

CALIFORNIA GAMBLING CONTROL COMMISSION
FINAL STATEMENT OF REASONS
CGCC-GCA-2021-07-R/C

HEARING DATE: (None Scheduled or Requested)

SUBJECT MATTER OF PROPOSED REGULATIONS:

Commission Fees Modernization Project II

SECTIONS AFFECTED:

California Code of Regulations, Title 4, Division 18: Sections 12002, 12252 and 12252.2.

UPDATED INFORMATION:

The prior certificate of compliance filings (OAL Matter Numbers 2022-0721-10C and 2022-0926-05SR), which were both approved in part by the Office of Administrative Law (OAL) and became effective on September 1, 2022, and September 30, 2022, respectively, are included in the file and are hereby incorporated by reference as if fully set forth therein. On October 4, 2022, the proposed regulations were modified and distributed to interested parties for a third 15-day public comment period that was held from October 5, 2022, through October 19, 2022, as part of this rulemaking process. The information contained therein is updated as follows:

PROPOSED ACTION:

The proposed changes within California Code of Regulations (CCR), Title 4, Division 18 are as follows:

Note: In the Modified Text of Proposed Regulations – Third 15-Day Changes, proposed changes in the initial 45-day text of the proposed regulations are shown in single blue underline/red strikeout. First 15-day changes are shown in the text as double blue underline/red strikeout. Second 15-day changes are shown in the text as single green italic underline/strikeout. Third 15-day changes are shown in the text as double italic underline/strikeout.

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES

Amend Section 12002. General Definitions.

Section 12002 provides the definitions used in the Commission’s regulations. The Commission is proposing modifications to the text to add one definition to this section. All subsequent provisions have been renumbered as necessary.

Subsection (ab) is added to provide the definition for “gross revenue,” to mean the total of all compensation received for participating in or conducting any controlled game, and to include interest received in payment for credit extended by a cardroom business licensee to a patron for purposes of gambling. This definition is necessary to implement the TPPPS annual fee amounts.

The definition expands the definition provided in Business and Professions Code section 19805, subdivision (r) by adding “participating in” to the standard. This change is necessary to provide additional specificity so that the definition also applies to TPPPS business licensees, as they participate in controlled games but do not conduct controlled games. The change has no effect on determining a cardroom business licensee’s gross revenue, as they do not participate in a controlled game and no changes are being made to their annual fee amounts in this regulatory package.

In addition, the term “owner licensee” as used in statute, is being changed to “cardroom business licensee.” This is necessary for consistency, as the term “cardroom business licensee” is the term used in the Commission’s regulations and is defined, in part, to mean “owner licensee.”

CHAPTER 3. CONDITIONS OF OPERATION FOR TPPPS BUSINESSES

ARTICLE 1. GENERAL PROVISIONS

General changes: the defined terms that were previously capitalized throughout this article have been changed to lowercase. This change is consistent with the format used throughout existing Commission regulations.

Amend Section 12252. TPPPS Annual Fee.

Section 12252 provides the process and timelines for a TPPPS business licensee to submit their annual fee.

Subsection (a) specifies that by October 1 of each year, the Bureau will provide an invoice to each TPPPS business licensee, pursuant to the requirements of Section 12006. This provision has been modified to require the TPPPS business licensee to submit their annual fee as provided in Section 12252.2 instead of Section 12252.1, which is necessary due to the removal of Section 12252.1 (see OAL File Number 2022-0926-05SR). Further, the January 1 due date for TPPPS business licensees to submit their annual fee has been more appropriately moved to subsection (c).

Subsection (b) provides that the annual fee may be paid in installments if the TPPPS business licensee submits a written request to the Bureau within 30 days from the date the invoice was mailed. This section has been modified to add the word “calendar” in front of “days” to further specify the TPPPS business licensee must submit a written request within “30 calendar days” to provide additional clarity to the timeline, which is consistent with existing timelines provided in other Commission regulations. Further, the term “mailed” has been modified to “served” to better align with the existing language in Section 12006 concerning the service of any notice or other written communication.

Subsection (c) provides that once approved for installment payments subject to the Bureau’s approval notification, a TPPPS business licensee must provide its installment payments by January 1, April 1, and June 30 of the payment year, with each payment being one-third of the total invoiced amount. This subsection has been modified with additional language to provide that a request for installment payments is to be considered approved, unless within 14 calendar days of receipt of the request, the Bureau notifies the TPPPS business licensee, pursuant to

Section 12006, that the request has been disapproved. This change is necessary to simplify the Bureau's approval process and require the Bureau to provide notice only when a request has been disapproved. This places less of a burden on the Bureau to issue approval notices, increases efficiency, and allows the TPPPS business licensee to know the outcome of the request within 14 calendar days so that it can begin to make installment payments. Additionally, this section has been modified with the addition of new language to provide that the Bureau will disapprove a request for installment payments under one of two conditions: (1) The TPPPS business licensee has a history of failing to make installment payments as required, or (2) the request for installment payments was not submitted pursuant to the requirements of subsection (b). The addition of this language is necessary to provide clarity to TPPPS business licensees regarding the specific conditions under which a request is disapproved. This will ensure only those licensees who present a risk of failure to comply with the installment payment requirements, based on their previous actions, are not approved to make the requested installment payments. Lastly, this section has been modified to add language specifying if a request is disapproved, or if installment payments have not been requested, the TPPPS business licensee will pay the entire amount by January 1. This January 1 deadline to pay the full annual fee amount aligns with the date the first installment payment is due. Thus, the first annual fee payment deadline for the first installment payment would be January 1 or the full fee amount would be due on January 1 if the request for the installment payment was disapproved. This change provides additional clarity and specificity on all annual fee payment deadlines in a single subsection, whether a TPPPS business licensee is approved to make installment payments or pay the full amount.

Subsection (d) provides that the TPPPS certificate will not be issued until the Bureau has received the TPPPS annual fee, or has approved the TPPPS business licensee for installment payments. This section has been modified for additional clarity to add the word "license" in front of "certificate," as the term "license certificate" is used throughout existing regulation.

Subsection (e) provides that any renewal application for a TPPPS business licensee will not be approved by the Commission if the TPPPS business licensee has any outstanding annual fees. The term "renewal application for the TPPPS business licensee" has been modified to "application for a renewal TPPPS business license" because "renewal TPPPS business license" is a defined term and its use increases the clarity of the provision. Other nonsubstantive changes have been made to this section, which are grammatical in nature.

Subsection (f) provides that no application for a TPPPS contract may be approved by the Bureau until any delinquent annual fees have been paid in full. Nonsubstantive changes have been made to this section, which are grammatical in nature.

Subsection (g) provides the process and calculation methods for newly approved TPPPS business licensees when they first receive their licenses and during the first full calendar year of licensure.

- In paragraph (1), due to the removal of Section 12252.1 (see OAL File Number 2022-0926-05SR), it is necessary to provide the calculation method for newly approved TPPPS licensees. This is necessary to simplify the calculation method using a fixed amount (\$4,069) for determining a prorated annual fee. Further, this section is amended to specify the Bureau will issue the invoice pursuant to Section 12006 to provide additional clarity and consistency.

- Paragraph (2) provides that for the first full calendar year of licensure, a TPPPS business licensee will be invoiced the unadjusted annual fee, as if they were a TPPPS business licensee whose average gross revenue was less than \$1.5 million for the following calendar year. If the license is approved after October 1, the invoice will be issued pursuant to the timeline in paragraph (1). Due to the removal of Section 12252.1 (see OAL File Number 2022-0926-05SR), it is necessary to provide a fixed annual fee amount for newly approved TPPPS licensees that have not been in operation for three full years as they would not be able to provide data for a three-year average gross revenue. Further, this section is amended to specify the Bureau will issue the invoice pursuant to Section 12006 to provide additional clarity and consistency. Additional nonsubstantive, clarifying changes have been made to this section.

Adopt Section 12252.2. TPPPS Annual Fee Amounts.

New Section 12252.2 is added to specify the TPPPS annual fee amounts.

Notably, this section is being added in lieu of providing the calculation method in the regulation that was previously proposed to be added under Section 12252.1 of the 45-day and first 15-day versions of the text (OAL Matter Number 2022-0721-10C), and was later withdrawn due to clarity issues raised by the Office of Administrative Law. Shortly thereafter, in order to temporarily resolve the TPPPS annual fee issue, Section 12252.2 (proposed herein) was adopted in a related emergency regulation filing (OAL Matter Number 2022-0922-01EE) to provide the specific annual fee amounts. To prevent the lapse of this section currently effective under that emergency filing, Section 12252.2 has been included as part of this certificate of compliance resubmittal filing (OAL Matter Number 2022-1021-06SR). The addition of this section is necessary to clearly specify the TPPPS annual fee amounts, in lieu of providing the methodology for determining those fees as previously proposed to be added under Section 12252.1. While the calculation method remains unchanged, it has been moved from the regulation text to this supporting documentation of the rulemaking file.

The fees required in this section of each type of TPPPS business licensee are as follows:

- \$0 for surrendered or revoked licensees;
- \$2,035 for non-operational licensees;
- \$4,069 for active licensees with a three-year average gross revenue under \$1,500,000; or,
- 1.54% of the three-year average gross revenue for active licensees with a three-year average gross revenue of \$1,500,000 or more.

This modification provides clarity on the specific amounts due for each type of TPPPS business licensee and does not result in any change to the calculations (explained below) or final fee amounts.

The Commission used a step-by-step calculation method that begins with the Commission's and Bureau's operation costs, which are not directly related to any charged fee or deposit to determine these values, following the MGT Cost and Fee Study. The process was as follows:

The Commission collected the cost data from the Commission and Bureau to determine which costs were not directly related to any charged fee or deposit. These costs were examined based

on what type of function they were associated with and divided into one of six categories, or “cost pools”:

- Cost Pool 1. Non-application costs that are not directly attributed to an application fee or deposit. This includes all costs associated with administration, information technology, and legislative and regulatory workload.
- Cost Pool 2. Non-application costs that have a direct connection to the processing of applications for the controlled gambling industry, and are not directly attributed to an application fee or deposit. This includes such costs associated with responding to general phone calls, and the processing of electronic and regular mail.
- Cost Pool 3. Non-application costs generated by non-Commission actions. This includes costs associated with compliance and enforcement, financial audits, calls for service, and incident reports born separately amongst TPPPS business licensees and cardroom business licensees.
- Cost Pool 4. Non-application costs generated by matters requiring Commission action. This includes such costs associated with administrative hearings and decisions, and Commission meetings.
- Cost Pool 5. Non-application costs that are specific to cardroom business licensees but not directly linked to a Commission approval, such as compliance reviews of games, reviews of reports, and local ordinance reviews.
- Cost Pool 6. Non-application costs that are specific to TPPPS business licensees but not directly linked to a Commission approval, such as, contract renewal notices and non-investigation industry inquiries or correspondence.

The cost pools were then each divided into two sections, those costs associated with cardroom business licensees and those costs associated with TPPPS business licensees. For purposes of determining the annual fee amounts for TPPPS business licensees, those costs identified as associated with cardroom business licensees no longer factor into the calculation, and so are not discussed further.

The cost pools were separated as follows:

- Cost Pool 1. The Commission determined the percentage of active and non-operational TPPPS business licensees compared to the total of all active and non-operational TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 1.
- Cost Pool 2. The Commission calculated the percentage of total applications for TPPPS business licensees compared to the total of all applications for TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 2.
- Cost Pool 3. The Commission determined the percentage of active and non-operational TPPPS business licensees compared to the total of all active and non-operational TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 3.
- Cost Pool 4. The Commission will determine the percentage of total Commission actions for TPPPS business licensees and cardroom business licensees using the average

number of applicable Commission actions over the previous three fiscal years.
This percentage was applied to cost pool 4.

Cost Pool 5. The entirety of this cost pool is associated with cardroom business licensees.

Cost Pool 6. The entirety of this cost pool is associated with TPPPS business licensees.

The Commission then totaled the results of the separated costs pool amounts for cost pools 1 through 4 and added the amount of cost pool 5. The result of this is the total annual fee to be paid by all TPPPS business licensees who are either active licensees or non-operational licensees. To determine the amounts owed by each individual TPPPS business licensee, the Commission did the following:

- The Commission set the annual fee amount of surrendered or revoked licensees at \$0 as these persons are no longer licensees with the Commission.
- To determine the amount owned by each active licensee whose three-year average revenue is under \$1,500,000, the Commission divided the total annual fee by the three-year average number of Commission actions.
- To determine the amount owed by each non-operational licensees, the Commission took the amount owned by each active licensee whose three-year average gross revenue is under \$1,500,000 and divided it by half.
- To determine the percentage of three-year average gross revenue over \$1,500,000, the Commission determined the remaining annual fee owed by subtracting the amounts determined for active licensee whose three-year average gross revenue is under \$1,500,000 and non-operational licensees from the total amount owed by all TPPPS business licensees.

The remainder amount is divided by the total average gross revenue of all TPPPS licensees with \$1,500,000 or more in revenue. The resulting percentage is what is provided in the regulation, and will be applied to each TPPPS licensee's three-year average gross revenue to issue the invoice.

This distribution, as provided in the MGT Cost and Fee Study, provides that larger TPPPS business licensees, who generally require more non-application administrative costs since they operate at more tables and have more employees/licensees, pays a larger portion of the required total fee amount as their annual fee. By splitting up the remainder of the total fee amongst these licensees and utilizing their three-year average gross revenue, each TPPPS business licensee is required to pay a proportional percentage of the total fee while still ensuring that the Commission and Bureau receive all fees necessary to cover the costs of these necessary services.

REQUIRED DETERMINATIONS:

LOCAL MANDATE:

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

ECONOMIC AND FISCAL IMPACT ANALYSIS:

The Commission has consulted with the California Department of Finance (DOF) on the resubmittal of this package. DOF concurred that this resubmittal does not result in any changes

to the previously approved economic and fiscal impact statement (Form STD. 399) and no additional signoff is required.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulations would be more effective in carrying out the purpose for which the action is proposed. No reasonable alternative would be as effective as and less burdensome to affected private persons than the proposed action, nor would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

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

IV. THIRD 15-DAY WRITTEN PUBLIC COMMENT PERIOD

The following three comment letters were received regarding the Modified Text of the proposed action during the third 15-day written comment period that commenced on October 5, 2022, and ended on October 19, 2022 (Author – Title – Date):

1. J. Blonien, Professional Law Corporation – Re: Proposed amended language of § 12252.2 and current fee structure – October 17, 2022
2. California Gaming Association – Re: Proposed Commission Fees Modernization Project II: CGCC-GCA-2021-07-R/C – October 18, 2022
3. Manatt, Phelps & Phillips, LLP – Re: Comments on Commission Fees Modernization Project from Park West Casinos, Inc., Certified Network M, LLC and Network Management Group, Inc. – October, 19, 2022

Pursuant to Government Code section 11346.8(c), the Commission finds that these comments do not relate to the proposed changes and need not be responded to in the final statement of reasons.

V. COMMENT RECEIVED OUTSIDE THE PUBLIC COMMENT PERIODS

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