



ADVISORY NOTICE

APPROVAL OF REVISED REGULATIONS AB 120 HEARINGS UPDATE

(CGCC-GCA-2021-06-R)

On February 8, 2022, the Office of Administrative Law approved regulations, which update the California Gambling Control Commission's (Commission) regulations for the adoption of Assembly Bill 120 (Salas, Chapter 45, Statutes of 2021). The approved regulations were filed with the Secretary of State on February 8, 2022, and will become effective April 1, 2022.

Approved Regulations

This regulatory action has made changes in Chapter 1 of Division 18 of Title 4 of the California Code of Regulations. Those changes are as follows:

ARTICLE 2. INITIAL AND RENEWAL LICENSES AND WORK PERMITS.

Amend Section 12002. General Definitions

This section provides general definitions for overall use in this division.

Subsection (g) provides the definition of "Bureau report" to mean the final determination by the Chief of the Bureau regarding his or her recommendation to the Commission on an application. This provision is modified to provide a definition of Bureau report, which references the filing by the Chief of the Bureau of his or her written reasons, as provided in Business and Professions Code section 19868(b), regarding his or her recommendation of denial or approval with restrictions or conditions, or the notification to the Commission that the Bureau is recommending approval or is not issuing a recommendation of denial or approval with restrictions or conditions.

Subsection (aa) provides the definition of "GCA hearing" to mean the hearing referred to as "the meeting" pursuant to Business and Professions Code section 19870 and 19871. This definition is amended to remove the reference to "the meeting."

Amend 12006. Service of Notices, Orders, and Communications.

Section 12006 provides standards for notices that are required by Commission regulation.

Subsection (b) provides that an applicant, licensee, or designated agent may request that the Commission provide communications electronically instead of mailing written communications. As originally noticed, this provision was modified to change the date of the Notice of Defense. This provision is modified to remove the date of the Notice of Defense.

Amend 12012. Ex Parte Communication.

Section 12012 provides the Commission's guidelines for what is and is not an *ex parte* communication and what to do should an inappropriate communication occur.

Subsection (a) provides the definition for "*ex parte communication*" and "*ex parte.*" This definition includes a misspelling for the word "communication" which has been corrected.

Subsection (d) provides a list of communications that do not qualify as *ex parte*. Paragraph (2) provides that communications made at a public hearing or meeting that has been properly noticed do not qualify as *ex parte* communications. This provision is modified to replace "public hearing or meeting" with "evidentiary hearing or Commission meeting."

Subsection (e) provides when the Commission's *ex parte* regulations apply to an APA hearing. With the addition of new paragraphs within Section 12054(a), this provision is renumbered to reference the current provision's new number.

Amend 12015. Withdrawal of Applications.

Section 12015 provides the process by which an applicant can request, and the Commission considers, the withdrawal of an application.

Subsection (a) provides that a request may be made by an applicant, or his, her, or its designated agent. The provision provides that a request must be made prior to the Bureau report being submitted to the Commission. The regulations have been revised to repeal the reference to the Bureau report and replacing it with a reference to Section 12066(b).

Additionally, subsection (a) provides that the Executive Director, upon receipt of information or documentation provided by the Bureau will schedule the withdrawal request for Commission consideration. This provision is amended to provide that the information and documentation provided by the Bureau must be that information required by Business and Professions Code section 19869.

Subsection (d) provides that if a request for withdrawal is granted with prejudice, the applicant will not be eligible to apply again for a license or approval for one year. This provision has been modified to be consistent with the changes to AB 120, specifically, revising the restriction from "will not be eligible" to "will be ineligible." Additionally, an applicant will no longer be limited from applying for a license or approval, but will instead be ineligible to submit or renew an application for the one-year period.

Amend 12035. Issuance of Interim Renewal Licenses.

Section 12035 provides standards and conditions for issuing an interim renewal license.

Subsection (a) provides when the Commission will issue an interim renewal license to an applicant. The Commission provides the interim renewal license prior to the expiration of the existing license should a triggering event occur. Additionally, the language is revised to include "finding of suitability" separate from "other approval."

Finally, one paragraph is amended and two more paragraphs are adopted:

- Paragraph (1) provides that the Commission will issue an interim renewal license when it has elected to hold an evidentiary hearing on a renewal license, work permit, or other approval. This provision is renumbered to reference the current provision's new number.
- New paragraph (4) will provide that the Commission will issue an interim renewal license to an applicant for a renewal license, work permit, finding of suitability, or other approval when their requested renewal license, work permit, finding of suitability, or other approval has been issued with conditions, restrictions, or limitations at a Commission meeting.
- New paragraph (5) will provide that the Commission will issue an interim renewal license to an applicant for the denial of a renewal license, work permit, finding of suitability, or other approval at a Commission meeting.

Subsection (b) provides that the Commission will issue a new interim renewal license if the hearing process will not be concluded before the expiration of the current interim renewal license. With the addition of new paragraphs within Section 12054(a), this provision is renumbered to reference the current provision's new number.

ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS.

Amend 12052. Commission Meeting; General Procedures; Scope; Notice; Rescheduling of Meeting.

Section 12052 provides information on how the Commission issues notices for the consideration of applications.

Subsection (c) provides what the Commission will include in a notice for any license, permit, finding of suitability, renewal, or other approval.

- Paragraph (1) provides what the Commission will include in a notice for a non-evidentiary hearing meeting, now renamed Commission meeting.
 - Subparagraph (C) provides notice that an individual who is making an oral statement might be required to be placed under oath. This provision is repealed.
- Paragraph (2) provides what the Commission will include in a notice for a GCA hearing. Subparagraph (E) is modified to change the date of the Notice of Defense.

Additionally, the Notice of Defense form has been amended.

- A new paragraph is added to the form's instructions. This paragraph provides the timeline for requesting an evidentiary hearing when an application has been approved with conditions, restrictions, or limitations, or has been denied at a Commission meeting. The instructions inform the applicant that the Notice of Defense form must be submitted to both the Commission and the Bureau, otherwise it will result in the Commission's decision becoming final. Additionally, the Notice of Defense must be received by the Commission within 30 calendar days of the Commission meeting where the application was approved with conditions, restrictions, or limitations, or has been denied.

- The existing instructions on the form have been amended to provide clarification that the existing process will apply for applications that the Commission has referred to an evidentiary hearing. Additionally, the timeline for submittal of the Notice of Defense has been changed from 21 days to 30 calendar days.

Amend 12054. Consideration at Regular Commission Meeting.

Section 12054 provides a limited list of the possible actions that could be taken by the Commission at a non-evidentiary hearing meeting. This section's title has been changed to Consideration at a Commission meeting.

Subsection (a) provides a list of nine possible actions that the Commission could take at a non-evidentiary hearing meeting, now renamed Commission meeting. This action adds two new items to the list of possible Commission actions. The actions authorized by AB 120 are:

- Paragraph (2) provides that the Commission can issue a license, work permit, finding of suitability, or other approval with conditions, restrictions, or limitations.
- Paragraph (3) provides that the Commission can deny an application for a license, work permit, finding of suitability, or other approval.

Additionally, both of these provisions provide that if the application is for a renewal, the Commission will issue an interim renewal license. As the list of actions in subsection (a) is designed to provide an applicant with a list of possible results, it is consistent to reference this additional action here.

- Existing paragraphs (2) through (9) are renumbered (4) through (11). This is a non-substantive change.

Amend 12056. Evidentiary Hearings.

Section 12056 provides the process when the Commission elects to hold an evidentiary hearing, including information such as limitations to discovery, costs, and the ability of the Commission to decide, at any time, that a referred application should be considered at a GCA hearing, APA hearing, or Commission meeting instead of the evidentiary hearing it had previously been referred to.

Subsection (a) provides that when the Commission has elected to hold an evidentiary hearing, that evidentiary hearing will by default be a GCA hearing, unless the Commission or Executive Director determines that the application should be considered at an APA hearing. This provision is modified to require that when an applicant has elected to request an evidentiary hearing following the Commission's denial of an application, or its approval with conditions, restrictions, or limitations, the evidentiary hearing process will follow the same process as when the Commission has elected to hold an evidentiary hearing.

Subsection (d) provides that the Commission reserves the ability to decide, at any time, that a referred application should be considered at a GCA hearing, APA hearing, or Commission meeting instead of the evidentiary hearing it had previously been referred to. With the addition

of new paragraphs within Section 12054(a), this provision is renumbered to reference the current provision's new number.

Amend 12057. Default Decisions and Uncontested Applications.

Section 12057 provides the specifics of the Commission's default decision process.

Subsection (a) provides what happens if an applicant fails to submit a completed Notice of Defense according to the timelines provided on the form or affirmatively waives their right to an evidentiary hearing. This provision is modified to remove the date of the Notice of Defense.

- Paragraph (5) provides that if an application was approved with conditions, limitations, or restrictions, or was denied at a Commission meeting and the applicant affirmatively waives their rights to an evidentiary hearing or 30 calendar days has passed, the Commission need only finalize the decision pursuant to Section 12055(b)(4).

Amend 12060. GCA Hearings.

Section 12060 provides the specifics of a GCA hearing.

Subsection (b) provides that if the Commission has elected to hold a GCA hearing, the Executive Director will provide notices to the various parties, as specified, 60 days in advance of the GCA hearing. This provision is amended to include when the Commission has made a decision on an application at a Commission meeting, and the applicant has requested an evidentiary hearing.

Amend 12066. Final Decisions; Judicial Review.

Section 12066 provides when a decision by the Commission is final and what judicial remedies are available.

Subsection (a) provides information on when a decision is final if the Commission accepts a request for withdrawal or a decision of abandonment is made. With the addition of new paragraphs within Section 12054(a), this provision is renumbered to reference the current provision's new number.

Subsection (b) provides a list of when a decision on an application is final.

- Paragraph (4) provides that an application is final if the application was approved with conditions, limitations, or restrictions, or was denied at a Commission meeting and the applicant affirmatively waives their rights to an evidentiary hearing or 30 calendar days has passed.

Subsection (c) provides that a decision of the Commission denying an application or imposing conditions on a license is subject to judicial review, as specified. This provision is amended to clarify that judicial review only applies if the denial or approval with conditions was made after an evidentiary hearing.

This regulatory action has made changes in Chapter 2 of Division 18 of Title 4 of the California Code of Regulations. Those changes are as follows:

ARTICLE 4. INTERIM OWNER CATEGORY LICENSE.

Amend 12134. General Provisions.

Section 12134 provides a series of general provisions that apply to the interim owner category license process.

Subsection (c) provides that if the Bureau determines that the holder of an interim owner category license has become disqualified or may have violated a condition of their interim owner category license, the matter will be set for Commission consideration at a non-evidentiary hearing meeting, now renamed Commission meeting.

Regulation Text

A copy of the recently approved regulations is attached. That document is also available on the Commission's Web site under "Regulations/Recently Approved Regulations" at www.cgcc.ca.gov.

Questions, Concerns, Suggestions

For any questions, concerns, or suggestions regarding the adoption of this regulation, please contact lawsandregs@cgcc.ca.gov.