CALIFORNIA GAMBLING CONTROL COMMISSION

INITIAL STATEMENT OF REASONS

UPDATE TO ANNUAL FEES
CGCC-GCA-2023-03-R

HEARING DATE: None Scheduled

SUBJECT MATTER OF PROPOSED REGULATIONS: Update to Annual Fees

SECTIONS AFFECTED: California Code of Regulations, Title 4, Division 18: Sections 12252, 12252.2, 12368, and 12368.2

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

INTRODUCTION:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the Gambling Control Act (Act).[1] The Commission is authorized to adopt regulations as necessary to implement the Act.

In 2022 and 2023, the Commission adopted annual fee amounts for Third-Party Proposition Player Services (TPPPS) business licensees[2] and cardroom business licensees.[3] Those annual fee amounts were based on a cost and fee analysis that utilized point-in-time workload data and fiscal information from the Commission and the Department of Justice (DOJ), and information collected from the industry. However, that analysis was based on available data through fiscal year 2021-22, and during the rulemaking process, the Commission acknowledged that over time, that data may no longer reflect the most accurate annual fee amounts. The Commission also committed to conducting annual cost and fee analyses to ensure its fees appropriately reflect workload-based costs incurred, and attribute costs appropriately to cardroom business licensees and TPPPS business licensees, based on workload attributable to each portion of the industry. As the result of the most recent cost and fee analysis, the Commission is proposing to update the amounts for the 2025 annual fees, which will be invoiced in October 2024, utilizing the latest available data through fiscal year 2022-23. The Commission has utilized the same calculation methods, detailed below, as were utilized to determine the annual fee amounts in the current regulations.

[1] Business and Professions Code, Division 8, Chapter 5, section 19800 et seq.
[2] OAL Matter Number 2022-1021-06
[3] OAL Matter Number 2023-0306-03

PROBLEM ADDRESSED:

California State Auditor Report

As directed by the Joint Legislative Audit Committee, the California Bureau of State Audits (State Auditor) began conducting an audit of the Commission and the DOJ Bureau of Gambling Control (Bureau) in 2018. The audit focused on each entity's regulatory duties supported by the Gambling Control Fund (GCF)[4], which include the licensing of individuals who own or work in cardrooms, including TPPPS. The State Auditor's Report (Audit Report)[5] released on May 16, 2019, found that to varying degrees, the fees charged resulted in unequal treatment of license applicants and did not align with the costs of providing regulatory oversight and related services. This situation resulted in an excessive surplus in the GCF.

To better align the revenue in the GCF with the costs of the activities that the fund supports, the Audit Report recommended the Commission and the Bureau conduct cost analyses of those activities by July 2020, assessing at a minimum, the following:

- The entities' personnel costs, operating costs, and any program overhead costs.
- Updated time estimates for their core and support activities.
- The cost of their enforcement activities.

Further, the Audit Report recommended that the Commission and the Bureau should use this information to reset their regulatory fees to reflect their actual costs.

Cost and Fee Study

Pursuant to the State Auditor's recommendation, in July 2019, the Commission and the Bureau contracted with MGT Consulting Group (MGT), a third-party consulting company, to complete a cost and fee study. The study's primary objective was to conduct a cost analysis to determine if the revenue collected and deposited into the GCF aligned with the costs of the activities that the fund supports. The study detailed the full costs necessary to regulate the industry and presented full-cost fee adjustments, including their fiscal impact. Specifically, the study provided fee recommendations to align the revenue collected and deposited into the GCF with the costs of the activities conducted by the Commission and the DOJ that the fund supports.

MGT issued their report in June 2021, representing the culmination of an extensive analysis conducted by MGT in collaboration with both the Bureau and the Commission's management and staff. The Commission submitted copies of the MGT report to the Department of Finance and the State Auditor. Subsequently, the Commission promulgated several regulatory amendments to implement fee changes resulting from the Audit Report's recommendations and findings of the cost and fee study.

PURPOSE:

This proposed action updates the annual fee amounts for cardroom business licensees and TPPPS business licensees, based upon the calculation method recommended by MGT in response to the Audit Report, as discussed above.

[4] Gambling Control Fund (0567)
[5] State Audit Report 2018-132

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

This proposed action will have the benefit of requiring cardroom business licensees and TPPPS business licensees to pay total annual fees in an amount necessary for the Commission and Bureau to maintain proper funding levels, while aligning the annual fees paid by each portion of the industry (cardrooms and TPPPS) with the costs associated with workload attributable to that portion of the industry.

PROPOSED ACTION:

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

CHAPTER 3. CONDITIONS OF OPERATION FOR TPPPS BUSINESSES
ARTICLE 1. GENERAL PROVISIONS

Amend Section 12252. TPPPS Annual Fee.

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

The title of Section 12252 is modified with a non-substantive change from "TPPPS Annual Fee" to "TPPPS Business Licensee Annual Fee," for greater consistency with the existing provisions of that Section and to conform to the proposed modification to the title of Section 12368.

Subsection (a) provides that no later than October 1 of each year beginning on October 1, 2022, an invoice in an amount determined by the Commission pursuant to Section 12368.2 will be sent by the Bureau to each TPPPS business licensee. This provision is modified to change the invoice date to October 5 of each year beginning on October 5, 2024. This amendment is necessary to ensure the invoices reflect the latest annual fee amounts in the event regulatory amendments to the annual fee become effective on October 1, as provided in Government Code section 11343.4.

Subsection (c) provides the timeline and standard for disapproval by the Bureau of a request for installment payments, and specifies annual fee payment deadlines for TPPPS business licensees. Specifically, subsection (c) requires TPPPS business licensees approved for installment payments to make those payments by January 1, April 1, and June 30 of the payment year. If the TPPPS business licensee did not request installment payments or their request was disapproved by the Bureau, subsection (c) requires the TPPPS business licensee to pay the entire annual fee amount by January 1. This provision is modified to change the first two installment payment deadlines to January 5 and April 5, respectively, and to change the lump sum payment deadline if the TPPPS business licensee is not making installment payments to January 5. These amendments are necessary to conform to the amendments to subsection (a), to ensure that the majority of payment timeframes are not reduced by the amendments to subsection (a), and to ensure that all installment payments are still made within the state fiscal year.

Paragraph (2) of subsection (g) provides that for the first full calendar year of licensure, a TPPPS business licensee will be invoiced the unadjusted annual fee required of an active licensee with a gross revenue under $1,500,000, as provided in Section 12252.2, for the following calendar year. Additionally, paragraph (2) specifies that if the license is approved after October 1, this invoice will be issued concurrently with the invoice required in paragraph (1) of subsection (g). This provision is modified to change the date after which approval of the license will result in issuance of the invoice concurrently with the invoice required in paragraph (1) of subsection (g), from October 1 to October 5. This is a conforming change to the amendment to subsection (a).

Subsection (h) is proposed to be added to specify that if three years of gross revenue data is unavailable for an active TPPPS business licensee, the Commission will utilize the available gross revenue data to determine that TPPPS business licensee's annual fee pursuant to Section 12252.2. Paragraph (1) of subsection (h) specifies that if only one year of gross revenue data is available within the previous three years, that year's gross revenue will serve as the three-year average gross revenue to determine the TPPPS business licensee's annual fee pursuant to Section 12252.2. Paragraph (2) of subsection (h) specifies that if only two years of gross revenue data are available within the previous three years, the average of those two years' gross revenue will serve as the three-year average gross revenue to determine the TPPPS business licensee's annual fee pursuant to Section 12252.2. These additions are necessary to clarify how the annual fee amount will be determined for active TPPPS business licensees for which three years of gross revenue data is unavailable, as the annual fee amounts for active TPPPS business licensees pursuant to Section 12252.2 depend upon the TPPPS business licensee's three-year average gross revenue. In some cases, such as when a TPPPS business licensee was not operational for all of the previous three years, or a TPPPS business licensee has not reported gross revenue data timely, it is not possible for the Commission to calculate a TPPPS business licensee's three-year average gross revenue.

Amend Section 12252.2. TPPPS Annual Fee Amounts.
Section 12252.2 provides the annual fee amounts required of TPPPS business licensees. The title of Section 12252.2 is modified with a non-substantive change from "TPPPS Annual Fee Amounts" to "TPPPS Business Licensee Annual Fee Amounts." This change provides greater consistency with the terms used in the Section and conforms to the proposed modification to the title of Section 12252.

Section 12252.2 specifies that the annual fee amounts for TPPPS business licensees include:

- $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.

To determine the current annual fees, the Commission used a step-by-step calculation method that began with the Commission's and Bureau's operational costs that are not directly related to any direct fees or deposits—which are charged directly to an applicant, cardroom or TPPPS—following the MGT cost and fee study. The Commission used this same calculation method to determine the proposed annual fees for this action, which are:

- $0 for surrendered or revoked licensees;
- $2,411 for non-operational licensees;

- $4,823 for active licensees with a three-year average gross revenue under $1,500,000; or,
- 1.48% of the three-year average gross revenue for active licensees with a three-year average gross revenue of $1,500,000 or more.

The process was as follows:

The Commission collected budget information and workload-based cost and volume data from the Commission and DOJ. The Commission analyzed the data and removed any costs related to an industry other than cardrooms or TPPPS businesses, such as Tribal-related costs. The remaining costs, all related to either cardrooms or TPPPS businesses, were analyzed to determine which costs were not related to any direct fee or deposit, and any costs related to a direct fee or deposit were removed from the data set. The remaining cost data was examined and divided into one of six categories, or "cost pools," based on the associated workload function:

Cost Pool 1. Non-application costs that are not directly attributed to an application fee or deposit. This includes costs associated with administration, information technology, and legislative and regulatory workload that affects both cardrooms and TPPPS.

Cost Pool 2. Non-application costs that have a connection to the application process for the controlled gambling industry, but are not charged to a direct fee or deposit because the costs are not specific to a submitted application. This includes 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 borne separately amongst TPPPS business licensees and cardroom business licensees.

Cost Pool 4. Non-application costs generated by matters requiring Commission action. This includes 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, local ordinance reviews, and legislative and regulatory workload that affects only cardrooms.

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, non-investigation industry inquiries or correspondence, and legislative and regulatory workload that affects only TPPPS.

The cost data in each cost pool was then separated into two portions, those costs associated with TPPPS business licensees and those costs associated with cardroom business licensees. The cost pools were separated as follows:

Cost Pool 1. The Commission split this cost pool evenly between cardrooms and TPPPS.

Cost Pool 2. The Commission calculated the percentages of total applications for cardroom business licensees and TPPPS business licensees using the average number of applications submitted over the previous five fiscal years.[6] This percentage was applied to Cost Pool 2.

Cost Pool 3. The Commission determined the percentage of active and non-operational cardroom 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 determined the percentages 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.

To determine the total annual fee to be paid by all TPPPS business licensees, the Commission totaled the amounts from each cost pool that were attributable to TPPPS. To determine the amounts owed by each individual TPPPS business licensee, the Commission did the following:

- The Commission set the annual fee amount for surrendered or revoked licensees at $0, as these persons are no longer licensees with the Commission.
- To determine the amount owed by each active licensee whose three-year average gross revenue was under $1,500,000, the Commission divided the total annual fee amount owed by TPPPS business licensees by the three-year average number of Commission actions.
- To determine the amount owed by each non-operational licensee, the Commission divided by half the amount owed by each active licensee whose three-year average gross revenue was under $1,500,000.
- To determine the percentage owed by licensees with a three-year average gross revenue of $1,500,000 or more, the Commission determined the remaining annual fee owed as follows:
    - Subtracting the amounts determined for active licensees whose three-year average gross revenue was under $1,500,000 and non-operational licensees from the total amount owed by all TPPPS business licensees.
    - Dividing the result by the total three-year average gross revenue of all TPPPS business licensees with a three-year average gross revenue of $1,500,000 or more.
    - The resulting percentage is what is provided in the regulation, and will be applied to each TPPPS business licensee's three-year average gross revenue amount to determine the amount owed.

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 because they have more employees/licensees, generate more compliance and enforcement regulatory activity, and/or generate more Commission actions than smaller entities, pay a larger portion of the required total fee amount as their annual fee. By splitting up the remainder of the total fee

[6] If application submittal data was available for fewer than the previous five fiscal years, the Commission used an annual average of available application data within that timeframe.

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.

CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS
ARTICLE 1. GENERAL PROVISIONS

Amend Section 12368. Cardroom Business License Annual Fee.
Section 12368 provides the process and timelines for a cardroom business licensee to submit their annual fee.

The title of Section 12368 is modified with a non-substantive change from "Cardroom Business License Annual Fee" to "Cardroom Business Licensee Annual Fee," for greater consistency with the existing provisions of that Section.

Subsection (a) provides that no later than October 1 of each year beginning on October 1, 2022, an invoice in an amount determined by the Commission pursuant to Section 12368.2 will be sent by the Bureau to each cardroom business licensee. This provision is modified to change the invoice date to October 5 of each year beginning on October 5, 2024. This amendment is necessary to ensure the invoices reflect the latest annual fee amounts in the event regulatory amendments to the annual fee become effective on October 1, as provided in Government Code section 11343.4.

Subsection (c) provides the timeline and standard for disapproval by the Bureau of a request for installment payments, and specifies annual fee payment deadlines for cardroom business licensees. Specifically, subsection (c) requires cardroom business licensees approved for installment payments to make those payments by January 1, April 1, and June 30 of the payment year. If the cardroom business licensee did not request installment payments or their request was disapproved by the Bureau, subsection (c) requires the cardroom business licensee to pay the entire annual fee amount by January 1. This provision is modified to change the first two installment payment deadlines to January 5 and April 5, respectively, and to change the lump sum payment deadline if the cardroom business licensee is not making installment payments to January 5. These amendments are necessary to conform to the amendments to subsection (a), to ensure that the majority of payment timeframes are not reduced by the amendments to subsection (a), and to ensure that all installment payments are still made within the state fiscal year.

Paragraph (2) of subsection (g) provides that for the first full calendar year of licensure, a cardroom business licensee will be invoiced the unadjusted annual fee required of an active licensee with a gross revenue under $1,500,000, as provided in Section 12252.2, for the following calendar year. Additionally, paragraph (2) specifies that if the license is approved after October 1, this invoice will be issued concurrently with the invoice required in paragraph (1) of subsection (g). This provision is modified to change the date after which approval of the license will result in issuance of the invoice concurrently with the invoice required in paragraph (1) of subsection (g), from October 1 to October 5. This is a conforming change to the amendment to subsection (a).

Subsection (h) is proposed to be added to specify that if three years of gross revenue data is unavailable for an active cardroom business licensee, the Commission will utilize the available gross revenue data to determine that cardroom business licensee's annual fee pursuant to Section 12368.2. Paragraph (1) of subsection (h) specifies that if only one year of gross revenue data is available within the previous three years, that year's gross revenue will serve as the three-year average gross revenue to determine the cardroom business licensee's annual fee pursuant to Section 12368.2. Paragraph (2) of subsection (h) specifies that if only two years of gross revenue data are available within the previous three years, the average of those two years' gross revenue will serve as the three-year average gross revenue to determine the cardroom business licensee's annual fee pursuant to Section 12368.2. These additions are necessary to clarify how the annual fee amount will be determined for active cardroom business licensees for which three years of gross revenue data is unavailable, as the annual fee amounts for active cardroom business licensees pursuant to Section 12368.2 depend upon the cardroom business licensee's three-year average gross revenue. In some cases, such as when a cardroom business licensee was not operational for all of the previous three years, or a cardroom business licensee has not reported gross revenue data timely, it is not possible for the Commission to calculate a cardroom business licensee's three-year average gross revenue.

Amend Section 12368.2. Cardroom Business License Annual Fee Amounts.
Section 12368.2 provides the annual fee amounts required of cardroom business licensees. The title of Section 12368.2 is modified with a non-substantive change from "Cardroom Business License Annual Fee Amounts" to "Cardroom Business Licensee Annual Fee Amounts." This change provides greater consistency with the terms used in the Section and conforms to the proposed modification to the title of Section 12368.

Section 12368.2 specifies that the annual fee amounts for cardroom business licensees include:

- $0 for surrendered or revoked licensees;
- $5,237 for non-operational licensees;
- $10,473 for active licensees with a three-year average gross revenue under $1,500,000; or,
- 1.29% of the three-year average gross revenue for active licensees with a three-year average gross revenue of $1,500,000 or more.

To determine the current annual fees, the Commission used a step-by-step calculation method that began with the Commission's and Bureau's operational costs that are not directly related to any direct fees or deposits—which are charged directly to an applicant, cardroom, or TPPPS—following the MGT cost and fee study. The Commission used this same calculation method to determine the proposed annual fees for this action, which are:

- $0 for surrendered or revoked licensees;
- $6,234 for non-operational licensees;
- $12,468 for active licensees with a three-year average gross revenue under $1,500,000; or,

- 1.33% of the three-year average gross revenue for active licensees with a three-year average gross revenue of $1,500,000 or more.

The process was as follows:

The Commission collected budget information and workload-based cost and volume data from the Commission and DOJ. The Commission analyzed the data and removed any costs related to an industry other than cardrooms or TPPPS businesses, such as Tribal-related costs. The remaining costs, all related to either cardrooms or TPPPS businesses, were analyzed to determine which costs were not related to any direct fee or deposit, and any costs related to a direct fee or deposit were removed from the data set. The remaining cost data was examined and divided into one of six categories, or “cost pools,” based on the associated workload function:

Cost Pool 1. Non-application costs that are not directly attributed to an application fee or deposit. This includes costs such as those associated with administration, information technology, and legislative and regulatory workload.

Cost Pool 2. Non-application costs that have a connection to the application process for the controlled gambling industry, but are not charged to a direct fee or deposit because the costs are not specific to a submitted application. This includes costs such as those 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 such as those associated with compliance and enforcement, financial audits, calls for service, and incident reports borne separately amongst TPPPS business licensees and cardroom business licensees.

Cost Pool 4. Non-application costs generated by matters requiring Commission action. This includes costs such as those 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 data in each cost pool was then separated into two portions, those costs associated with TPPPS business licensees and those costs associated with cardroom business licensees. The cost pools were separated as follows:

Cost Pool 1. The Commission split this cost pool evenly between cardrooms and TPPPS.

Cost Pool 2. The Commission calculated the percentages of total applications for cardroom business licensees and TPPPS business licensees using the average number of applications submitted over the previous five fiscal years.[7] This percentage was applied to Cost Pool 2.

[7] If application submittal data was available for fewer than the previous five fiscal years, the Commission used an annual average of available application data within that timeframe.

Cost Pool 3. The Commission determined the percentage of active and non-operational cardroom 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 determined the percentages 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.

To determine the total annual fee to be paid by all cardroom business licensees, the Commission totaled the amounts from each cost pool that were attributable to cardrooms. To determine the amounts owed by each individual cardroom, the Commission did the following:

- The Commission set the annual fee amount for surrendered or revoked licensees at $0, as these persons are no longer licensees with the Commission.
- To determine the amount owed by each active licensee whose three-year average gross revenue was under $1,500,000, the Commission divided the total annual fee amount owed by cardrooms by the three-year average number of Commission actions.
- To determine the amount owed by each non-operational licensee, the Commission divided by half the amount owed by each active licensee whose three-year average gross revenue was under $1,500,000.
- To determine the percentage owed by licensees with a three-year average gross revenue of $1,500,000 or more, the Commission determined the remaining annual fee owed as follows:
    - Subtracting the amounts determined for active licensees whose three-year average gross revenue was under $1,500,000 and non-operational licensees from the total amount owed by all cardroom business licensees.
    - Dividing the result by the total three-year average gross revenue of all cardroom business licensees with a three-year average gross revenue of $1,500,000 or more.
    - The resulting percentage is what is provided in the regulation, and will be applied to each cardroom business licensee’s three-year average gross revenue amount to determine the amount owed.

This distribution, as provided in the MGT Cost and Fee Study, provides that larger cardroom business licensees, who generally require more non-application administrative costs because they operate more tables, have more employees/licensees, generate more compliance and enforcement regulatory activity, and/or generate more Commission actions than smaller entities, pay 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 cardroom 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.

UNDERLYING DATA:

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

BUSINESS IMPACT:

The Commission has made a determination that the proposed regulatory action will not have a 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 new mandatory requirements on businesses.

The Commission anticipates a statewide savings of approximately $357,877 in TPPPS annual fees. This savings would directly impact TPPPS business licensees. This is reflected as an average savings of approximately $78,118 in annual fees for a typical business and approximately $2,064 for a small business. These estimates were calculated based on the difference between 2024 annual fees invoiced to TPPPS business licensees in October 2023 based on the annual fee amounts in the current regulations, compared to the 2024 annual fees that would have been invoiced to TPPPS business licensees based on the proposed amendments to the annual fee amounts. As previously described, the calculation method was weighted to ensure that those businesses whose three-year average gross revenue is under $1,500,000 per year pay a lower proportion of the total fees necessary in order to ensure that no TPPPS business licensee is significantly impacted.

The Commission anticipates an additional statewide cost of approximately $399,524 in cardroom annual fees. This cost would directly impact cardroom business licensees. This is reflected in an average increase of approximately $25,515 in annual fees for a typical business and approximately $2,327 for a small business. These estimates were calculated based on the difference between 2024 annual fees invoiced to cardroom business licensees in October 2023 based on the annual fee amounts in the current regulations, compared to the 2024 annual fees that would have been invoiced to cardroom business licensees based on the proposed amendments to the annual fee amounts. As previously described, the calculation method was weighted to ensure that those businesses whose three-year average gross revenue is under $1,500,000 per year pay a lower proportion of the total fees necessary in order to ensure that no cardroom business licensee is significantly impacted.

For purposes of estimating the impact to typical businesses and small businesses, the Commission utilized federal Small Business Administration (SBA) definitions of a small business for casinos and other gambling industries. An average annual gross gaming revenue of $34 million was used as the threshold for small business cardrooms, as specified in the North American Industry Classification System (NAICS) Code section 713210 and referenced by the SBA in Section 121.201 of Title 13, Part 121 of the Electronic Code of Federal Regulations.

Cardroom business licensees having a three-year average gross revenue of no more than $34 million were identified as small businesses. An average annual gross gaming revenue of $40 million was used as the threshold for small business TPPPS, as specified in the North American Industry Classification System (NAICS) Code section 713290 and referenced by the SBA in Section 121.201 of Title 13, Part 121 of the Electronic Code of Federal Regulations. TPPPS business licensees having a three-year average gross revenue of no more than $40 million were identified as small businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

The proposed action does not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California.

The basis for this determination is that this proposed action only adjusts TPPPS business licensees' and cardroom business licensees' annual fees to better align with costs incurred by the Commission and Bureau, which is unlikely to result in additional or reduced industry participation or performance.

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:

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.

Between December 28, 2022, through March 1, 2023, the Commission solicited from all stakeholders alternative methodologies to determine the annual fees for cardrooms and TPPPS. The Commission received one response that provided a detailed alternative methodology within the Commission's regulatory authority. Set forth below is a description of the alternative that was considered and the reasons that alternative was rejected. No other reasonable alternative methodology has been developed or otherwise identified and brought to the attention of the Commission.

In summary, the differences between the annual fee methodology the Commission utilizes and the alternative methodology provided were as follows:

- Although there was no proposed change in the Cost Pools or how to determine the amount of each Cost Pool, it was proposed that the amount of each Cost Pool would be divided amongst active and non-operational cardrooms and TPPPS based on the following methodology:

  Cardrooms:
  - The percentage of Cost Pool 1 and 2 costs to be attributed to active cardrooms would be determined by dividing the total number of authorized tables for all active cardrooms by the total number of all authorized tables.
  - The percentage of Cost Pool 1 and 2 costs to be attributed to non-operational cardrooms would be determined by dividing the total number of authorized tables for all non-operational cardrooms by the total number of all authorized tables.
  - Cost Pools 3-6 would be attributed only to active cardrooms.

  TPPPS:
  - The percentage of Cost Pool 1 and 2 costs to be attributed to active TPPPS would be determined by dividing the total number of licensed employees for all active TPPPS by the total number of all licensed TPPPS employees.
  - The percentage of Cost Pool 1 and 2 costs to be attributed to all non-operational TPPPS would be determined by dividing the total number of licensed employees for all non-operational TPPPS by the total number of all licensed TPPPS employees.
  - Cost Pools 3-6 would be attributed only to active TPPPS.

- The total amount of costs identified in Cost Pools 1 and 2 for non-operational cardrooms and non-operational TPPPS would be divided by the number of cardroom and TPPPS non-operational entities, respectively, to determine a base cost for each non-operational cardroom or TPPPS.

- The total amount of costs identified in Cost Pools 1-6 for active cardrooms and TPPPS would be divided by the total number of authorized tables for active cardrooms and the total number of licensed employees for active TPPPS to determine a per-table or per-licensed-employee cost. The per-table amount multiplied by the number of authorized tables for each active cardroom would be that active cardroom’s annual fee amount due. The per-licensed-employee amount multiplied by the number of licensed employees for each active TPPPS would be that active TPPPS’ annual fee amount due.

The reasons this alternative methodology was not utilized are as follows:

- When the methodology was applied using real industry data, 72 percent of cardrooms' annual fees and 85 percent of TPPPS' annual fees increased compared to the annual fees calculated utilizing the Commission's current methodology.
- Among the entities whose annual fees would have increased, the average increase of the amount to be billed was 89 percent for cardrooms and 288 percent for TPPPS.
- Non-operational entities' annual fee amounts—which are fixed amounts in both the current and alternative methodologies—would have increased by 35 percent for cardrooms and 560 percent for TPPPS.
- The alternative methodology shifted a larger share of costs to small businesses, compared to the current methodology. When compared to the current methodology, the alternative methodology shifted a statewide total of approximately $527,902 in annual fees from typical (non-small business) cardrooms to small business cardrooms, and a statewide total of approximately $1.4 million in annual fees from typical (non-small business) TPPPS to small business TPPPS.
- The increases to non-operational and smaller cardrooms and TPPPS could have significantly jeopardized whether the entities could maintain a license/business.
- The methodology would have caused inconsistencies between how cardrooms and TPPPS are charged annual fees, which is in direct contrast to the State Auditor's recommendation to increase uniformity in the licensing process.
- The proposal not to apply costs associated with Cost Pools 3-6 to non-operational entities is not justified. Non-operational entities choose to maintain a license in a highly regulated industry. The costs associated with Cost Pools 3-6 are costs associated with regulating the industry as a whole.