

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 115.00: PHASE 1 **AND NEW QUALIFIER** SUITABILITY DETERMINATION,  
STANDARDS, AND PROCEDURES

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115.01: Phase 1 **and New Qualifier** Determination Standards

(1) Phase 1 Determination Standards. The commission shall not issue an affirmative determination of suitability for any Category 1 or Category 2 applicants unless:

- (a) The applicant meets the standards in M.G.L. c. 23K, §§ 12, 16, 46 and 47.
- (b) The applicant complies with the provisions of 205 CMR 111.00: *Phase I Application Requirements* and 205 CMR 115.00.
- (c) The commission has determined that the applicant has demonstrated financial stability pursuant to 205 CMR 117.00: *Phase I Determination of Financial Stability*.
- (d) All qualifiers under 205 CMR. 116.02: *Persons Required to be Qualified* have been determined to be suitable by the commission or received a waiver under 205 CMR 116.03: *Waivers*.

(2) Burden of Proof. All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.

(3) New qualifiers Subsequent to the issuance of a positive determination of suitability in accordance with 205 CMR 115.05(3) relative to a gaming licensee or applicant for a gaming license, if a new person is designated by the bureau as a person required to be qualified in accordance with 205 CMR 116.02, they shall submit a completed application to the bureau. An entity qualifier shall submit to the bureau a *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* in accordance with 111.02. An individual qualifier shall submit to the bureau a *Multi-jurisdictional Personal History Disclosure Form* in accordance with 205 CMR 111.03 and a *Massachusetts Supplemental Form* in accordance with 205 CMR 111.04. A new qualifier designated in accordance with 205 CMR 116.02 must establish their qualifications and meet the standards in M.G.L. c. 23K, §§ 12 and 16 by clear and convincing evidence and shall be subject to all applicable procedures contained in 205 CMR 115.00.

115.02: Phase 1 **and New Qualifier** Procedures

(1) When a completed RFA-1 application, *Multi-jurisdictional Personal History Disclosure Form, Massachusetts Supplemental Form, or Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* is filed, the application shall be referred by the commission to the bureau for a determination of completeness and investigation.

(2) Determination of Administrative Completeness. After receiving the application containing the information required by 205 CMR 111.02: *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* or 205 CMR 111.03: *Multi-jurisdictional Personal History Disclosure Form* and 205 CMR 111.04: *Massachusetts Supplemental Form* the bureau will either determine that the application is sufficiently complete for purposes of initiating substantive review or request additional information from the applicant.

(3) Notice. ~~After the bureau has determined the application to be administratively complete pursuant to 205 CMR 111.02(2): *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies*, the commission shall notify the applicant of the determination and notify the public that an application has been filed.~~ After the bureau has determined that an application is administratively complete in accordance with 205 CMR 115.02(2) it shall notify the applicant or new qualifier of such determination.

#### 115.03: Phase 1 and New Qualifier Investigation and Recommendations by the Bureau

(1) The bureau shall conduct an investigation into the qualifications and suitability of all applicants and qualifiers, as provided for in M.G.L. c. 23K, §§ 12 and 16. The bureau may conduct the investigation, in whole or in part, with the assistance of one or more contractor investigators pursuant to 205 CMR 105.10: *Authority to Retain and Utilize Contractor Investigators*.

(2) At the completion of the bureau's investigation, it shall submit a written report to the commission. At a minimum, this report will include: recommendations pursuant to M.G.L. c. 23K, §§ 12, 14(i) and 16 and findings of fact pursuant to M.G.L. c. 23K, § 17(f), as required, relative to the suitability of the applicant for a gaming license and of any new qualifiers.

#### 115.04: Phase 1 and New Qualifier Proceedings by the Commission

(1) After the commission has received the bureau's report under 205 CMR 115.03(2) it shall provide a copy to the applicant or new qualifier and the commission shall determine whether it shall initiate a process for a public hearing or adjudicatory proceeding. However, the commission may only utilize the public hearing process with the qualifier's consent.

(2) Applicant's Notice of Claim. ~~If the applicant contests any of the bureau's recommendations or findings of fact it shall file a notice of claim with the commission within 30 days of receipt of~~

the bureau's report.

~~(3)~~ **(2) Adjudicatory Proceeding.** If the applicant files a Notice of Claim pursuant to 205 CMR 115.04(2) or on the commission's own initiative, **the commission determines that an adjudicatory proceeding shall be held**, the commission shall conduct an adjudicatory proceeding pursuant to 205 CMR 101.03: *Special Procedures for Hearings before the Commission* 101.00 M.G.L. c. 23K *Adjudicatory Proceedings* on the ~~Phase 1~~ report by the bureau concerning the applicant pursuant to 205 CMR 115.03(2). The commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing.

~~(4)~~ **(3) Public Hearing.** If the bureau's suitability report under 205 CMR 115.03(2) recommends an unconditional positive determination of suitability for the applicant, without findings of fact that are contested by the applicant, then the applicant may request and the commission may waive the need for an adjudicatory hearing concerning the bureau's report, in which case **commission determines that a public hearing should be held**, the commission shall review the bureau's suitability report in a public hearing, subject to redaction of confidential and exempt information described in 205 CMR 103.02(1) through (5). The commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing and the form (oral or written) and conditions pursuant to which the commission will receive public comments.

#### 115.05: Phase 1 **and New Qualifier** Determination by the Commission

(1) After the proceedings under 205 CMR 115.04, the commission shall issue a written determination of suitability pursuant to M.G.L. c. 23K, §§ 4(15), 12 and 17.

(2) **Negative Determination.** If the commission finds that an applicant **or new qualifier** failed to meet its burden of demonstrating compliance with the suitability standards in M.G.L. c. 23K and 205 CMR 115.00, the commission shall issue a negative determination of suitability.

(3) **Positive Determination.** If the commission finds that an applicant **or new qualifier** has met its burden of demonstrating compliance with the suitability in M.G.L. c. 23K and 205 CMR 115.00, the commission shall issue a positive determination of suitability which may include conditions and restrictions.

(4) The commission shall not entertain a Phase 2 application for any applicant unless and until the commission has issued a positive suitability determination on that applicant.

(5) **No Appeal from Commission's Determination of Suitability.** Pursuant to M.L.G. c. 23K, § 17(g) the applicant **or qualifier** shall not be entitled to any further review.

(6) A host community may not hold an election in accordance with M.G.L. c. 23, § 15(13) until the commission has issued a positive determination of suitability to the applicant in accordance with 205 CMR 115.05(3) unless the following conditions are satisfied:

(a) Prior to the request by the applicant for an election in accordance with 205 CMR 124.02(1), the governing body of the community formally approves of holding the election prior to a positive determination of suitability having been issued to the applicant by the

commission; and

(b) at the expense of the applicant, prior to the election the community has conducted a process for informing the community about the commission's determination of suitability standards and procedures, which shall include, but not be limited to, the provision of a notice designed to be received by voting households within the community informing such households that an election is to be held for which the applicant has yet to be issued a positive determination of suitability, that the commission will make its determination of suitability after completing a thorough background investigation of the applicant, its principal operating officers and investors, and that the commission will not permit the applicant or its principal operating officers or investors to proceed with the application unless it determines that they are suitable to operate a gaming facility in Massachusetts. The content of the notice shall be forwarded to the commission for approval prior to dissemination. A description of other methods to so inform the community about the commission's determination of suitability standards and procedures shall also be forwarded to the commission prior to holding of the election. Any failure to issue the notice to one or more voting households shall not be deemed by the commission to be a failure to meet the requirements of 205 CMR 115.05(6), provided that a community demonstrates reasonable efforts to comply with the requirements of 205 CMR 115.05(6).