

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

**HEARING DATE:**                    *(None Scheduled or Requested)*

**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

**UPDATED INFORMATION:**

The Initial Statement of Reasons, as published on December 14, 2018 and amended October 28, 2019 are included in the file and are hereby incorporated by reference as if fully set forth herein. The information contained therein is updated as follows:

**PROPOSED ACTION:**

The proposed changes to Chapter 1 are as follows:

**Amend Section 12002. General Definitions**

This section provides general definitions for overall use in this division. As part of this proposal, two new definitions are proposed. The other provisions have been renumbered appropriately.

This section was modified to provide for a second new definition. New subsection (u) provides a definition for interim renewal license. This definition provides that an interim license is issued to an applicant for the renewal of license, work permit, or other approval involving a finding of suitability when their application is pending consideration at an evidentiary hearing or the holder of a current license or work permit has a pending accusation. This definition is necessary to provide clarity for each of these approval types; license, work permit and other approval involving a finding of suitability, gets the same interim renewal license.

**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.

Section (c) was originally proposed to be modified in two ways. First, the sentence is restructured to be more consistent in syntax to (b)(1). This is a non-substantive change. The second, the striking of the last clause, has been reverted to the original text.

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

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.

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 hearing process will not be concluded within two years. This 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. This provision is amended to restructure the sentences into one and specifically identify paragraphs (1) and (2) as being required for submittal. This amendment provides clarity to the application process and is consistent with the change creating paragraph (3).

- Paragraph (1) explains that applicants must submit a new application for the new interim renewal license through the same process similar as 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. This provision is amended to move the clause “the same type as the application pending evidentiary hearing” from subparagraph (A) or paragraph (1). This change provides clarity that all of the application submittal requirements are consistent with the holder’s current license, work permit, or other approval involving a finding of suitability.
- Paragraph (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. 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. This provision is amended to remove the standard of reasonable. This requirement forced the applicant to pre-determine how the Commission would feel about its justification and should the Commission find the justification not reasonable could have resulted in the applicant retroactively out of compliance. By removing the justification requirement the provision provides a linear application process.

Additionally, the last sentence has been removed. The timeline requirement of ten days, while reflecting the Commission's needs to have the timeliest justification, did not necessarily provide the applicant adequate time to prepare the justification. By removing the alternative requirement, the process now provides only a single submittal timeline.

- Paragraph (3) was originally proposed to be part of paragraph (2). It has been amended to be its own paragraph in order to separate it from the requirements to receive an interim renewal license. This provision is added to clarify that if the provided justification for the delay is not supported by good cause, the Commission may set the hearing at the earliest possible opportunity including retracting any application referred to an APA hearing. This is necessary to provide notice to the applicants on how the Commission might consider the justification and what the results of that consideration might be.

#### **Amend Section 12056. Evidentiary Hearings**

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.

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 Business and Professions Code sections 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. This provision is amended to directly reference the Commission's authority under Section 12054(a)(2) and removes the reference to the appropriateness of the situation. By directly linking this provision to the relevant retraction authority this provision better notifies the applicant of the Commission's ability to retract a referral.

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

This proposed action adds a new section to expand 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 Business and Professions Code 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.

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 complainant, and the Commission as to what may be expected. This provision is amended to provide clarification on how the Commission will make its determination. Adding the standards of “interests of justice” and “judicial economy” lets the applicant know how the Commission will make its decision on how to proceed with the application.

The originally proposed subsection (b) is removed. This provision provided the options the Commission would consider when adjudicating an application by default. These options still exist; however, they have been incorporated into subsection (a).

- New paragraph (1) of subsection (a), originally noticed as paragraph (1) of subsection (b), provides that when the Commission adjudicates and application by default, it may issue a default decision. The requirement of basing the decision upon the Bureau report was modified to the requirement that the Commission issue its default decision after the consideration of the Bureau report. This change makes the requirement more consistent with the requirement in Business and Professions Code section 19870, subdivision (a), which requires that “[t]he commission, after considering the recommendation of the chief...” The Commission’s regulations have included the recommendation of the chief in the definition of Bureau report.
- New paragraph (2) of subsection (a), originally noticed as paragraph (2) of subsection (b), was not amended beyond the removal of subsection (b) and the incorporation into subsection (a).
- New paragraph (3) subsection (a), originally noticed as subsection (c), provides that the Commission may reschedule a GCA hearing when an applicant fails to attend. This provides an important clarification of Commission authority as well as providing transparency to the applicant and complainant and ensures all parties are alerted to the potential outcomes when an applicant does not attend. In addition to the amendments to this provision consistent with the renumbering, this provision is amended to remove the appropriateness consideration. This standard is no longer necessary as subsection (a) provides the standards from which the Commission will consider how to proceed with an application.
- The provision is amended to add a new paragraph (4) to subsection (a). This provision provides that the Commission could act on an application in a manner identified in subsection (a) of Section 12054. This ability existed under the proposed regulations, as the Commission could always have retracted the referral, but providing it here provides clear notice to the applicant of the possibility.

Consistent with the repeal of subsection (a), subsections (d) through (f) have been renumbered to subsections (b) through (d). They remain otherwise unchanged.

**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.

New paragraphs (1) and (2) of subsection (a) would require that a request for reconsideration must be: (1) copied to the Bureau when made to the Commission, and (2) received by the Commission and Bureau within the proscribed timeframe. The requirement to submit the request for reconsideration was modified to remove the Bureau and instead require that the request be copied to the complainant. While in most evidentiary hearings the complainant is the Bureau, Section 12056(a) does allow for the complainant to be either the Bureau or advocates of the Commission.

Subsection (b) was originally proposed to be amended so that when a request for reconsideration is submitted the request must state good cause for the request and that good cause could be either: (1) newly discovered evidence or legal authorities, or (2) other reasons. Due to concern that this proposed language could confuse existing standards of good cause by including newly discovered evidence or legal authorities in its definition, the language of the provision was reverted to require that a request for reconsideration must state the reasons for the request and that those reasons could be either: (1) newly discovered evidence or legal authorities, or (2) other good cause. The net effect of these changes is that the usage of good cause remains unchanged, as does the basis for the request for reconsideration.

**UNDERLYING DATA:**

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

**REQUIRED DETERMINATIONS:**

**LOCAL MANDATE:**

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

**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.

**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.

**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:

Executive Director Determines if Request Includes Good Cause: This option would provide the Executive Director with the authority to determine if a request for reconsideration contains good cause and should be placed on the Commission's agenda for consideration. Concern was expressed that the concepts involving good cause are nuanced and are best decided by the Commission in an open meeting instead of by a single person behind closed doors.

## **COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:**

The following public comments/objections/recommendations were made regarding the proposed action<sup>1</sup> during the public comment periods:

### **I. 45-DAY WRITTEN COMMENT PERIOD**

The following written comments/objections/recommendations were received regarding the text of the proposed action during the 45-day written comment period that commenced December 14, 2018 and ended February 8, 2019:

#### **A. 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 (b) [pg. 2, line 25] specifies that notices may be sent to the applicant, licensee, or designate agent via email if requested.
  - a. **John Park, Fortiss**: Mr. Park expressed concern that applicants may claim to not have received an email and that it may be beneficial if the sender is required to provide a read receipt in order to confirm that an email was delivered and opened by the applicant.

**Recommended Response:** This comment was considered but was rejected. While the regulations do not require that required communications be sent with a read receipt, there is nothing that would prevent either the Bureau or the Commission from sending emails with a read receipt request. When the applicant requests that communications be sent via email, the applicant provides an active email address for those communications. As subsection (c) of Section 12006 makes the communications effective upon transmission, it becomes the applicant's responsibility to check that email and read any communications.

- b. **Paras Modha, The Indian and Gaming Law Section of the Attorney General's Office (IGLS)**: Mr. Modha notes that this language should refer to the Commission and suggests the following revision:

(b) Notwithstanding subsection (a), notice and other written communication [from the Commission staff](#) may be provided exclusively via email to the email address of the applicant, licensee, or designated agent as last reported to the Commission [after he, she, or it](#) ~~where they~~ [provides](#) the Commission written authorization [to communicate by email](#) including, for instance in a completed and returned Notice of Defense, CGCC-ND-002 (Rev. 12/18) received under subparagraph (E) of

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<sup>1</sup> The descriptions of the proposed changes are based on the regulation text originally published October 18, 2013.

paragraph (2) of subsection (c) of Section 12052, or at an earlier point  
~~from the Commission staff.~~

**Recommended Response:** This comment was considered but was rejected. Section 12006 is intended to apply to specific communications required by the Commission's regulations. This section is not limited to communications by the Commission and the proposed revision would provide such a limitation. The other changes do not provide clarification to the provision.

**B. AMEND SECTION 12012. EX PARTE COMMUNICATIONS.**

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.

1. Paragraph (6) of subsection (d) [pg. 4, line 6] would make clear that communications between an advisor and a member of the Commission, by themselves, are not *ex parte* communications.

- a. **John Park, Fortiss**: Mr. Park expressed a concern that the "advisor" of the Commission is unclear and could be interpreted to include employees of IGLS. Mr. Park commented that no person outside of Commission staff should be communicating with Commissioners regarding the merits of the application and that the term "advisor" should therefore be limited to Commission staff.

**Recommended Response:** This comment was considered but was rejected. The term advisor is defined in subsection (b) of Section 12002 to mean "shall be all employees of the Commission except those designated as an advocate of the Commission." This definition provides the clarification and limitations requested in the comment.

**C. AMEND SECTION 12017. ABANDONMENT OF APPLICATIONS.**

This section provides for the abandonment of applications under limited specified circumstances.

1. Subsection (c) [pg. 9, line 1] specifies that the criteria that the Commission may consider when deeming an application abandoned are discretionary.

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

- a. **Paras Modha, IGLS:** Mr. Modha suggested that subsection (c) should be amended to provide a standard to guide the Commission’s decision to abandon an application. Mr. Modha suggested the following revision:

(c) At any time after the Bureau report is submitted to the Commission, the Commission may deem an application abandoned for any cause deemed reasonable by the Commission~~at its discretion~~

**Recommended Response:** This comment was considered but was rejected. Existing regulation provides the Commission with guidance that certain issues should be considered when considering if an application should be abandoned. However, these issues do not limit the Commission from deeming an application abandoned. The proposed change removes the guidance but maintains that an application can be abandoned at the Commission’s discretion. However, Mr. Modha’s comments are opposite of both the existing provision and the proposed change and would subvert the intent of the provision. There is no statutory or regulatory reason or requirement to limit the Commission’s authority to determine an application abandoned.

Mr. Modha also proposed a change to replace “at its discretion” with “any cause deemed reasonable.” This proposed change does not add any appreciable standards or alter the effect of the existing provision.

**D. AMEND SECTION 12035. ISSUANCE OF INTERIM RENEWAL LICENSES.**

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 (b) [pg. 9, line 23] would 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 would also require the applicant to work with the Complainant if possible. In the event that the applicant does not provide a reasonable justification, the Commission may set the hearing at the earliest possible opportunity, including retracting any application referred to an Administrative Procedures Act (APA) hearing.
  - a. **Paras Modha, IGLS:** Mr. Modha suggested the using the word “renewed” is consistent with the idea that the interim license is being renewed. Mr. Modha suggested the following changes:

(b) The Commission will issue a renewed interim renewal license if the hearing process has not been, or will not be, concluded by the expiration

date of ~~at~~ the current interim renewal license. To receive a renewed interim renewal license, interim renewal license holders must submit:

(1) A timely and completed renewal license application of the same type as the application pending evidentiary hearing, include the required fees and costs, and any supplemental forms required by ~~to~~ the Bureau. with the appropriate:

~~(A) Form, the same type as the application pending evidentiary hearing;~~

~~(B) Renewal timeframe;~~

~~(C) Fees and costs;~~

~~(D) Supplemental forms if required; and~~

~~(E) Related requirements.~~

**Recommended Response:** This comment was considered but was rejected. The structure of the Commission regulations does not provide for the renewal of interim renewal licenses. An interim renewal license is connected to a renewal license application but does not get renewed itself. Instead the Commission issues a new interim renewal license. By providing an interim renewal license the Commission maintains an applicant's status quo while an evidentiary hearing proceeds forward. Additionally, the items required with the application for a new interim renewal license were provided as separate subparagraphs in order to make the list easier for the applicant to read and to make each of the required items separately referenceable in case a request is incomplete. The suggested change would not have either of these advantages.

2. Paragraph (2) of subsection (b) [pg. 10, line 1] would 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 would also require the applicant to work with the Complainant if possible. In the event that the applicant does 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.
  - a. **Alan Titus, Artichoke Joe's**: Mr. Titus suggests that the regulations should provide the Commission with an additional option to consider; specifically, leaving an application to be heard as an APA hearing but instead have the Commission take control of setting the matter for hearing. Mr. Titus proposed the following revision:

(2) An update to the Commission, in coordination where possible with the complainant as specified under subsection (a) of Section 12056, on the status of the hearing and provide a reasonable justification for the delay in concluding the hearing during the term of the first interim renewal license period. The update must be received by the Commission no later than ten days in advance of the date the Commission will consider the new interim renewal license application. Failure to provide a reasonable justification for the delay may result either in the Commission setting a time for the APA hearing or in the Commission setting a time for a GCA hearing,

including retracting an application referred to an APA hearing and referring it to a GCA hearing.

Mr. Titus notes that Government Code section 11508 provides that a hearing is set by “the agency” in consultation with the Office of Administrative Hearings (OAH). Mr. Titus believes that “the agency” is the Commission and not the Bureau. Additionally, Section 12056 allows for the Commission to designate who will act as the complainant, which could be advocates of the Commission. Mr. Titus concludes that this means the Commission has the authority to set an APA hearing without redirecting a hearing to a Gambling Control Act (GCA) hearing.

Mr. Titus notes that exercising this authority includes a number of advantages, including:

- Allows lengthy cases to remain at an APA hearing and therefore not tying up the Commission for too long and diverting them from other duties and issues.
- Allows the Commission to consider all evidence as well as the Administrative Law Judge’s (ALJ) recommended decision when making their own decision.
- APA hearings are the “gold-standard” and are universally followed by state agencies and have the benefit of focusing and distilling the issues before they are considered by the Commission.
- APA hearings permit discovery, which ensures a mutual flow of information and enables the Commission to avoid surprises.

Mr. Titus expresses a concern that these advantages would be lost if a hearing was retracted from an APA hearing and referred to a GCA hearing. Mr. Titus suggests that in many cases it is a better option for the Commission to leave an application to be heard as an APA hearing but to directly ensure the APA hearing’s scheduling.

**Recommended Response:** This comment was considered but was rejected. Due to the bifurcated nature of California’s controlled gambling structure, Mr. Titus’ comments do not apply to the Commission’s evidentiary hearing process except under very specific conditions.

Government Code section 11500 provides that for the purposes of the APA:

“Agency” includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word “agency” alone is used the power to act may be delegated by the agency, and wherever the words “agency itself” are used the power to act shall not be delegated unless the statutes related to the particular agency authorize the delegation for the agency’s power to hear and decide. (emphasis added)

For an agency that does not involve a bifurcated structure, the agency acts as both the complainant and the decision maker. When the Commission elects to have an evidentiary hearing held as an APA hearing, the Commission elects to either assign the Bureau as the complainant or have the role provided by an advocate of the Commission. When the Commission elects to have the Bureau serve as that role, it must inherently delegate certain authority to the Bureau and thus for the delegated purposes both the Bureau acts as the “agency.” Therefore, when the Bureau is the complainant the Commission does not have the authority to set the hearing.

However, this does not mean that the Commission does not have the authority to take more control over an evidentiary hearing than it may have initially done so. Once the Commission has elected who will act as the complainant that does not mean that the Commission cannot reconsider its decision, including altering who it has designated as the complainant. For example, if the Commission has selected specific staff at the Commission to act as advocates of the Commission and those employees’ employment status changes the Commission must be able to designate different or additional staff as advocates of the Commission. Similarly, the Commission retains the authority to switch from advocates of the Commission to the Bureau or from the Bureau to advocates of the Commission. It is in this last situation where the Commission could choose to take more direct control over its role as the agency under the APA.

While the Commission does have the authority to do so, the possibility of this would be so limited that it is not noteworthy enough to include in the regulation.

In the scheduling of an APA hearing there are three parties who are involved: the applicant, complainant, and the Office of Administrative Hearings (OAH). The complainant is typically the Bureau represented by attorneys with IGLS. The attorneys with IGLS act as the attorney regardless of who has been designated as the complainant, i.e. the Bureau or the advocates of the Commission. Where an APA evidentiary hearing has not been scheduled the cause could be attributed to any or all of these four groups (applicant, OAH, IGLS, and either the Bureau or advocates of the Commission). However, in order for the proposed option to be a solution to the delay the issue must solely rest with the Bureau, which is unlikely. If the scheduling issue is a result of any other group then reassigning the role of complainant would not bring a resolution.

- b. **John Park, Fortiss:** Mr. Park suggested that such a significant delay is not caused solely by one side. Mr. Park also suggested that in cases when “coordination... with the complainant” is not possible, the complainant should be required to submit their own status report providing a reasonable justification for the delay.

**Recommended Response:** This comment was considered but was rejected. The provision requires that the applicant provide information explaining any delay in

concluding the evidentiary hearing because Business and Professions Code section 19856(a) provides that it is the applicant's burden to prove his or her qualifications to receive any license. The provision allows for this information to be provided in conjunction with the complainant and does not require such because the Commission cannot force either the Bureau or IGLS, representing the Bureau, to provide a justification.

**E. 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.

1. Subsection (b) [pg. 11, line 24] specifies the Commission or an ALJ sitting for the Commission will consider, but not be bound by, any recommendations by either the Bureau or Commission's staff.
  - a. **Paras Modha, IGLS:** Mr. Modha suggests that the Commission should repeal this provision as it undermines any recommendations made by the Bureau or Commission staff.

**Recommended Response:** This comment was considered but was rejected. The Commission disagrees that this provision undermines the recommendations made by the Bureau or Commission staff. The Gambling Control Act provides that any decision on suitability rests with the Commission. The point of an evidentiary hearing is for the Commission or ALJ to hear a case without a perceived reliance on previous recommendations. In order to do so, the Commission or ALJ must independently review and consider the facts of the case. The Commission or ALJ can consider the recommendations provided by the Bureau or Commission staff but should not be beholden to either.

**F. AMEND SECTION 12052. COMMISSION MEETINGS; GENERAL PROCEDURES; SCOPE, RESCHEDULING OF MEETING.**

This section provides general procedures regarding the hearing process.

1. Clause 2 of subparagraph (A) of paragraph (1) of Subsection (c) [pg. 12, line 18] provides that any documents submitted in support of the application may not be considered, or may cause a meeting to be continued, if not submitted with a sufficient time for consideration. For this purpose, any documents submitted less than 72 hours before the scheduled start time is presumed to be insufficient for consideration.

a. **John Park, Fortiss:** Mr. Park expressed the following concerns:

- Constitutional due process requires that the applicant be afforded a chance to respond to any documents submitted by the Bureau less than 72 hours in advance of the noticed meeting's scheduled start time.
- Commission staff often sends questions to the Bureau and receives responses from the Bureau less than 24 hours in advance of the meeting.

Mr. Park suggests the following:

- There should be an explicit exemption from the proposed 72 hour rule if the applicant is responding to documentation requests or communications by the Bureau within the 72 hour window.
- Commission staff should have a deadline for submitting questions or requests for documentation from the applicant and/or Bureau to allow the applicant a reasonable amount of time to adequately respond.

**Recommended Response:** This comment was considered but was rejected. The inclusion of the proposed 72 hour guideline does not limit or deny due process but has instead been proposed to both protect due process and allow for an application to proceed through the process in a consistent and predictable manner.

The process for considering an application is complex and contains many steps. It begins with an applicant completing and submitting an application to the Bureau. The Bureau reviews the application, investigates the suitability and background of an applicant, and submits its report to the Commission. Once the Bureau's report has been submitted to the Commission, Commission staff reviews the report and any attachments. This may include contacting both the Bureau and applicant for additional information. The application is then most likely noticed for a non-evidentiary hearing meeting and the Commissioners are provided with the Bureau report along with any attachments. After reviewing this information, the Commissioners may request that staff ask questions of the Bureau and applicant.

The Commissioners are not provided with any documentation until after the application has been noticed for a non-evidentiary hearing meeting, most often 10 calendar days before the meeting itself. Due to this limited timeline, it is not always possible to provide the Bureau and applicant an extended period of time to respond. However, Commission staff does attempt to provide the parties as much time as they are able in advance of a meeting to respond. While these requests may come later in the process, providing the parties time to respond is better than having the questions only asked at the meeting, removing the parties' time to prepare or find answers or documents. It is self-evident that some time, no matter how limited, is still better than no time. Additionally, if insufficient time has been provided, a failure to respond promptly or not at all cannot cause an application to be denied.

However, once information has been requested, the Commissioners do need time to properly review the documents, and as such, the regulations provide for the Commissioners to continue an application to a later meeting date if the time available is insufficient. The regulation, as proposed, does not require the Commission to continue the consideration of an application should documents be submitted less than 72 hours, but only provides notice that it could be.

Finally, due to meetings being scheduled far in advance, additional time cannot be provided for the other party to respond to any submitted documents before a meeting. To always allow additional time to respond could create an infinite loop where parties submit alternating responses. This would impact the Commission's ability to promptly hold the meeting. This does not infringe on due process, however, as ultimately each party will have the opportunity to respond at the non-evidentiary hearing meeting, or at any subsequently scheduled evidentiary hearing as parties could clearly ask at that meeting for more time to respond to new information.

- b. **Paras Modha, IGLS:** Mr. Modha expressed a concern that 72 hours is not a sufficient amount of time to ensure appropriate review of documents by the Bureau. Mr. Modha notes that in some cases the 72 hours could be fully encompassed by a weekend or holiday. Mr. Modha suggested the following revision:

2. Submit documents in support of the application; however, documents which are not received by the Commission and Bureau with sufficient time for consideration may result in the documents not being considered or the consideration of the application being continued, at the Commission's discretion. Less than five business days~~72 hours~~ in advance of the noticed meeting's scheduled start time is presumed to be insufficient time for consideration.

**Recommended Response:** This comment was considered but was rejected. While Mr. Modha is correct that in some instances, such as weekends, 72 hours may be insufficient for the Commissioners to properly review documents, there is likewise no assurance that five days or any other specific timeline will be sufficient. As every submittal of information is different, it is difficult to provide a consistent timeline to provide sufficient time for review. Submittals can range from a single page to hundreds of documents and can be submitted just before a weekend or at the beginning of the week. This provision is not intended to provide a hard and fast deadline, but to provide notice to the parties that whatever documents they do submit, the Commission will take the time necessary to review the documents even if that means a noticed meeting date is rescheduled. The 72 hour guideline was chosen based upon the Commission's recent history conducting GCA hearings and the expectation that all parties, when able to, will submit documents in a manner to

ensure everyone has the time necessary to review the documents without needing to reschedule a meeting.

**G. AMEND SECTION 12056. EVIDENTIARY HEARINGS.**

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 (d) [pg. 15, line 26] would provide that where an application has been referred to either a GCA or APA hearing, the Commission retains the authority to retract the referral and instead refer the application to a different hearing or hear the matter at non-evidentiary hearing meeting.
  - a. **John Park, Fortiss:** Mr. Park expressed a concern that preparing for a hearing, either GCA or APA, involves a significant expenditure of resources. Mr. Park suggested that the provision should limit the Commission's ability to retract a referral to either a GCA or APA hearing within seven days of the scheduled start of the hearing and at a minimum not after the original hearing as begun.

**Recommended Response:** This comment was considered but was rejected. While it is technically possible that the Commission could redirect an evidentiary hearing from one type to another on either short notice or after a hearing is begun, that is not the intention of this provision. Currently the Commission has the authority to redirect an evidentiary hearing and this provision merely notifies the parties of the possibility. It is however extremely unlikely that this would ever happen especially in the hypothetical situation raised. The intent of this provision is to notify the parties that in situations where one of the parties is being slow to act in proceeding to a hearing the Commission may redirect a hearing to a different type.

**H. 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. Subparagraph (E) of paragraph (1) of subsection (f) [pg. 19, line 6] would authorize offsite livestreaming for parties or witnesses if good cause has been presented and the process for the livestreaming has been approved by the Executive Director.
  - a. **Paras Modha, IGLS:** Mr. Modha suggests that the provision should include more specific guidance what is good cause. Mr. Modha suggests the following conditions:

- The reason for the request;

- The importance of the witness; and,
- If the witness' credibility may be an issue.

Mr. Modha also suggests that an applicant should not be permitted to appear via offsite livestreaming and if offsite livestreaming has been approved that a representative of the other party has the opportunity to be present at the alternative location.

Additionally, Mr. Modha suggests that the regulation provide for specific technology standards and standards for the livestream itself. Mr. Modha's suggestions include:

- The offsite testimony be transmitted through two-way videoconference technology and that one-way transmission not be permitted;
- The transmission be tested prior to the hearing;
- A knowledgeable operator must be present throughout the testimony;
- The transmission must be in real time with little to no audio delay between question and answer;
- The witness' demeanor must be easily observable, including non-verbal cues such as hand gestures, eye contact, etc.; and,
- Any transmission provided by the Office of Attorney General be presumed to satisfy any technology standards adopted by the Commission.

**Recommended Response:** This comment was considered but was rejected. Mr. Modha's comment addresses two issues related to the receipt of offsite testimony: the Presiding Officer's consideration of good cause and the Executive Director's consideration of appropriate technological and performance standards. It is the Commission's intent to decide both of these considerations case-by-case. If the Commission later decides, based upon its experiences, that specific standards need to be placed, the Commission is prepared to further amend these regulations to provide those standards.

The reason for this revolves around the nuances of different and varied considerations. For example, when the Executive Director is deciding if appropriate technological standards are available, this decision will necessarily be limited based on the technology available at that time. As time progresses technology will improve, different applications may be available, and older systems that were once allowed may not meet new standards. Limiting the Commission to specific systems or styles of systems available now may negatively impact future hearings as they will be unable to take advantage of new technology, or worse, may require the regulations to be constantly updated.

Additionally, the decision on performance standards by the Executive will not always involve the same issues. For example, depending on the nature of a witness,

information like eye contact (as is possible via livestreaming, which is limited) or demeanor may not be necessary. A witness may be providing technical expertise on a subject related to the application, or providing background on a report. Depending on the systems used a “knowledgeable operator” may not be possible or necessary. The use of a video call system, such as those available on mobile devices, are extremely user friendly and only require that the user have access to internet and the appropriate device. Finally, it does not make sense to create a specific list of technological and performance standards and then exempt one of the parties from those standards.

The decision of the Presiding Officer is likewise nuanced. This decision may revolve around a health issue, a cost issue, a distance issue, or any number of other issues. For example, a key witness might be out of state or out of the country and to require their physical attendance might be costly and overly burdensome and yet they are able to provide a key piece of information. Additionally, the Presiding Officer’s decision would take place in advance of the hearing. The Presiding Officer would make their determination with both parties participating, allowing them to express any concerns, such as those raised here by Mr. Modha. Therefore, the Presiding Officer’s decision could be made in a way to address any appropriate concerns in that specific instance.

2. Subsection (j) [pg. 20, line 1] specifies that the applicant may choose to be represented or to retain an attorney or lay representative. Additionally, lay representatives would be limited to assisting the applicant but would not be authorized to serve as an attorney.
  - a. **Paras Modha, IGLS:** Mr. Modha commented that any person practicing as an attorney must be a member of the California State Bar and lay representatives may only assist the applicant and not provide legal representation. To make this clear, Mr. Modha suggests the following revisions:

(j) The applicant may choose to represent himself, herself, or itself, or may ~~be represented by~~retain an attorney who is an active member in good standing of the California State Bar~~or lay representative~~. A ~~L~~ay representatives ~~s~~ may assist the applicant who chooses to represent himself, herself, or itself, but a lay representative shall not engage in any conduct that would constitute legal representation or the practice of~~are not authorized to serve as an attorney as otherwise defined and regulated by~~ state law.

**Recommended Response:** This comment was considered but was rejected. The proposed changes to the text are unnecessary. State law already provides for what individuals can do or cannot do related to legal representation for attorneys; both those in good standing, those that are not, and non-attorneys. The existing regulations provide sufficient guidance on the topic.

**I. 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) [pg. 21, line 10] specifies that an applicant who has had an application denied, or whose license, permit, registration, or finding of suitability has had conditions, restrictions, or limitations imposed may request reconsideration by the Commission.

- a. **Paras Modha, IGLS:** Mr. Modha commented that fairness and due process requires that both parties in an evidentiary hearing be afforded the same and equal rights. Mr. Modha requests that the provision be revised to expressly authorize the Bureau to request reconsideration.

**Recommended Response:** This comment was considered but was rejected. The availability of reconsideration is not a due process right. Commission regulations allow for a decision to be effective immediately, which means that even the applicant is not afforded the opportunity to request reconsideration in all cases. Additionally, it is clear from the Act that Applicant's carry the burden to prove their suitability for a license, registration, or other approval. This means that the applicant is the entity who will suffer harm from an adverse decision and who may benefit from requesting reconsideration. The role of complainant is derived from Commission regulations and is not harmed by any decision, whether the application is approved or not. Additionally, the role of complainant is necessary even for applications where both the Bureau and the Commission staff have recommended approval. The complainant has no interest in the outcome of the applicant's application, and must act as the presenter of facts regardless of any initial recommendation; therefore there is no reason to allow for them to request reconsideration.

2. Subsection (c), Option 2, [pg. 22, line 16] would specify that the Commission will make the determination to place a request for reconsideration onto a future agenda. This provision also provides notice timelines for that future agenda and for any final decision.
  - a. **John Park, Fortiss:** Mr. Park comments that his preference would be for Option 2 to be included in the final regulations. Mr. Park suggests that due to the gravity of the decision, the Commission should afford the applicant the opportunity to be heard regarding whether their request for reconsideration should be considered.

**Recommended Response:** Mr. Fortiss support for Option 2 was accepted and considered by the Commission.

**J. AMEND NOTICE OF DEFENSE FORM (CGCC-ND-002).**

This existing form is provided to the applicant to complete and return within 15 days of receipt, if provided by Commission or the Bureau, or within 15 calendar days of the date of

service, if provided with the Notice of Hearing. Once returned to the Bureau and Commission, the form 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 participating in an evidentiary hearing.

- a. **Paras Modha, IGLS:** Mr. Modha commented that the Notice of Defense should be returned within 15 calendar days of service and that this timeline is consistent with both the APA and the Commission's historic practice.

**Recommended Response:** This comment was considered but was rejected. The timeline of the return of the Notice of Defense was altered from 15 calendar days of receipt, if provided by Commission or the Bureau, or within 15 calendar days of the date of service, if provided with the Notice of Hearing to within 21 days of service because of the difference between the service of the form and the receipt of the form. The Notice of Defense form can be provided in more than one way. It can be directly provided by either the Commission or Bureau, or it can be mailed by the Commission or Bureau. In both of these cases the date of service of the form is known; however, when mailed the date of receipt is not. By changing the key date from date of receipt to date of service the timeline has been linked to a date that is always known. This provides a more certain timeline for all parties involved. In order to not reduce the timeline for those receiving the form by mail the timeline has been extended from 15 to 21 days, providing 6 days to incorporate an estimated longer mailing period.

The suggestion to change the timeline to 15 days of service is more restrictive than what currently exists and is unlikely to provide the applicant sufficient time to receive the form in the mail, complete it, and return it in the mail.

There were no further comments, objections, or recommendations received regarding the proposed action during the 45-day change written comment period that began December 14, 2018 and ended February 8, 2019.

## **II. 1<sup>ST</sup> 15-DAY WRITTEN COMMENT PERIOD**

The following written comments were received regarding the proposed text dated April 17, 2019, during the 15-day written comment period that commenced April 17, 2019, and ended May 2, 2019:

There were no comments, objections, or recommendations received within this 15-day written public comment period.

### **III. 2<sup>ND</sup> 15-DAY WRITTEN COMMENT PERIOD**

The following written comments were received regarding the proposed text dated October 28, 2019, during the 15-day written comment period that commenced October 28, 2019, and ended November 12, 2019:

#### **A. 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.

2. Subsection (b) [pg. 3, line 1] specifies that notices may be sent to the applicant, licensee, or designate agent via email if requested.

- c. **Bradley Benbrook, California Gaming Association**: Mr. Benbrook suggested that the provision be revised to allow an applicant licensee, or designated agent to receive notices by mail *and* email and not just select one.

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

#### **B. AMEND SECTION 12035. ISSUANCE OF INTERIM RENEWAL LICENSES.**

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.

3. Subsection (b) [pg. 10, line 11] would provide that the Commission will issue a new interim renewal license before the expiration date of an existing interim renewal license. Additionally, the license holder must provide specified information.

- b. **Alan Titus, Artichoke Joe's**: Mr. Titus expressed a concern in regards to the language in subsection (b). Specifically, Mr. Titus is concerned that subsection (b) incorrectly references only paragraphs (1) and (2), and not paragraph (3). Mr. Titus comments that paragraph (3) adds a requirement not otherwise mentioned in paragraph (2) in regards to the required update.

**Recommended Response:** This comment was considered but was not incorporated. While Mr. Titus is partially accurate in his reading of this provision, the exclusion of paragraph (3) from the requirements for receipt of the new interim renewal license was intentional. Subsection (b) only requires the licensee to submit a complete application of the same type pending evidentiary hearing [paragraph (1)] and an explanation for the delay in concluding the hearing [paragraph (2)]. Paragraph (3) only explains what could occur if the justification for the delay in concluding the

hearing during the previous interim renewal license term is not supported by good cause. Paragraph (3) therefore does not impact the receipt of the new interim renewal license, merely the Commission's actions in regards to the process.

4. Subsection (b) [pg. 10, line 11] would require applicants for a new interim renewal license to submit an application to the Commission of the same type that would be required for a renewal application of the same type pending an evidentiary hearing.

- c. **Alan Titus, Artichoke Joe's**: Mr. Titus expressed a concern that the requirements of a complete application may be confusing. Specifically, Mr. Titus is confused about the use of the terms application and form, and what is considered a completed application.

**Recommended Response:** Mr. Titus' comments were considered but were not incorporated. An interim renewal license can be issued for licenses, work permits, and other approvals involving a finding of suitability. Each of these approval types has requirements for what is considered a completed application along with different fees, requirements, and timelines. If an applicant wasn't subject to a pending evidentiary hearing, the applicant would be required to review their relevant renewal procedures, pay fees, and submit all required documents within a specified timeline. This provision isn't designed to replicate or reproduce those requirements, but to instead only inform the applicant that they are responsible for maintaining the validity of their license beyond the two year cycle of the interim renewal license in a similar fashion to a regular renewal license, work permit, or other approval.

**C. AMEND SECTION 12054. EVIDENTIARY HEARINGS.**

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. The following comments were received about the section [pg. 15, line 10], in general:

- a. **Bradley Benbrook, California Gaming Association**: Mr. Benbrook suggested that the GCA hearing process should include a means for the Commission to issue or approve a binding Statement of Issues similar to what is provided for APA hearings in Government Code section 11504.

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

**D. AMEND SECTION 12062. EVIDENTIARY HEARINGS.**

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

1. Subsection (c), renumbered from subsection (d) [pg. 22, line 28] provides that only members of the Commission who heard the evidence presented at a hearing are eligible to vote on any decision. The provision allows votes to be made through the mail or by another appropriate method unless doing so would prevent the existence of a quorum. If no quorum could be made by Commissioners who heard the presented evidence at a hearing, another Commissioner may be allowed to vote after review of the complete record and any other additional briefings or hearings the Commission believes necessary.
  - a. **Bradley Benbrook, California Gaming Association**: Mr. Benbrook suggested that if a quorum is possible, but where the eligible members of the Commission cannot get the necessary three votes for any decision, a Commissioner who did not hear the presented evidence should be allowed to vote after a rehearing based on the hearing and audio file.

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

#### **IV. COMMENT RECEIVED OUTSIDE THE PUBLIC COMMENT PERIODS**

There were no comments, objections, or recommendations received outside any public comment period.

There were no further comments, objections, or recommendations received regarding the proposed action either within or outside any of the public comment periods.