

CALIFORNIA GAMBLING CONTROL COMMISSION  
**INITIAL STATEMENT OF REASONS**  
CGCC-GCA-2018-04-R

**HEARING DATE:**                      **None Scheduled**

**SUBJECT MATTER OF PROPOSED REGULATIONS:**      Updates and Amendments to Application Withdrawals and Abandonments, and Hearing Procedures

**SECTIONS AFFECTED:**                      California Code of Regulations, Title 4, Division 18: Sections 12006, 12012, 12014, 12015, 12017, 12035, 12050, 12052, 12054, 12056, 12057, 12058, 12060, 12062, 12064, 12066, and 12068

**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 or GCA).<sup>1</sup> Under the Act, the Commission is required to approve, condition, or deny an application for license or other approval at a meeting [evidentiary hearing] where certain provisions must be provided. The Commission previously adopted regulations under California Code of Regulations, Title 4, Division 18, sections 12006 to 12068 concerning the procedures for evidentiary hearings in 2014. Modifications are proposed to address discrepancies and ambiguities, and provide additional clarity on certain topics. These modifications include, for instance, guidance on hearing notices, interim renewal licenses, notice of defense forms, default decisions, reconsideration requests, and divestiture provisions.

**PROBLEM ADDRESSED:**

Currently, the Commission’s regulations provide comprehensive procedures for evidentiary hearings and related topics. However, after several years of experience, we find the current regulations at times provide incomplete and unclear guidance on certain topics to all concerned. These modifications provide additional necessary procedures and guidance to applicants, the Bureau, and the Commission.

**PURPOSE:**

This proposed action has been prepared to modify the implementation of Business and Professions Code sections 19869, 19870, 19871, and 19872 by providing needed edits to the procedures to be followed from the conclusion of the Bureau’s investigation period until any

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<sup>1</sup> Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

action by the Commission is final. The proposed action will provide additional transparency by filling gaps in procedure and eliminating ambiguity in the Commission's current practices for the consideration of applications through the evidentiary hearing process.

**ANTICIPATED BENEFITS OF PROPOSED REGULATION:**

This proposed action will have the benefit of providing additional clarity on the hearing process by more fully identifying the steps and requirements, correcting ambiguities and filling gaps, and providing clear guidance to the Commission, the Bureau, and the applicant, while protecting the applicant's due process and procedural rights. This proposed action will further provide the Commission and Bureau with a more complete process to follow when processing and reviewing applications that allows each organization to understand their various roles. The applicant will benefit by better understanding the process under which his, her, or its application will be considered, including how failure to participate in the process can affect his, her, or its application and other possible actions that can be taken by the Commission.

**PROPOSED ACTION:**

This proposed action makes the following specific changes within Chapter 1, Division 18, Title 4 of the California Code of Regulations:

A general change has been made in the proposal to replace the word "shall" with other words less subject to interpretation. Shall is a potentially ambiguous word. In most connotations it is used to convey an obligation. However, the word has been used in a variety of contexts to convey a range of ideas including "may," defining a term, meaning "should," compelling as "must," etc. In an effort to foreclose any such ambiguity, shall is replaced throughout the text with other words subject to less interpretation. These are non-substantive, clarifying changes to syntax within the meaning of Section 100(a)(4), Title 1 of California Code of Regulation (CCR).

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES

**Amend Section 12002. Definitions.**

1. Subsection (h) would add and clarify to the definition "Chief" as provided in Business and Profession Code section 19805, subdivision (d). This definition adds to the term "Chief of the Bureau." This works in conjunction with the definition of Bureau in subsection (e) by clarifying that the Bureau is the entity within the Department that is responsible for fulfilling the obligations imposed upon the department by the Act. Additionally, this definition clarifies that the Chief may designate an individual to act on his behalf to perform the duties of the department as required by the Act and must not himself or herself be responsible to conduct every responsibility, duty, or requirement.
2. The current subsections (h) through and including (aa) will be renumbered as (i) through and including (ab), accordingly.

### **Amend Section 12006. Service of Notices, Orders and Communications**

This section describes how the Commission will communicate with applicants and is the default manner for all notices.

1. Subsection (a) is modified to allow for notices to be provided by first class mail and registered mail in addition to certified mail. As previously written this provision required all notices be sent via certified mail which in practice ended up being both costly and unnecessary for many circumstances. With the addition of first class mail and registered mail, the Commission will still be able to provide notice to applicant's based upon the particular circumstances of a matter.
2. Subsection (b) is replaced with a new provision added to provide flexibility when providing notice for applications, licensees, and designated agents who request in writing to receive notices via email in lieu of other forms. This added flexibility will provide additional efficiency and clarity due to inadvertent delays in the delivery of US Mail which vary in delivery times across the state. Additionally, this method has the benefit of being faster than any of the mail options available in subsection (a).
3. Subsection (c) is added to hold the contents of former subsection (b) and modified to allow notices to be effective upon "transmission" in light of email notices in subsection (b).

### **Amend Section 12012. Ex Parte Communication**

This section addresses and defines *ex parte* communications. The Act<sup>2</sup> imposes prohibitions on communication between "Members of the Commission" and an applicant or an agent of an applicant under certain conditions, however these prohibitions are ambiguous. Section 12012 adds clarity and guidance regarding prohibited communications to members of the Commission, employees of the Commission, Bureau staff, the applicant, and interested parties. The word "issued" is replaced in subsections (b) & (c) with "submitted" as parties submit documents to the Commission who in turn issues licenses, approvals, or notices of hearing. Also "and" is added to subparagraph (d)(7)(B) to clarify the intent of the section as being a list of required elements. This is also consistent with other changes throughout the regulations. These are non-substantive changes.

1. Subsection (d)(3) is modified to make clear that information or documents provided by an applicant's designated agent are included with those from an applicant when determining if the exclusion from the *ex parte* definition applies. This is necessary to clarify that a representative of an applicant must follow the same rules as an applicant and cannot be used to circumvent *ex parte* restrictions.
2. Subsection (d)(6) is added to make clear that communications between an advisor and a member of the Commission, by themselves, are not *ex parte* communications. This clarification is necessary to make clear that the Commission as an entity functions with the assistance of staff who must communicate with Commissioners on a routine basis.

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<sup>2</sup> Specifically, section 19872

**Amend Section 12014. Subpoenas**

The Act requires evidentiary hearings where the Commission may take testimony from witnesses under oath. This section provides the guidance and authority for how witnesses may be compelled to testify at evidentiary hearings. The only change in this section is the usage of the word “shall” which is replaced with more appropriate words. As explained above, these are non-substantive changes.

**Amend Section 12015. Withdrawal of Applications**

The Act’s application process can be lengthy, especially for those applying to be owners of a cardroom, and requires a significant investment in time and funds for the applicant, the Bureau, and the Commission. If at any point in the process, the applicant no longer wishes to proceed with the application, it is beneficial to all parties to have a procedure by which the application process may be ended. The Act, in section 19869, provides for a request to withdraw an application and differentiates between a withdrawal granted “with prejudice” and one granted “without prejudice.”

1. Subsection (a) is modified to make clear that a designated agent may make a request on behalf of an applicant to withdraw an application. This provides applicants with the benefit of individuals who are otherwise authorized to aid applicants in the application process. In addition, the word “issued” is replaced with “submitted” to be more consistent with other changes throughout the regulations. These are non-substantive changes.
2. Subsection (f) is modified to restructure the section to make clear that an applicant does not withdraw an application, but rather the Commission approves a withdrawal request. The applicant will benefit by better understanding the processes. This is a non-substantive change to syntax.

**Amend Section 12017. Abandonment of Applications**

This section provides for the abandonment of applications under limited specified circumstances. The word “issued” is replaced with “submitted” to be more consistent with other changes through the regulations as the Bureau submits reports to the Commission, who in turn issues licenses, approvals, or notices of hearing. These are non-substantive changes.

1. Section (a)(1)(B) is modified to allow designated agents to provide information to the Bureau on the applicant’s behalf. This is a non-substantive change to syntax meant to clarify roles consistent with other changes throughout the regulations regarding designated agents.
2. Section (b)(1) is modified to clarify that the Bureau makes the recommendation for approval or makes no recommendation. As currently worded, this could imply the provision is triggered by a Commission recommendation. This edit removes that ambiguity.
3. Section (c) is modified in two ways. First, the sentence is restructured to be more consistent in syntax to (b)(1). This is a non-substantive change. Second, the last clause of the section is stricken as unnecessary. As written, this provision indicates the Commission will consider

the same criteria as the Executive Director under subsection (b)(1). Ultimately, the criteria that the Commission may consider when deeming an application abandoned are discretionary. Eliminating this provision clarifies that discretion and removes any unintended limitations.

4. Section (d) is modified to replace “unexpended” with “unused.” This is a non-substantive changes to syntax meant to provide clarity and consistency across subsections. Additionally, the qualification “if possible” is repealed. There is no reason that the Bureau should be unable to return any unused portion of a background investigation deposit as Business and Professions Code section 19867, subdivision (c) provides that any money in excess of costs and charges incurred in the investigation or processing of the application must be refunded.
5. Section (e) is modified to replace “their” with “his, her, or its” application to be consistent with the same language as used elsewhere in Section 12017. This is a non-substantive change. Additionally, this section is modified to make clear that the Commission deems an application abandoned, rather than an applicant abandons an application. As written, this could lead to unintended confusion. This is a not substantive change to syntax.

#### **Amend Section 12035. Issuance of Interim Renewal License**

This section provides for the issuance of interim renewal licenses. Interim renewal licenses effectively extend a current approval to allow for an evidentiary hearing to occur without an applicant losing that approval prior to Commission action. By holding this interim renewal license, an applicant is responsible for any existing conditions and for those fees, costs, and procedures normally required of a similarly situated applicant/licensee.

1. Subsection (a) is modified to make it clear that the Commission will also issue an interim renewal license for work permits, and other approvals involving a finding of suitability. The applicant’s previously issued license, work permit, or other approval will, at some point, expire, leaving him or her without a valid approval and legally unable to continue in the approved activity. The interim renewal license is issued to address this gap while the evidentiary hearing is pending. This addition makes clear the current practice of preserving the status quo for all applicants that are up for renewal pending an evidentiary hearing.
2. Current subsection (b) is moved to a new subsection (c). The last sentence of former subsection (b)(2) is moved to a new subsection (b) and expanded upon. This new subsection (b) more clearly explains the process for how interim renewal license holders will be able to obtain new interim renewal licenses in the event the evidentiary hearing process will not be concluded within two years which will reduce uncertainty and confusion in the process. The issuance of a new interim renewal license is provided as a requirement as this represents a ministerial action. Should the Commission decide that they wish to act upon the license in a more definitive manner, other processes are more appropriate.
  - Subdivision (1) explains that applicants must submit a new application for the new interim renewal license through a process similar to the one for the application pending considering at the evidentiary hearing including the same forms, fees, costs, and related

requirements. This is necessary to ensure that applicants continue to maintain the same status and obligations as other Commission approved persons.

- Subdivision (2) is added to require applicants for a new interim renewal license to provide an update to the Commission on why the hearing process has not concluded in the previous two-year period. It also requires them to work with the Complainant if possible. In the event that they do not provide a reasonable justification, the Commission may set the hearing at the earliest possible opportunity including retracting any application referred to an APA hearing. The requirement for the interim renewal license holder to update the Commission on the status of the evidentiary hearing is necessary to provide the Commission sufficient oversight of the process and to ensure the parties are not being dilatory in proceeding to an evidentiary hearing. The requirement for an update no later than ten days in advance of Commission consideration is to be consistent with the Commission's obligations for noticed public meetings pursuant to the Bagley-Keene Open Meeting Act and provides the Commission with sufficient time to review the provided documentation.
3. Subsection (c) is language moved from the former subsection (b).
    - Subsection (c)(2), renumbered from (b)(2), is modified to clarify a work permit or other approval involving a finding of suitability, as well as an interim renewal license may serve as the starting point for the term of an interim renewal license. The addition of work permits, other approvals, and an interim renewal license is a continuation of changes made in subsection (a) meant to protect an applicant's request for an evidentiary hearing.
  4. Subsection (b)(4) is re-lettered (d). This is a non-substantive change. In addition, the section is modified to clarify that the issue date will also apply to any issued work permit or other approval. This is a continuing change from other sections meant to provide a consistent practice across all approvals sent to an evidentiary hearing.
  5. The current paragraphs (4) and (5) will be renumbered as subsections (d) and (e), accordingly. This is a non-substantive change.

## ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS

### **Amend Section 12050. Bureau Recommendation and Information**

The Act, in subdivision (a) of section 19826, allows the Bureau to recommend the denial or limitation, conditioning, or restriction of any license, permit, or approval, after the completion of a background investigation. This section details the manner in which any recommendation is provided to the applicant and how the information may be considered by the Commission. The word "issued" is replaced with "submitted" to be more consistent with other changes throughout the regulations. The Bureau submits reports to the Commission who in turn issues licenses, approvals, or notices of hearing. These are non-substantive changes.

1. Paragraph (a)(2) is modified to reference paragraph (7) of subsection (d) of Section 12012. This is necessary to maintain the reference due to changes in Section 12012.
2. Section (b) is modified to shorten the subsection into one sentence and eliminate redundancy and ambiguity. This is a non-substantive modification to syntax.

**Amend Section 12052. Commission Meetings; General Procedures; Scope; Rescheduling of Meeting**

This section provides general procedures regarding the hearing process. The title is modified to add a reference to the notice process which is provided under subsections (c)(1) and (c)(2).

1. Subsection (c)(1) is modified to add a reference to section 12054 to make clear the specific type of meeting being referenced in the notice. This provides additional clarity and transparency.
2. Subsection (c)(1)(A)(2) is modified to require that the documents must be received by the Commission and Bureau with sufficient time for consideration. This modification is necessary to clarify that the ability to consider a document is dependent upon the receipt of a document. Additionally, clarification is provided that less than 72 hours before the noticed meeting's start time is insufficient. While some documents may be simple, small, and straightforward, many are voluminous and complex and a minimum amount of time is required for all parties to receive and review the documents. 72 hours ensures proper time for documents to be internally distributed, received, and reviewed.

Finally, the provision is modified to add "consideration of the" before application. This is a non-substantive edit to syntax meant to clarify that the consideration is being continued as opposed to an application which could imply Commission action on an application which is not occurring.

3. Subsection (c)(2)(E) is modified to include a new version of the Notice of Defense Form (CGCC-ND-002)(Rev. 12/18). This updated form is provided to the applicant to complete and return. Once returned to the Bureau and Commission, provides important guidance to the Commission concerning the evidentiary hearing process. The applicant may accept any proposed conditions, waive their participation in the evidentiary hearing, or may indicate their interest in continuing and participating in an evidentiary hearing. Should the applicant waive participation in their evidentiary hearing, the subsection references new section 12057 which discusses how the Commission may choose to consider the application. The modified form further clarifies whether the applicant understands English and the form or if they need to have an interpreter read and explain the form or if they need an interpreter at the hearing.

Should the applicant indicate a desire to participate in the hearing, a space is provided where an attorney's information can be provided to the Commission and Bureau. This changes the term "counsel" to "attorney" to better reflect the role of the applicant's legal representative at the hearing and distinguishes it from a lay representative. It also provides the attorney the option of receiving further Commission notices related to the hearing via email.

The form is additionally modified to provide for similar information from the applicant so that the Commission and Bureau can have the most up-to-date contact information for the applicant. The same option to receive notices via email is given to the applicant. An applicant may also confirm to the Commission that they will have the assistance of a lay representative at the hearing which is important for the Commission and Complainant in preparing for any prehearing conference and hearing.

4. Subsection (c)(F) is modified to shorten the section and make a reference to the new section 12057. The contents of clauses 1 and 2 are moved and expanded upon in the new section to better provide clarity to the applicant, Complainant, and public regarding the process.
5. Subsection (d) is modified to change the wording to be consistent with other edits in the regulation package. These edits are non-substantive changes.

**Amend Section 12054. Consideration at Regular (Bagley-Keene) Commission Meetings**

This section provides procedural guidance by laying out some of the various decisions the Commission may make at a regular non-evidentiary meeting regarding an application.

1. Subsection (a)(2) is modified to strike “when” which is merely a modification to syntax without substantive effect. This section also adds “or retract” to clarify that the Commission may retract the referral of an application to an evidentiary hearing. Though already included in the Commission’s authority, the inclusion of this reference here provides clarity to applicants and complainants.
2. Subsection (a)(3) is modified to clarify that the Commission is acting on applications for renewals. This is a non-substantive edit to syntax meant to clarify Commission action.
3. Subsection (a)(7) is modified to replace “accusatory pleading” with the word “accusation.” This is a non-substantive edit to syntax.
4. A new subsection (a)(8) is added to make clear that the Commission can issue a default decision pursuant to new section 12057 at regular Commission meetings. The Commission already issues default decisions pursuant to its authority under section 12056 where a regular non-evidentiary hearing meeting is combined with an evidentiary hearing without applicant participation. The specific reference to default decisions will make this authority and outcome explicit and transparent.
5. A new subsection (a)(9) is added to make clear that the Commission may consider reconsideration requests pursuant to section 12064 at a regular Commission meeting. This merely confirms the current practice where reconsideration requests are taken up in the normal course of business.
6. Subsection (b) is modified to restructure the section to make clear that the Commission’s denial of a request to withdraw an application, as well as a finding of abandonment, does not

afford an applicant an opportunity to have an evidentiary hearing to challenge that determination. This is a non-substantive change, clarifying modification that makes it clear that the lack of a right to an evidentiary hearing is directly tied to the Commission's action on those two issues and not a broader right to a hearing in general.

**Amend Section 12056. Evidentiary Hearing**

This section defines the manner by which the Commission or Executive Director determines between an APA and GCA evidentiary hearing format once the Commission has elected to hold an evidentiary hearing. Additional procedural information is also provided.

1. Subsection (a) is modified to replace “advocates” with “an advocate” to improve the syntax of the sentence. This is a non-substantive edit.
2. A new subsection (d) is added to make clear that the Commission retains authority to control the path an application takes through the evidentiary hearing process. This language is moved from section 12060 with clarifying edits. After the Commission has referred a matter to an evidentiary hearing and made an election to send it to a GCA hearing or an APA hearing, new issues or concerns may arise that could necessitate the matter being sent down a different hearing pathway. The current regulations refer to this possibility under section 12060 and it is also inherent in the Commission's statutory authority under Section 19824, 19825, and 19870. This modification provides clarity to applicants, the Complainant, and the public of the possible procedural direction an evidentiary hearing may take.

**Adopt Section 12057. Default Decisions and Uncontested Applications**

This proposed action adds a new section which expands upon current regulations which provide for default decisions through the application of the Notice of Defense, CGCC-ND-002 (Rev. 12/18) and Section 12052(c)(2)(F). The Commission possesses the authority to issue default decisions at various stages of the application process based upon its statutory authority under sections 19824, 19825, 19870 and regulatory authority under Section 12052. This section expands upon those references and provides clear guidance on the default process making it more explicit and transparent so applicants can be informed of the significance of their actions or lack of action.

1. New subsection (a) makes clear to applicants that when the applicant fails to submit a notice of defense according to the timelines on the form, waives the right to an evidentiary hearing, or fails to attend an evidentiary hearing, the Commission may adjudicate the application by default. This is consistent with the current authorized practice before the Commission and under normal procedures for APA hearings and provides clarity to the applicant, the Bureau, and the Commission as to what may be expected.
2. New Subsection (b) provides the possible outcomes to an applicant when the Commission adjudicates an application by default. These outcomes can include 1) the Commission issuing a default decision based upon the Bureau report and any other documents or testimony the Commission has been or will be provided prior to the decision being issued, or without applicant participation, 2) the Commission continuing forward with an evidentiary

hearing without the applicant to gather evidence before issuing a decision. This is consistent with current practice and provides clarity to the applicant, the Bureau, and the Commission as to what may be expected.

3. New Subsection (c) provides that the Commission may reschedule a GCA hearing when an applicant fails to attend in addition to the options provided in subsection (b). This provides an important clarification of Commission authority as well as providing transparency to the applicant and Bureau and ensures all parties are alerted to the potential outcomes when an applicant does not attend.
4. New subsection (d) alters the time frames required under Section 12060, subsections (a) & (b), for notices of evidentiary hearings when the Commission is considering a default decision or scheduling a hearing without applicant participation. The current notice requirements were created to provide the applicant and the Complainant time to prepare for the evidentiary hearing. This preparation can often require gathering evidence, interviewing witnesses, and general preparation for a hearing. Where the applicant waives the right to a hearing or fails to submit a notice of defense, or who fails to attend the hearing, these time periods are not required or appropriate.
5. New subsection (e) follows up on the modification made to section 12054 that the Commission may consider default decisions at regular non-evidentiary hearing meetings. Presently, default decisions are considered at an evidentiary hearing which is run simultaneously with a non-evidentiary meeting. This edit allows the Commission to consider the default decision without the possible need for additional procedures required for full evidentiary hearings. This section also preserves the option that default decisions may be considered at full evidentiary hearings which preserves Commission discretion to act on applications in a manner it deems appropriate. This is necessary to provide the Commission the flexibility to hold its meetings in the most efficient manner while maintaining all proper notice requirements.
6. New subsection (f) makes it clear that when the Commission issues a default decision on an application, that applicant may follow the same procedures for requesting reconsideration as are available to normal evidentiary hearings and decisions. Making this pathway expressly available is important as applicants may wish to set aside a default decision for reasons they would need to explain in the reconsideration request, including explaining why they failed to complete a notice of defense.

#### **Amend Section 12058. APA Hearings**

This section provides procedural guidance for when the Commission or Executive Director elects to hold the evidentiary hearing through the APA. Subsection (e) is modified to make clear that the APA hearing will proceed through the normal process unless and until the Executive Director or the Commission approves retracting the referral. This edit replaces the language of cancellation or a continuance as was previously included which unintendedly implied the Commission had control over the APA process beyond a referral and retraction. This provision removes that ambiguity and makes the extent of the Commission's authority clear.

**Amend Section 12060. GCA Hearings**

This section implements the evidentiary hearing process pursuant to sections 19870 and 19871. This process provides a clear method for the applicant to show the Commission that he, she, or it meets the requirements of the Act and is of good character, honesty and integrity.

1. Subsection (a) is modified to remove the last sentence and move it with clarifying modifications to section 12056(d). Changes are discussed with the new provision.
2. Subsection (c) is modified in two ways. First, support staff is added to those that are precluded from communicating upon the merits of an application. The Presiding Officer may at times need to communicate with support staff in regards to an application and support staff serving as a liaison may have contact with the applicant or Complainant. Both the Presiding Officer and her or his support staff are segregated pre-hearing from the rest of the Commission in communicating upon the merits of an application. This will further clarify the process to the applicant, Complainant, and preserve the appearance of impartiality of the Commission.

Second, this section is modified to remove the reference to “information or documents” which could be interpreted as precluding procedural communications and the provision of jurisdictional documents in advance of a hearing. During the normal course of a hearing process, both the Presiding Officer and support staff may need to communicate with other parts of the Commission on procedural or technical issues for conducting the hearing, such as room availability, the Commissioner’s availability, information technology support, etc. The ostensible reason for including information and documents was precluding the communication upon the merits of an application including how those documents or information relate to the merits of an application. These types of communication are still prohibited after this edit.

3. Subsection (e) is modified to add a reference to section 12056(b) which reiterates the Bureau’s and Commission’s responsibility to protect certain confidential information from disclosure. This provides clarity and guidance to the parties as to what should be expected in disclosures.
4. Subsection (f)(1)(D) is modified to expressly provide for stipulations on evidence and not merely facts in the Bureau Report. As written, this provision might be interpreted as precluding the admission of documents via stipulation without also admitting all the facts contained in those documents. This modification is necessary to clarify that the documents themselves may be admitted without admitting the truth of the matters identified in them.
5. Subdivision (f)(1)(E) is relettered to subdivision (F) and a new subdivision (E) is created which expressly allows the pre-hearing conference to address offsite livestreaming appearances of parties and witnesses. This provision is implied under the current subdivision (E) but clearly delineating it as an option will further aid the applicant and Complainant in preparing for a hearing. It is necessary to require the prior approval of offsite livestreaming

because livestreaming involves two elements; (1) the actual technological process of parties being able to appear via a tele-conference in a manner suitable to Commissioner preference; and, (2) the individual nature of any particular witness or applicant. By requiring the Executive Director to make a determination about the technological process, it ensures that the appropriate capability is in place and ready to meet the Commission and party's needs. By requiring the Presiding officer review each individual request, it ensures the process is suitable for the given testimony at not being abused.

6. Subsection (i) is modified to reword the burden of proof requirement. This is a non-substantive edit to syntax.
7. Subsection (j) is modified to add a provision providing that lay representatives may assist an applicant in a hearing, but are not authorized to serve as the applicant's attorney. Lay representatives are currently allowed at Commission hearings under Section 12060(j). However, the Commission has no authority to allow a lay representative to act as an attorney and this level of authority should not be expected by either the applicant or the lay representative. Rather a lay representative, as authorized by these regulations and as is consistent with the practices of other agencies, may merely assist an applicant during the evidentiary hearing.
8. Subsection (k) is modified by eliminating the word "own." This is a non-substantive edit to syntax.
9. Subsection (l) is modified by the elimination of a comma. This is a non-substantive edit to syntax.

**Amend Section 12062. Issuance of GCA Hearing Decisions**

This section describes the procedural method and requirements by which the Commission prepares and issues its decision following a GCA evidentiary hearing.

1. Subsection (a) is modified and combined with subsection (b) to join the previously identified 30 and 45 day periods. The current language envisions a separation of 30 days for legal staff to prepare a decision and 45 days for the Commissioners to consider that draft decision. This section is unnecessarily restrictive of the internal drafting processes which can entail more extensive debate and edits. Additionally, this section as currently worded could imply that a proposed decision would be made available to the applicant or Complainant as is the case for an administrative law judge as part of the APA. This is not the intent of the section and the edit removes that ambiguity. Lastly, by keeping the overarching 75 days as the absolute maximum, both the applicant and Complainant will receive a decision in the same period of time as is currently required.
2. Subsection (c) and (d) are relettered to subsection (b) and (c) respectively.

### **Amend Section 12064. Requests for Reconsideration**

This section defines the procedure by which an applicant can request reconsideration from the Commission after an evidentiary hearing but before any decision becomes final.

1. Subsection (a) is modified to move the provision requiring a request for reconsideration be made within 30 calendar days to a new paragraph (2) of subsection (a). This change is non-substantive and any changes to the moved text are discussed in paragraph (2) of subsection (a).
  - A new paragraph (1) would move a requirement that the request for reconsideration be made to the Commission and copied to the Bureau. This is a non-substantive change as this requirement currently exists in subsection (b). This current requirement is modified to provide the Bureau a 10-day time limit to provide a response to the request for reconsideration. While the existing provision did not preclude the Bureau from providing a response and in fact the requirement to provide a copy to the Bureau would infer otherwise, one could surmise that the applicant was the only one able to provide input on the request. It was not the intent of the original language to preclude input by the Bureau and so this edit clarifies that both parties may provide input.
  - A new paragraph (2) would move the requirement that a request for reconsideration be made within 30 calendar days from subsection (a). This provision is clarified to mean that a request for reconsideration must be received within 30 days. Currently the provision requires that the request be made within 30 days, but this requirement is ambiguous as it does not specify when a request is considered made. The current requirement could mean upon mailing or upon receipt by the Commission. Depending on which interpretation of making the request is used, a widely different timeframe is possible. This change clarifies that making a request for reconsideration requires the Commission and Bureau to receive the request. As the decision makers (Commission) and the enforcers of the decision (Bureau), it is critical that notification actually be made before the requirement is considered fulfilled. Without this requirement, the applicant would be able to assert that the requirement has been met without the Commission or Bureau actually having received the request and therefore without any way to confirm timely compliance.

Additionally the moved provision is modified to replace the word “later” with “earlier.” This section as it is currently written would allow reconsideration of a decision after the decision is ostensibly already effective. This section was meant to preserve jurisdiction via regulation after a decision’s effective date. This provision however created confusion amongst parties as to when and how reconsideration could be requested. As a result, this section is modified to be consistent with the similar time frames for requesting reconsideration in the APA which allows for reconsideration upon the earlier of the effective date of the decision or the passage of 30 days. As modified, if the Commission made a decision effective immediately, the applicant would not have a reconsideration option. This is consistent with the APA

- reconsideration process. This modification is necessary to eliminate ambiguity, conflicts on the effective date of decisions, as well as concerns about losing jurisdiction on a decision. As to losing jurisdiction, while the previous language implicitly preserved jurisdiction for 30 days regardless of an effective date, parties affected by a decision did not understand the reservation and acted accordingly. This edit removes that issue.
2. Subsection (b) is modified to swap the term “reasons” with the term “good cause” which establishes a basis upon which the request must be made. Though implied by the current wording, this edit makes clear that all requests for reconsideration must have good cause. In addition, the provision requiring that the request be copied to the Bureau is moved to new paragraph (1) of subsection (a). This change is non-substantive and any changes to the moved text are discussed in paragraph (1) of subsection (a).
  3. Option 1 – Executive Director Determination  
Option 1 would provide that the Executive Director will determine whether a request for reconsideration states good cause and should be placed on the Commission’s agenda for consideration. To provide for this determination, the text is revised as follows:
    - (A) Paragraph (2) of subsection (b) is revised to change the term “good cause” to “reasons.” This change is a non-substantive change to syntax consistent with other edits in proceeding and subsequent sections. Specifically, “good cause” includes those items under paragraph (2) as well as the reasons under paragraph (1). In addition, the phrase “the Commission may decide, in its sole discretion” is removed. This is necessary to be consistent with other changes in this option. Specifically, this option now requires the Executive Director to make a determination related to good cause and not only the Commission.
    - (B) Subsection (c) is revised to require the Executive Director to determine whether a request for reconsideration states “good cause.” It is the Executive Director’s role to be the gatekeeper to improper requests for reconsideration. Requiring good cause in the request and allowing the Executive Director to review that request will provide applicants the ability to request reconsideration without turning requesting reconsideration into essentially an automatic stay of the Commission’s decision. In addition, this provision is revised to include the Complainant in the notice requirement. This is necessary to meet Ex Parte requirements.
    - (C) Subsection (d) is revised to make clear that the decision is stayed from the time of the request to either the point the Executive Director determines the request does not may a preliminary showing of good cause, or if it does may a preliminary showing of good cause, when the Commission grants or denies the request for reconsideration. This is necessary to be consistent with the new requirement that the Executive Director make a determination on if the request states “good cause.”
  4. Option 2 – Commission Determination  
Option 2 would remove the Executive Director from determining whether a request for reconsideration is valid and instead places all requests for reconsideration before the Commission. This option preserves the Commission’s discretion on its decisions and allows

the Commission to be more directly involved in the reconsideration process. To provide for this determination, the text is revised as follows:

- (A) Paragraph (2) of subsection (b) is revised to change the term “good cause” to “reasons.” This change is a non-substantive change to syntax consistent with other edits in proceeding and subsequent sections. Specifically, “good cause” includes those items under paragraph (2) as well as the reasons under paragraph (1).
  - (B) Subsection (c) is revised to remove the Executive Director from the reconsideration process. This is necessary to preserve the Commission’s discretion on its own decisions. In addition, this provision is revised to include the Complainant in the notice requirement. This is necessary to meet Ex Parte requirements.
  - (C) Subsection (d) is not revised.
5. New subsection (f) is added to specify that when the Commission grants reconsideration, the underlying decision is stayed and the Commission may take additional action on the application including affirming the decision, issuing a reconsidered decision, vacating the initial decision, or other action as the Commission deems appropriate. This provision is necessary to make it clear that while reconsideration is pending there is no underlying decision including delineated effective dates or applicable conditions. This clarifies the expectations of applicants, Complainants, and the public for the hearing process.
6. New subsection (g) is added to provide an additional option for the Commission to stay the effective date of a decision following the denial of a request for reconsideration. This is necessary to preserve the Commission’s flexibility in acting on decisions which an applicant may disagree with. At times the Commission may not believe that a reconsideration request should be approved, but may understand that a stay is warranted for a set period, such as to divest, end employment, sell an interest, seek judicial review, or other reasons that don’t warrant altering the decision itself.

**Amend Section 12066. Final Decisions; Judicial Review**

This section provides procedural guidance to applicants related to when a decision of the Commission becomes final and what judicial remedy may be available.

1. Subsection (b)(2) is modified to make clear that a reconsidered decision is effective when specified in the decision as opposed to immediately when the reconsidered decision is issued. This is necessary to preserve the Commission’s authority to specify when a decision is effective and, where appropriate, provide a date farther in the future than immediately upon issuance. There are a variety of reasons why a decision may need to be made effective upon a delay and this protects the Commission’s flexibility to cover those eventualities.
2. New subsection (b)(3) provides that if a request for reconsideration is denied, the Commission decision is final either: (A) upon the denial of the request; or, (B) upon the expiration of any stay that may have been granted pursuant to subsection (g) of Section 12064. This provision is necessary to provide the appropriate timelines associated with the stays provided in subsections (d) and (g) of Section 12066.

**Amend Section 12068. Decisions Requiring Resignation or Divestiture**

This section provides guidance to applicants and business entities in regards to resignation and divestment of ownership interests where an application has been denied.

1. A new subsection (b)(4) is added which makes clear the requirements found under (a)(4) and (c)(2) also apply to limited liability companies. This is necessary to make practices consistent across the three different ownership entities and conform to the requirements of Business and Professions Code section 19892.
2. A new subsection (e) is added to provide a default date upon which a specified person must be removed after the effective date of the Commission's decision. This section is necessary because it is possible a Commission decision may omit an otherwise controlling time period for removal which could create uncertainty upon stakeholders for compliance with the act and Commission Decisions. This section requires the specified person to be removed no later than 60 days after effective date of the decision. This period provides ample time for removing a person from the specified entities.

**REQUIRED DETERMINATIONS:**

**LOCAL MANDATE:**

A mandate is not imposed on local agencies or school districts.

**UNDERLYING DATA:**

Technical, theoretical, or empirical studies or reports relied upon: None.

**BUSINESS IMPACT:**

The Commission has made a determination that the proposed regulatory action 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 determination is based on the following facts or evidence/documents/testimony:

This proposed action imposes no mandatory requirement on businesses. The regulation simply provides a clear process to follow should a party's application be sent to an evidentiary hearing for consideration before the Commission. Any costs associated with pursuing a license would be voluntarily assumed upon the filing of an application. The proposed process provides for numerous opportunities for an applicant to request to end the process and therefore avoid further costs.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

The proposed action does 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 a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the consolidated small business definition provided in Government Code section 11346.3, subdivision (b), paragraph (4) was utilized.

The basis for this determination is that this proposed action imposes no mandatory requirement on businesses or individuals and does not significantly change the Commission's current practices and procedures. The proposed action simply provides a clear process to follow once a party has decided to submit an application for Commission consideration.

**HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:**

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by aiding and preserving the integrity of controlled gambling.

**WORKER SAFETY:**

It has been determined that the proposed action will not affect worker safety because it has nothing to do with working conditions or worker safety issues.

**STATE'S ENVIRONMENT:**

It has been determined that the proposed action will not affect the State's environment because it has nothing to do with environmental issues.

**BENEFITS OF PROPOSED REGULATION:**

This proposed action will have the benefit of providing helpful and clarifying modifications to the Commission's evidentiary hearing procedures. These modifications expand upon an evidentiary hearing process which helps provide applicants with a clear understanding of the process their application will follow, from review by the Bureau through consideration by the Commission at a non-evidentiary hearing through the evidentiary hearing process. Moreover, these updates 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 and transparency of the decision making process.

**CONSIDERATION OF ALTERNATIVES:**

No reasonable alternative to the regulations would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons 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.