's**: Mr. Titus repeated his comment provided in III.C.1.a regarding the disposition of the "a" in Penal Code Section 1203.4a.

Recommended Response: Please see the response to comment III.C.1.a.

- b. **David Fried, representing Oaks Card Club and California Grand Casino**: Mr. Fried repeated his comment provided in III.C.1.b regarding his suggestion that agreements and contracts be limited by specified conditions such as topic or dollar amount.

Recommended Response: Please see the response to comment III.C.1.b.

3. Subsection (b), paragraph (4) [pg. 22, line 3 and pg. 243] provided the form Trust: Supplemental Information, CGCC-CH2-09.

- a. **Alan Titus, representing Artichoke Joe's**: Mr. Titus objected to the criteria provided in the regulations. Mr. Titus stated that the requirements disregard the intent of the Gambling Control Act, which focuses on persons having "significant involvement" or "significant power to influence" being licensed. Mr. Titus stated that requiring children of cardroom owners, who are 21, to be licensed is inconsistent as it ignores whether the beneficiary has any real access to the money, and it ignores that the distributions may just be by an S corporation to cover taxes passed through onto the beneficiary's tax return. Finally, Mr. Titus commented that 21-year olds are often still maturing and it is premature to judge whether a beneficiary qualifies for a license.

Additionally, Mr. Titus repeated his concern provided in comment I.L.7.a that by including requirements on this form that are not otherwise provided in a regulatory section constitutes an underground regulation. Specifically, Mr. Titus noted that this form contains substantive rules on who must be licensed and for the first time,

requires that all current trust beneficiaries be licensed. Finally, Mr. Titus expressed a new concern that the original adoption of this requirement into the form Trust Supplemental Background Investigation, BGC-APP-143, did not follow proper rulemaking procedures and so was itself an underground regulation.

Recommended Response: These comments are not germane to the modified text of the proposed action. For the response to the repeated concern, see the response to comment I.L.7.a.

- b. **Alan Titus, representing Artichoke Joe's**: Mr. Titus expressed a concern that the requirement for licensure of "percentage share of revenue" is unclear. Mr. Titus noted that the original form provided the phrase "percentage share of revenue *from gambling activities*." Mr. Titus inquired if the missing "from gambling activities" is still implicitly included in the requirement or if it is an intended change?

Recommended Response: This comment was considered but was not incorporated. The language as modified provides the same requirement as currently required despite the phrase "from gambling activities" not being included. The instructions on the form immediately following the language includes reference to the statutory requirement provided in Business and Professions Code section 19824, subdivision (h), which requires licensure of "each person who receives, or is to receive any percentage share of the revenue earned by the owner from gambling activities." Additionally, the provided example also specifically references net gaming revenue.

4. Subsection (b), paragraph (5) [pg. 22, line 4 and pg. 253] provides the Commission Work Permit or TPPPS Worker: Supplemental Information, CGCC-CH2-10.

- a. **Alan Titus, representing Artichoke Joe's**: Mr. Titus repeated his comment provided in III.C.1.a regarding the disposition of the "a" in Penal Code Section 1203.4a.

Recommended Response: Please see the response to comment III.C.1.a.