

**TITLE 4.**  
**CALIFORNIA GAMBLING CONTROL COMMISSION**  
**NOTICE OF PROPOSED REGULATORY ACTION**  
**Subpoenas**  
**CGCC-GCA-2022-06-R**

**NOTICE IS HEREBY GIVEN** that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest after consideration of all relevant public comments, objections, and recommendations received concerning the proposed action. Comments, objections, and recommendations may be submitted as follows:

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period, which closes on **January 3, 2023**. Written comments relevant to the proposed regulatory action may be sent by mail, facsimile, or e-mail, directed to one of the individuals designated in this notice as a contact person. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than midnight on January 4, 2023**. **Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

**PUBLIC HEARING**

The Commission has not scheduled a public hearing on this matter. Any interested person, or his or her authorized representative, may request a hearing pursuant to Government Code section 11346.8. A request for a hearing should be directed to the person(s) listed under Contact Persons no later than 15 days prior to the close of the written comment period.

**ADOPTION OF PROPOSED ACTION**

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

**AUTHORITY AND REFERENCE**

Pursuant to the authority vested by sections 19811, 19823(a), 19824(h), 19840, and 19841, of the Business and Professions Code, and section 11450.5(b), of the Government Code; and to implement, interpret or make specific sections 19840, 19870, and 19871 of the Business and Professions Code, sections 1985, 1985.1, 1985.2, 1985.3, and 1985.4, of the Code of Civil

Procedure, sections 1560 and 1561, of the Evidence Code, and sections 11450.05, 11450.20, 11450.30, 11450.50, and 11455.10 of the Government Code, the Commission is proposing to adopt the following changes to Chapter 1 of Division 18 of Title 4 of the California Code of Regulations:

## **INFORMATIVE DIGEST AND POLICY STATEMENT**

### **Introduction:**

The Commission is the state agency charged with the administration and implementation of the Gambling Control Act (Act). The Commission is authorized to adopt regulations governing applications for licenses, permits, registrations, findings of suitability, or other approvals, including in connection with the consideration of an application at an evidentiary hearing.

The Commission's regulations provide comprehensive procedures for evidentiary and non-evidentiary hearings and related topics. At a Commission meeting, the Commission may, among other actions, issue or deny a license, temporary license, interim license, registration, permit, finding of suitability, renewal, or other approval; or it may elect to hold an evidentiary hearing if issues are identified that require additional information or consideration related to an applicant's suitability for licensure. For evidentiary hearings on applications, the regulations require the hearing to be conducted as a Gambling Control Act hearing (GCA hearing), unless the Commission determines the hearing should be conducted as an Administrative Procedure Act hearing (APA hearing).

This proposed regulatory action adds requirements to the service of subpoenas and will clarify discover related procedures available to parties to a GCA hearing. They include:

1. Clarifying that all subpoenas and subpoenas duces tecum must be served in the manner provided by Government Code section 11450.20 and requiring that a copy be served on the presiding officer.
2. Allowing the presiding officer to order, on their own motion, to enforce, modify, or quash a subpoena or subpoena duces tecum.
3. Clarifying the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing, and that discovery is not permitted upon a member of the Commission or an advisor of the Commission.

### **EXISTING LAW:**

Section 19824, subdivision (h) of the Business and Professions Code provides authority for the issuance of subpoenas and subpoenas duces tecum, and states that the Commission may "issue subpoenas to compel attendance of witnesses and production of documents and other material things at a meeting or hearing of the commission or its committees, including advisory committees."

Section 11450.05, subdivision (b) of the Government Code states that "An agency may use the subpoena procedure provided in this article [Article 4.5] in an adjudicative proceeding not required to be conducted under Chapter 5 (commencing with Section 11500), in which case all the provisions of this article apply including, but not limited to, issuance of a subpoena at the request of a party or by the attorney of record for a party under Section 11450.20."

**EFFECT OF REGULATORY ACTION:**

The proposed action has been prepared to modify existing subpoena regulations to clarify discovery related procedures available to parties to a GCA hearing. They include:

1. Clarifying that all subpoenas and subpoenas duces tecum must be served in the manner provided by Government Code section 11450.20 and requiring that a copy be served on the presiding officer.
2. Allowing the presiding officer to order, on their own motion, to enforce, modify, or quash a subpoena or subpoena duces tecum.
3. Clarifying the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing, and that discovery is not permitted upon a member of the Commission or an advisor of the Commission.

**ANTICIPATED BENEFITS OF PROPOSED REGULATION:**

This proposed action will avoid needless consumption of time to deal with unwarranted subpoena and subpoenas duces tecum. In addition, it makes additional clarifications regarding the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing, which will avoid discovery disputes and clarify that discovery is not permitted upon a member of the Commission or an advisor of the Commission except in limited circumstances.

**SPECIFIC PROPOSAL:**

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

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

**Amend 12014. Subpeonas.**

Section 12014 provides to the Commission’s guidelines for subpoenas and subpoenas duces tecum.

Subsection (a) provides that the issuance and enforcement of a subpoena or subpoena duces tecum in any adjudicative proceeding held pursuant to the Act for which a notice of hearing has been issued will be in accordance with Article 11 (commencing with section 11450.05) and Article 12 (commencing with section 11455.10), respectively, of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. Further, the issuance of a subpoena or subpoena duces tecum may be on the form entitled “Subpoena,” CGCC-CH1-02 (New 05/20), or in a manner that otherwise complies with Article 11 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. Lastly, all subpoenas and subpoenas duces tecum must be served at least 30 days prior to the date specified for commencement of the hearing in the notice of hearing, or the date specified in the subpoena for the appearance of a witness or the production of records.

Subsection (a) has been revised to provide updates to the requirements of how a subpoena and/or subpoena duces tecum is served. Specifically, it requires service pursuant to Government Code section 11450.20 with a copy to the presiding officer.

Subsection (b) provides that any motion made pursuant to subdivision (a) of section 11450.30 of the Government Code must be filed with the presiding officer no later than 15 days prior to the date specified for appearance or for the production of records. The party bringing the motion must serve copies of the motion on all parties and persons who are required by law to receive notice of the subpoena. Any response to the motion must be filed with the presiding officer and served no later than 5 days before the motion is scheduled to be heard. Upon a timely motion of a party or a witness, after notice to the parties and an opportunity to be heard, upon a showing of good cause, the presiding officer may order the quashing of a subpoena or subpoena duces tecum entirely, may modify it, or may direct compliance with it upon other terms and conditions.

This provision, has been revised to provide that the presiding officer may, on their own motion (*suo moto*), order the quashing of a subpoena or subpoena duces tecum entirely, may modify it, or may direct compliance with it upon other terms and conditions.

**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. Subparagraph (B) of paragraph (2) provides that if the application is to be scheduled at an evidentiary hearing, information must be provided regarding the date, time, and location of the pre-hearing conference. This section is modified to update a reference due to a provision being moved.

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

**Amend 12060. GCA Hearings.**

Section 12060 provides the specifics of a GCA hearing.

Subsection (f) specifies that the complainant will provide to the applicant, at least 45 calendar days prior to the GCA hearing, and the applicant must provide to the complainant, at least 30 calendar days prior to the GCA hearing, a list of items.

- Subparagraph (4) provides other written comments and writings must be provided. This provision is amended to include “other items” that contain relevant evidence.

New subsection (g) provides that the exclusive right to and method of discovery between the applicant and complainant during a GCA hearing is as provided in subsection (f). Additionally, it provides that discovery is not permitted upon a member of the Commission or an advisor of the Commission except in limited circumstances.

Subsection (l), renumbered to subsection (m), is modified to update a reference due to a provision being moved.

Existing subsections (g) through (n) are renumbered to subsections (h) through (o).

CHAPTER 2 LICENSES AND WORK PERMITS

ARTICLE 1. INITIAL AND RENEWAL LICENSES AND WORK PERMITS

**Amend 12118. Objection to Local Work Permits.**

Section 12118 provides a series of general provisions that apply to the Commission's ability to object to the issuance of a work permit by a local jurisdiction.

Subsection (c) is modified to update a reference due to a provision being renumbered.

**CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS:**

The Commission has evaluated this regulatory action and determined that the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

The proposed action is intended to make changes to the Commission's regulations to improve the Commission's existing processes and in so doing makes them more compatible and internally consistent.

**COMPARABLE FEDERAL LAW:**

There are no existing federal regulations or statutes comparable to the proposed regulations.

**FISCAL IMPACT ESTIMATES**

**FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:** None

**NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:** None.

**MANDATE IMPOSED ON ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:** None.

**COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:** None.

**EFFECT ON HOUSING COSTS:** None.

**IMPACT ON BUSINESS:**

The Commission has determined that this regulatory proposal will not have a significant impact directly affecting business, including the ability to compete. For this purpose, the definition of a small business as defined by the federal Small Business Administration 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.

**COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:**

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON SMALL BUSINESS:**

The Commission has made a determination that the proposed regulatory action would not affect small businesses as the proposed action only modifies existing subpoena requirements.

**RESULTS OF 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 definition of a small business as defined by the federal Small Business Administration was utilized.

The basis for this determination is that this proposed action imposes no new mandatory requirement on businesses or individuals and does not significantly change the Commission's current practices and procedures. The proposed action modifies existing subpoena requirements.

**BENEFITS OF PROPOSED REGULATION:**

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.

**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 does not pertain to 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 does not pertain to environmental issues.

**CONSIDERATION OF ALTERNATIVES**

The Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**INITIAL STATEMENT OF REASONS, INFORMATION AND TEXT OF PROPOSAL**

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the

proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

### **AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the primary contact person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's website listed below.

### **CONTACT PERSONS**

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person:

Joshua Rosenstein, Legislative and Regulatory Specialist  
Legislative and Regulatory Affairs Division  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231  
Telephone: (916) 274-5823  
Fax: (916) 263-0499  
[E-mail: jrosenstein@cgcc.ca.gov](mailto:jrosenstein@cgcc.ca.gov)

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Alex Hunter, Legislative and Regulatory Specialist  
Legislative and Regulatory Affairs Division  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231  
Telephone: (916) 263-1301  
Fax: (916) 263-0499  
[E-mail: ahunter@cgcc.ca.gov](mailto:ahunter@cgcc.ca.gov)

### **WEBSITE ACCESS**

Materials regarding this proposed action are also available on the Commission's website at [www.cgcc.ca.gov](http://www.cgcc.ca.gov).