



## **NOTICE OF MEETING and AGENDA**

March 28, 2013 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Thursday, March 28, 2013

1:00 p.m.

Division of Insurance

1000 Washington Street

1<sup>st</sup> Floor, Meeting Room 1-E

Boston, Massachusetts

### **PUBLIC MEETING - #61**

1. Call to order
2. Approval of Minutes
  - a. March 12, 2013 Meeting
3. Administration
  - a. Master schedule
4. Qualifier status review
5. Public Education and Information
  - a. Report from the Ombudsman
    - i. Category 2 deadlines
6. Regulation Update
  - a. Regulation review - VOTE
  - b. Schedule update
  - c. Evaluation Criteria – Final Approval
7. Racing Division
  - a. Administrative update
  - b. Proposed “phase II” regulation changes to 205 CMR 4.00 – rules governing flat racing - VOTE
8. Research Agenda
  - a. Research respondent presentation

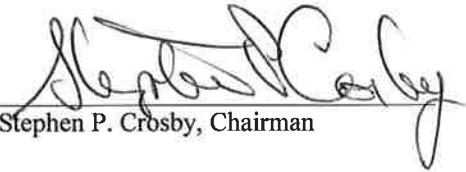


Massachusetts Gaming Commission

9. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as “Gaming Commission Meeting” at [www.massgaming.com](http://www.massgaming.com) and emailed to: [rcgs@sec.state.ma.us](mailto:rcgs@sec.state.ma.us), [melissa.andrade@state.ma.us](mailto:melissa.andrade@state.ma.us), [brian.gosselin@state.ma.us](mailto:brian.gosselin@state.ma.us).

3/26/13  
(date)

  
Stephen P. Crosby, Chairman

**Date Posted to Website:** March 26, 2013 at 1:00 p.m.



Massachusetts Gaming Commission

# MEMO

TO: Chairman Steve Crosby  
Commissioner Gayle Cameron  
Commissioner James McHugh  
Commissioner Bruce Stebbins  
Commissioner Enrique Zuniga  
Executive Director Rick Day

FROM: Director Karen Wells  
General Counsel Catherine Blue

RE: Vornado Trust

DATE: March 28, 2013

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This memorandum regards a proposed trust agreement between Sterling Suffolk Racecourse ("the applicant") and Vornado Suffolk ("Vornado") which places the Vornado interest in the Sterling Suffolk application for a gaming license into a blind trust.

Originally fourteen individuals associated with Vornado were identified by the IEB as qualifiers for purposes of the applicant's suitability investigation. Of those original 14 individuals, one was allowed to withdraw as a qualifier and two individuals filed the required disclosure forms as part of the SSR RFA – 1 application. The remaining eleven individuals refused to file required disclosure forms as part of the SSR RFA -1 application. The applicant's representatives came to meet with IEB to determine how they could proceed in the process and have the application deemed complete.

One option that has been used in another jurisdiction where this question arose is to allow the qualifier to place its interest in a trust managed by an independent trustee under a trust agreement which gives the trustee the sole ability to manage the interest without instruction or influence from the qualifier. The trustee of the trust becomes the qualifier for application purposes and would have to submit to the qualification process and be found suitable by the Commission.

The Commission received a request to place the entire Vornado interest in the application into a blind trust while parties complete a divestiture of Vornado's interest. The parties have proposed Stephen Kidder, of the law firm Hemenway & Barnes as the trustee. His bio is attached to this memo. Both IEB and the Legal Department have reviewed the proposed trust agreement, and are satisfied that if the applicant and Vornado enter into the trust agreement the application can be deemed complete without the disclosure forms that Vornado originally failed to file.

The matter is on the open meeting agenda for March 28, 2013, where Catherine Blue will present the matter to the Commission for the Commission's vote as to whether or not placing the Vornado interest into a trust and having the trustee of the trust subject to qualification by the Commission will allow the Sterling Suffolk application to proceed through the application process. In addition, the Commission will be asked to approve the withdrawal of certain qualifiers and the Vornado entities from the Sterling Suffolk application.



## Stephen W. Kidder

### Partner

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### Practice Focus

Stephen W. Kidder serves as the Managing Partner of Hemenway & Barnes LLP and as Chairman of the firm's Management Committee. Mr. Kidder also serves as President and Managing Director of Hemenway Trust Company, based in Salem, New Hampshire.

Mr. Kidder concentrates his practice in the areas of taxation and professional fiduciary services. Mr. Kidder counsels a number of New England's leading nonprofit organizations in the areas of governance, regulatory and compliance issues. In addition, he serves as a private fiduciary for many family trusts. Mr. Kidder represents major professional sports players associations nationally on both state and local tax issues.

Prior to joining Hemenway & Barnes LLP in 1991, Mr. Kidder served as Commissioner of Revenue (1987 to 1991) and as General Counsel to the Secretary for Administration and Finance for the Commonwealth of Massachusetts. Mr. Kidder also was a Clerk for the Honorable A. David Mazzone, Judge of the United States District Court for the District of Massachusetts.

### Representative Matters

- Mr. Kidder serves as tax counsel to all professional athlete players associations, including the Major League Baseball Players Association, the National Basketball Players Association, the National Football League Players Association, the National Hockey League Players Association and the Major League Soccer Players Association. Mr. Kidder represents the players associations on tax issues across the country.

### Education

JD, Boston College Law School  
(*magna cum laude*, Editor in Chief  
Boston College Law Review)

AB, Harvard University (*cum laude*)

### Bar Admissions

Massachusetts

- Mr. Kidder serves as General Counsel to Citizens Energy Corporation.
- Mr. Kidder is the Lead Independent Trustee of Century Mutual Funds.
- As counsel, Mr. Kidder obtained regulatory and court approval for the expansion and renovation of the Isabella Stewart Gardner Museum.

### Activities and Publications

- Mr. Kidder has written and spoken extensively about the taxation of professional athletes.
- "A task force on reforming the corporate tax system arrives at a timely consensus," Stephen W. Kidder, *CommonWealth Magazine*, Spring 2008
- Mr. Kidder has spoken to various groups about the PILOT program including the recommendations and impact on nonprofit organizations.

### Community Involvement

- President, Board of Trustees, Isabella Stewart Gardner Museum, Boston
- Trustee, Boston Children's Hospital Trust
- Trustee, Wellesley College
- Chair, Boston's PILOT Task Force (2009 through 2010) appointed by Mayor Thomas M. Menino
- Member of Commonwealth of Massachusetts Study Commission on Corporate Taxation (2007-2008) appointed by Governor Deval Patrick; Chair of the Subcommittee on Combined Reporting
- Past Trustee, Massachusetts Biomedical Research Corporation
- Past Trustee, Museum of Science
- Past Trustee, First Night Boston
- Past Trustee, Massachusetts Association of the Blind



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MASSACHUSETTS GAMING COMMISSION

DRAFT REGULATIONS- new 205 CMR 118.00 through 131.00



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205 CMR 118.00: PHASE 2 ADMINISTRATIVE PROCEEDINGS

Section

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118.01: RFA-2 Application Requirements

(1) An applicant shall be eligible to submit an RFA-2 application only after (a) the issuance of a positive determination of suitability by the commission at the conclusion of the RFA-1 process in accordance with 205 CMR 115.05(3), and (b) payment to the commission of all application fees, additional amounts for community disbursements, and additional fees for investigations required by 205 CMR 114.00: *Fees* arising out of the RFA-1 process.

(2) An RFA-2 application, as described in 205 CMR 119.01, must be filed on or before the applicable deadline established by the commission pursuant to the instructions and process posted by the commission on its website and in the application. The commission may establish different deadlines for submission of RFA-2 applications for a category 1 license, a category 2 license, or for a region or regions. The commission will post on its website the deadline or deadlines for submission of RFA-2 applications.

(3) The commission shall have no obligation to accept or review an ~~incomplete~~ application issued a negative determination of administrative completeness in accordance with 205 CMR 118.03(1) submitted by the established deadline or an ~~late~~ application submitted after the established deadline.

(4) Upon petition by the applicant to the commission in accordance with 205 CMR 102.03(4), the commission may, in its discretion, extend the time for filing a complete RFA-2 application to provide reasonable additional time for filing in cases in which extraordinary circumstances prevented a timely filing.



#### 118.02: RFA-2 Pre-Application Consultation

- (1) Before the applicable deadline for submitting RFA-2 applications, the commission or its designees may conduct one or more consultation meetings to provide guidance on RFA-2 standards and procedures to applicants found qualified pursuant to a determination of suitability at the conclusion of RFA-1 process.
- (2) Information provided by the commission or its designees pursuant to 205 CMR 118.02(1) shall be advisory in nature and shall not be binding. In the event of a conflict with such information, the provisions of M.G.L. c. 23K, 205 CMR, and the application forms and instructions issued or adopted by the commission shall prevail.

#### 118.03: RFA-2 Administrative Completeness Review

- (1) The executive director or his or her designee will conduct an administrative completeness review of each RFA-2 application and will send either a positive determination of administrative completeness or a negative determination of administrative completeness to the applicant and to the commission.
  - a. Upon the issuance of a positive determination of administrative completeness, the RFA-2 application may proceed to further review under 205 CMR 118.00.
  - b. Upon issuance of a negative determination of administrative completeness the RFA-2 application shall not proceed to further review under 205 CMR 118.00.
  - c. If an applicant receives a negative determination of administrative completeness the executive director may, at the request of the applicant, allow the applicant to cure the deficiency in a prescribed manner and timeframe, or the applicant may file a petition for appeal, or waiver or variance in accordance with 205 CMR 102.03(4), ~~to~~ with the commission.
- (2) A positive determination of administrative completeness shall not constitute a finding with respect to the technical suitability, adequacy or accuracy of the information submitted, and shall not bar a request for further information by the commission, the bureau or their agents and employees under 205 CMR 118.04.

#### 118.04: RFA-2 Review Procedures

- (1) Upon a determination that an RFA-2 application is administratively complete, the commission will determine the surrounding communities pursuant to 205 CMR 125.00: *Surrounding Communities*, determine the impacted live entertainment venues pursuant to 205 CMR 126.00: *Impacted Live Entertainment Venues*, and review the merits of the application. In doing so, the commission may, at such times and in such order as the commission deems appropriate, take some or all of the following actions:
  - a. Hold one or more open meetings concerning the application;
  - b. Refer the RFA-2 application, or any parts thereof, for advice and recommendations, to any or all of the following:
    - i. The executive director;
    - ii. The bureau;

- iii. Any office, agency, board, council, commission, authority, department, instrumentality or division of the commonwealth;
  - iv. Any office, agency, board, council, commission, authority, department, instrumentality or division of the host community or any potential surrounding community;
  - v. Any consultant retained in accordance with 205 118.04(1)(c).
- c. Retain, or authorize the executive director or the deputy director to retain, at the applicant's expense, such professional consultants (including without limitation financial and accounting experts, architects, engineers, environmental professionals, legal experts, gaming experts, contractor investigators, and other qualified professionals) as the commission in its discretion deems necessary and appropriate to review the application and make recommendations;
  - d. Receive independent evaluations of the application;
  - e. Require or permit presentations by the applicant and its representatives;
  - f. Require or permit the applicant to provide additional information and documents pursuant to 205 CMR 112.00: *Required Information and Applicant Cooperation*;
  - g. Require or permit the executive director, with the assistance of commission's agents and employees, to negotiate with the applicant and its agents and employees concerning potential improvements to the applicant's proposed gaming establishment, its mitigation plans, and its proposals to ensure economic and other benefits to the region and to the commonwealth;
  - h. Require or permit the applicant to supplement or amend its application as the commission determines to be in the best interests of the host community, one or more surrounding communities or impacted live entertainment venues, the region or the commonwealth;
  - i. On a regional basis for category 1 applicants or on a state-wide basis for category 2 applicants, (i) screen out and deny one or more applications, and (ii) identify finalists for further consideration;
  - j. In the commission's discretion, request best and final offers by finalists;
- (2) The commission shall retain the discretion to take or not to take any actions under 205 CMR 118.04(1) as it deems appropriate with respect to an RFA-2 application; and the fact that the commission has or has not taken any such action with respect to one or more RFA-2 applications shall not obligate the commission to do so or not to do so with respect to any other RFA-2 application or applications.

118.05: RFA-2 Public Hearing in Host Community

- (1) For each administratively complete RFA-2 application, the commission shall conduct a public hearing on the application at an open meeting of the commission pursuant to M.G.L. c. 30A, §20. The commission will send written notice of the public hearing to the applicant for a gaming license and to the city or town clerk of each host and surrounding community at least 30 days before the public hearing. The commission will post the notice of the public hearing on its website. The commission shall hold the public hearing within the host community; provided, however, that the commission may hold the public hearing in another

city or town upon written request from the host community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B.

- (2) The chair or his or her designee shall preside over the public hearing. The applicant and its agents and representatives shall attend the public hearing, may make a presentation and respond to questions as directed by the chair or his or her designee. Representatives of the host community, representatives of the surrounding communities and representatives of the impacted live entertainment venues may attend the public hearing, may make a presentation and respond to questions as directed by the chair or his or her designee. Others may attend the public hearing and may make a presentation in the discretion of the commission. Prior to the hearing the commission will prescribe the manner in which it will receive comments from members of the public, and may take the opportunity during the hearing to read into the record any letters of support, opposition or concern from members of a community in the vicinity of the proposed gaming establishment.
- (3) For each application, the commission may in its discretion complete the public hearing in one meeting or continue the public hearing over two or more meetings. If the commission adjourns the public hearing, the commission will provide notice of the continued hearing either (a) by announcing before adjourning the date, time and place of the continued public hearing and thereafter posting notice of the continued public hearing on the commission's website, or (b) by sending and posting notice in the manner prescribed in 205 CMR 118.05(1). At the conclusion of the public hearing the commission will vote to close the public hearing.

#### 118.06: RFA-2 License Determinations

- (1) Not sooner than 30 days nor later than 90 days after the commission votes to close the public hearing under 205 CMR 118.05(3), the commission shall take action on the application. The commission may:
  - a. Grant the application for a gaming license with appropriate conditions in accordance with M.G.L. c.23K, §21 and 205 CMR 120.02;
  - b. Deny the application for a gaming license; or
  - c. Extend the period for issuing a decision in order to obtain any additional information deemed necessary by the commission for a complete evaluation of the application; provided, however, that the extension shall be no longer than 30 days.
- (2) The commission shall issue not more than 3 category 1 licenses throughout the commonwealth, and not more than 1 category 1 license per region. Within any region, if the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the region in which the gaming establishment is proposed to be located and to the commonwealth, no gaming license shall be awarded in that region.
- (3) The commission shall issue not more than 1 category 2 license. If the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the commonwealth, no category 2 license shall be awarded.
- (4) Upon denial of an application, the commission shall prepare and file the commission's

decision and, if requested by the applicant, shall further prepare and file a statement of the reasons for the denial, including specific findings of fact, pursuant to M.G.L. c. 23K, §17(f).

118.07: RFA-2 Administrative Proceedings – Legislative not Adjudicatory

- (1) The commission's RFA-2 administrative proceedings pursuant to 205 CMR 118.01-118.06 are administrative and legislative in nature, not adjudicatory.
- (2) Each applicant must present all information required by the commission in the RFA-2 application truthfully, fully and under oath; however, unless otherwise required by the commission, RFA-2 administrative proceedings pursuant to 205 CMR 118.01-118.06 shall (a) involve public hearings that are not adversarial in nature; (b) involve no specific charges, legal right or privilege; (c) provide no opportunity for cross-examination of witnesses under oath in a hearing; (d) afford the opportunity for public comments including unsworn statements and letters of support, opposition or concern by persons advocating for or against the application; and (e) involve a final decision to grant or deny a gaming license that rests at all times within the discretion of the commission.

118.08: RFA-2 Costs and Expenses

- (1) For each RFA-2 application, all of the commission's costs and expenses of the RFA-2 administrative proceedings pursuant to 205 CMR 118.01-118.06 shall be borne by the applicant.
- (2) All such costs and expenses shall be assessed to the applicant and collected by the commission pursuant to 205 CMR 114.04: *Additional fees for investigations*.

REGULATORY AUTHORITY

205 CMR 118.00: M.G.L. c. 23K, §§4(28), 4(37); 5; 8; 9; 10; 11; 13; 15(11); 17; 18; 19; 21; 56; and c. 30A.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 119.00: PHASE 2 APPLICATION

Section

- 119.01: Contents of the Application
- 119.02: Completing the Application
- 119.03: Evaluation of the Application by the Commission

119.01: Contents of the application

The RFA-2 application form shall be designed to require applicants to demonstrate that they have thought broadly and creatively about creating an innovative and unique gaming establishment that will create a synergy with, and provide a significant and lasting benefit to, the residents of the host community, the surrounding communities, the region, and the Commonwealth of Massachusetts, and will deliver an overall experience that draws both residents and tourists to the gaming establishment and the Commonwealth of Massachusetts. Further, the RFA-2 application shall require attestation of the applicant under the pains and penalties of perjury as to the truthfulness of the contents of the submission, and shall require, at a minimum, provision of the following information on and in the form prescribed by the commission:

- (1) the name of the applicant; and
- (2) the mailing address and, if a corporation, the name of the state under the laws of which it is incorporated, the location of its principal place of business and the names and addresses of its directors and stockholders; and
- (3) an attestation that the qualifiers identified by the commission in accordance with 205 CMR 116.00 and deemed suitable under the RFA-1 process in accordance with 205 CMR 115.00 maintain the association with the applicant previously identified in the RFA-1 process;
- (4) a copy of the host community agreement executed by the applicant and the host community that includes provision for a community impact fee; and
- (5) Information demonstrating how the applicant proposes to address host community impact and mitigation issues as set forth in the host community agreement required under 205 CMR 123.00; and
- (6) a listing of the infrastructure costs of the host community incurred in direct relation to the construction and operation of a gaming establishment and a statement to commit to a community mitigation plan for ~~these communities~~ that community; and

- (7) a certificate showing that the applicant has received a certified and binding positive vote on a ballot question at an election in the host community in favor of the license; and
- (8) a copy of all surrounding community agreements it has executed, if any; and
- (9) a list identifying any community it believes to be a surrounding community in accordance with 205 CMR 125.01(1)(a) that it has not executed a surrounding community agreement with, if any; and
- (10) information demonstrating how the applicant proposes to address surrounding community impact and mitigation issues as set forth in the surrounding community agreements required under 205 CMR 125.00; and
- (11) a listing of the infrastructure costs of the surrounding community incurred in direct relation to the construction and operation of a gaming establishment and a statement committing to a community mitigation plan for those communities; and
- (12) a description and documentation of all public outreach efforts it made to local communities; and
- (13) a description and any documentation outlining the public support for the application from the host and surrounding communities; and
- (14) a description as to how the applicant proposes to promote local businesses in host and surrounding communities, including developing cross-marketing strategies with local restaurants, small businesses, hotels, retail outlets and impacted live entertainment venues; and
- (15) a copy of all impacted live entertainment venue agreements it has executed, if any; and
- (16) a list identifying any venue it believes to be an impacted live entertainment venue accordance with 205 CMR 126.01(1)(a) that it has not executed an impacted live entertainment venue agreement with, if any; and
- (17) a statement as to whether it has been its past practice to incorporate geographic exclusivity clauses into agreements with its entertainers engaged to perform at its venues and the nature of such agreements; and
- (18) an explanation as to how the applicant proposes to utilize sustainable development principles including, but not limited to:
  - (i) being ~~certified~~ certifiable as gold or higher under the appropriate certification category in the Leadership in Environmental and Energy Design program created by the United States Green Building Council;

- (ii) meeting or exceeding the stretch energy code requirements contained in Appendix 120AA of the Massachusetts State Building Code (780 CMR) or equivalent commitment to advanced energy efficiency as determined by the secretary of energy and environmental affairs;
  - (iii) efforts to mitigate vehicle trips;
  - (iv) efforts to conserve water and manage storm water;
  - (v) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
  - (vi) procuring or generating on-site at least 10 per cent of its annual electricity consumption from renewable sources qualified by the department of energy resources under section 11F of chapter 25A; and
  - (vii) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems; and
- (19) a calculation of the total capital investment in accordance with 205 CMR 122.00 including an agreement that, in accordance with the design plans submitted with the licensee's application to the commission, it will invest not less than the required capital under 205 CMR 122.00 into the gaming establishment; and
- (20) how the applicant proposes to realize the maximum capital investment exclusive of land acquisition and infrastructure improvements; and
- (21) an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past 5 years; and
- (22) clear and convincing evidence of financial stability including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed by government agencies and business and personal accounting check records and ledgers; and
- (23) evidence of its ability to pay and a commitment to paying the gaming licensing fee in accordance with 205 CMR 121.00; and
- (24) information and documentation to demonstrate that the applicant has sufficient business ability and experience to create the likelihood of establishing and maintaining a successful gaming establishment; and
- (25) a full description of the proposed internal controls and security systems for the proposed gaming establishment and any related facilities; and
- (26) an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including:

- i. maintaining a smoke-free environment within the gaming establishment under M.G.L. c.270, §22;
- ii. providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission;
- iii. prominently displaying information on the signs of problem gambling and how to access assistance;
- iv. describing a process for individuals to exclude their names and contact information from a gaming licensee's database or any other list held by the gaming licensee for use in marketing or promotional communications; and
- v. instituting other public health strategies as determined by the commission; and

(27) how the applicant proposes to take measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling and prevention programs targeted toward vulnerable populations; and how the applicant proposes to cooperate and support the commission in the development of an annual research agenda as provided in M.G.L. c.23K, §71; and

(28) the designs for the proposed gaming establishment, including the names and addresses of the architects, engineers and designers, and a timeline of construction that includes detailed stages of construction for the gaming establishment, non-gaming structures and racecourse, where applicable; and

(29) the number of construction hours estimated to complete the work; and

(30) how the applicant proposes to build a gaming establishment of high caliber with a variety of quality amenities to be included as part of the gaming establishment and operated in partnership with local hotels and dining, retail and entertainment facilities so that patrons experience the diversified regional tourism industry; and

(31) the number and a description of the hotels and rooms, restaurants and other ancillary entertainment services and amenities to be located at the proposed gaming establishment and how they measure in quality to other area hotels and amenities; and

(32) the number of employees to be employed at the proposed gaming establishment, including detailed information on the pay rate and benefits for employees; and

(33) how the applicant proposes to ensure that it provides a high number of quality jobs in the gaming establishment; and

(34) whether the applicant has prepared, and how the applicant proposes to implement a workforce development plan that: (i) incorporates an affirmative action program of equal opportunity by which the applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities; (ii) utilizes the existing labor force in the commonwealth; (iii) estimates the number of construction jobs a gaming establishment will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and



veterans on those construction jobs; (iv) identifies workforce training programs offered by the gaming establishment; and (v) identifies the methods for accessing employment at the gaming establishment; (vi) addresses workplace safety issues for employees; and

(35) whether the applicant proposes to establish, fund and maintain human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:

(i) establishes transparent career paths with measurable criteria within the gaming establishment that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;

(ii) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and

(iii) establishes an on-site child day-care program; and

(36) whether the applicant has a contract with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:

(i) the number of employees to be employed at the gaming establishment, including detailed information on the pay rate and benefits for employees and contractors;

(ii) the total amount of investment by the applicant in the gaming establishment and all infrastructure improvements related to the project;

(iii) completed studies and reports as required by the commission, which shall include, but need not be limited to, an economic benefit study, both for the commonwealth and the region; and

(iv) whether the applicant has included detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment;

(37) completed studies and reports as required by the commission, which shall include, but not be limited to, an examination of the proposed gaming establishment's: (i) economic benefits to the region and the commonwealth; (ii) local and regional social, environmental, traffic and infrastructure impacts; (iii) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host community and surrounding communities; (iv) cost to the host community and surrounding communities and the commonwealth for the proposed gaming establishment to be located at the proposed location; and (v) the estimated municipal and state tax revenue to be generated by the gaming establishment; and

(38) the names of proposed vendors of gaming equipment; and

(39) whether the applicant proposes to contract with local business owners for the provision of goods and services to the gaming establishment, including developing plans designed to assist businesses in the commonwealth in identifying the needs for goods and services to the establishment; and

- (40) whether the applicant intends to purchase domestically manufactured slot machines for installation in the gaming establishment; and
- (41) the location of the proposed gaming establishment, which shall include the address, maps, book and page numbers from the appropriate registry of deeds, assessed value of the land at the time of application and ownership interests over the past 20 years, including all interests, options, agreements in property and demographic, geographic and environmental information and any other information requested by the commission; and
- (42) if it does not presently possess an ownership interest in the location, an agreement, and description of its plan as to how it intends to own or acquire, within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed; provided, however, that ownership of the land shall include a tenancy for a term of years under a lease that extends not less than 60 years beyond the term of the gaming license issued under this chapter; and
- (43) whether the applicant purchased or intends to purchase publicly-owned land for the proposed gaming establishment; and
- (44) a market analysis detailing the benefits of the site location of the gaming establishment and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments; and
- (45) the type and number of games to be conducted at the proposed gaming establishment and the specific location of the games in the proposed gaming establishment; and
- (46) a projection as to the number of slot machines it will seek approval for use at the gaming establishment should it be awarded a gaming license; and
- (47) a projection as to the number of gaming positions it anticipates at the gaming establishment should it be awarded a gaming license; and
- (48) how the applicant proposes to maximize revenues received by the Commonwealth of Massachusetts; and
- (49) whether the applicant's proposed gaming establishment is part of a regional or local economic plan; and
- (50) how issuance of the license to the applicant will offer the highest and best value to create a secure and robust gaming market in the region and the Commonwealth of Massachusetts; and
- (51) A signed agreement to be a licensed state lottery sales agent under M.G.L. c.10 to sell or operate the lottery, multi-jurisdictional and keno games including an agreement that, it would agree to a condition of the issuance of a license to operate a gaming establishment, that it will not create, promote, operate or sell games that are similar to or in direct competition, as determined by the Massachusetts Gaming Commission, with games offered by the state lottery commission,

including the lottery instant games or its lotto style games such as keno or its multi-jurisdictional games; and

(52) A written plan demonstrating the manner in which the lottery and keno games shall be made readily accessible to the guests of the gaming establishment; and

(53) Information demonstrating how the applicant proposes to protect the lottery from and mitigate any adverse impacts due to expanded gaming including, but not limited to, developing cross-marketing strategies with the lottery and increasing ticket sales to out-of-state residents; and

(54) a copy of, an agreement to abide by, and an explanation as to how it proposes to implement a marketing program by which the applicant identifies specific goals, expressed as an overall program goal applicable to the total dollar amount of contracts, for utilization of:

(i) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the design of the gaming establishment;

(ii) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the construction of the gaming establishment; and

(iii) minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by the gaming establishment and any businesses operated as part of the gaming establishment; and

(55) a copy of, an agreement to abide by, and an explanation as to how it proposes to implement an affirmative action program of equal opportunity whereby the applicant establishes specific goals for the utilization of minorities, women and veterans on construction jobs; provided, however, that such goals shall be equal to or greater than the goals contained in the executive office for administration and finance Administration Bulletin Number 14; and

(56) identification of all disclosures required in accordance with 205 CMR 108.00: *Community and Political Contributions*.

(57) any additional information that, after release of the RFA-2 application the commission determines would be useful in conducting its evaluation of the RFA-2 applications. Provided, however, that additional information may be requested from the applicant by the commission upon reasonable notice at any time after the submission of the RFA-2 application in accordance with 205 CMR 112.00.

#### 119.02: Completing the Application

~~Two~~ Two hard copies and one electronic copy on a compact disc or flash drive of the application and all attachments shall be submitted to the Commission by mail or in hand by the filing deadline. Applications must be neatly prepared and organized and marked in the manner specified on the application form to ensure uniformity of the submissions. To the extent that an

applicant identified in the RFA-1 application is a newly formed entity, any information required to be provided in accordance with 205 CMR 119.01 relative to past performance shall, at a minimum, be provided in relation to the primary controlling and/or operating entity of the proposed gaming establishment and/or its significant business units.

#### 119.03: Evaluation of the Application by the Commission

- (1) Once a submitted RFA-2 application is deemed administratively complete, the commission shall commence a substantive evaluation of its contents. The commission may utilize any technical assistance it deems necessary to aid in its review.
- (2) In determining which applicant will be awarded a Category 1 gaming license in accordance with M.G.L. c.23K, §19, and a Category 2 gaming license in accordance with M.G.L. c.23K, §20, the commission will evaluate the RFA-2 application to determine how the applicant proposes to advance the objectives specified in M.G.L. c.23K, §18. **In no particular order and without assigning any particular weights**, the commission will evaluate the applicant's response on how it addresses the following categories of information:
  - (a) Financial criteria including:
    - (1) Financial and capital structure
    - (2) Maximization of revenues to the Commonwealth
    - (3) Realization of maximum capital investment exclusive of land and infrastructure
    - (4) Ability to offer the highest and best value to create a secure and robust gaming market
  - (b) Economic Development criteria including:
    - (1) Job creation
    - (2) Supporting external business and job growth
    - (3) Regional tourism and economic impact
  - (c) Building and Site Design criteria including:
    - (1) Compliance with 780 CMR (**State Building Code**), 521 CMR (**Architectural Access regulations**), local ordinances and by-laws, including M.G.L. c.30, §§61-62H
    - (2) Demonstration of creativity in design and overall concept excellence
    - (3) Proposal to build a gaming establishment of high caliber a with quality amenities in partnership with local facilities
    - (4) Compatibility with surroundings
    - (5) Utilization of sustainable development principles in the construction and during the life cycle of the facility
    - (6) Security measures
    - (7) Alternative uses for buildings in the complex
  - (d) Mitigation criteria including:

- (1) Agreement to be a lottery agent and not run competing games
  - (2) Demonstration of plan for mitigation of lottery impact and compulsive gambling problems, community development, and host and surrounding community impact and mitigation issues as set forth in memoranda of understanding
  - (3) Identification of the infrastructure costs of the host and surrounding community from the construction and operation of the gaming establishment and commitment to a mitigation plan
  - (4) Providing a signed host community agreement with a favorable community vote
  - (5) Providing surrounding community agreements
  - (6) Providing impacted live entertainment venue agreements
  - (7) Payment of agreed upon community impact fees
  - (8) Traffic mitigation
- (e) Enhancements and overall uniqueness of the project.

(3) In addition to 205 CMR 119.03(2), in awarding a Category 1 gaming license the commission shall take into consideration the physical distance between the location of Category 1 gaming establishments as they relate to each other and how they maximize benefits to the commonwealth; provided, however, that in determining which gaming applicant shall receive a gaming license in each region, the commission shall also consider the support or opposition to each gaming applicant from the public in the host and surrounding communities as demonstrated by public comment provided by the gaming applicant or directly to the commission pursuant to M.G.L. c.23K, §15 and through oral and written testimony received during the public hearing conducted pursuant to M.G.L. c.23K, §17. 19(d)

#### REGULATORY AUTHORITY

205 CMR 119.00: M.G.L. c. 23K, §§4(12); 4(28), 4(37); 5; 9; 15; 18; 19; and 20.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 120.00: PERMITTING REQUIREMENTS

Section

120.01: Permitting Requirements

120.02: Conditions of Licensure

120.01: Permitting Requirements

(1) An RFA-2 application for a category 1 or category 2 license shall include, in addition to those items required by 205 CMR 119.00, the following:

(a) A chart identifying all federal, state, and local permits and approvals required, or potentially required, for the construction and operation of the applicant's proposed category 1 or category 2 gaming establishment that includes:

1. the date on which the applicant submitted, or anticipates that it will submit, its application for each permit or approval;
2. the maximum time period set by statute, regulation, and/or by-law or ordinance that the authority having jurisdiction has to render a decision on an application, if any;
3. the expiration date or maximum effective time period for each permit or approval, if any, set by statute, regulation, and/or by-law or ordinance; and
4. a citation to the statute, regulations, and/or by-law or ordinance governing the issuance of each permit or approval.

The applicant shall attach to the chart, and shall index in accordance with the chart, a complete copy of: (i) any completed application for each permit or approval that was submitted by the applicant to the authority having jurisdiction, including a copy of any exhibits and attachments; (ii) any written comments received by the applicant from a host community, surrounding community or prospective surrounding community, impacted live entertainment venue or prospective impacted live entertainment venue, and/or the permitting agency regarding the applicant's request for the permit or approval; and (iii) any permit, approval or decision issued by the authority having jurisdiction.

- (b) A copy of the applicant's environmental notification form (ENF) along with proof of the applicant's submission of the ENF in compliance with G.L. c. 30, §62A and 301 CMR 11.00 in connection with the applicant's proposed category 1 or category 2 gaming establishment;
- (c) A copy of the certificate from the secretary of EOEEA after the conclusion of the comment period on the filing of the ENF pursuant to 301 CMR 11.06(7) and a copy of all written comments submitted to the MEPA unit during its review of such ENF.
- (d) A copy, if any, of the draft, final, supplemental, or single environmental impact report (EIR), Notice of Project Change, or a request for an Advisory Opinion submitted by the applicant pursuant to G.L. c. 30, §§61-62H and 301 CMR 11.00 in connection with the applicant's proposed category 1 or category 2 gaming establishment;
- (e) A copy, if any, of the certificate from the secretary of EOEEA after the conclusion of the comment period on the filing of any such draft, final, supplemental, or single EIR, Notice(s) of Project Change, and in the case of an Advisory Opinion, the decision of either the Secretary or the MEPA Director pursuant to G.L. c. 30, §§61-62H and 301 CMR 11.00, and a copy of all written comments submitted to the MEPA unit during its review of such filing;
- (f) A copy of any notice or draft, final, or supplemental environmental assessment, finding of no significant impact, or environmental impact statement prepared by any federal agency in accordance with 42 U.S.C. §4321 in connection with the applicant's proposed category 1 or category 2 gaming establishment;
- (g) A statement from each host community's zoning officer, town counsel or city solicitor that the proposed category 1 or category 2 gaming establishment is either:
  - 1. Permitted at its proposed location as of right pursuant to the host community's zoning ordinances or bylaws; or
  - 2. Permitted at its proposed location pursuant to all of the host community's zoning ordinances or bylaws subject only to the applicant's obtaining some or all of the permits and approvals identified in the application pursuant to 205 CMR 120.01(1)(a);
- (h) Any appeal, whether to a municipal or state entity or for judicial review, filed with respect to any permit or approval listed in 205 CMR 120.01(1) along with a current copy of the docket sheet on such appeal and each decision on any appeal; and
- (i) Any other information requested from the applicant by the commission regarding federal, state, or local permits or approvals.

- (2) As long as the RFA-2 application for a category 1 or category 2 license is pending before the commission, and in the event that a conditional or final category 1 or category 2 license is issued, the applicant shall have a continuing duty to timely provide to the commission an updated permits chart and all documents and information listed in 205 CMR 120.01(1), as well as any updates relative to the MEPA process, such that the commission is continuously apprised of all material developments with respect to all permits and approvals required for the gaming establishment.

120.02: Conditions of Licensure

- (1) In addition to any conditions imposed in accordance with 205 CMR 119.00, all category 1 and category 2 gaming licenses shall be issued subject to the following conditions unless documentation demonstrating that a particular requirement has been satisfied has been provided as part of the RFA-2 process:

- (a) There shall be a determination by the secretary of EOEEA that:

1. No EIR is required; or
2. A single, final or supplemental EIR is adequate.

Following the determination that the EIR is adequate pursuant to G.L. c. 30, §§61-62H, and 301 CMR 11.00, and after 60 days have elapsed following publication of notice of the availability of the single, final, or supplemental EIR in the *Environmental Monitor* in accordance with 301 CMR 11.12(4)(a) and 11.15(2), the Commission shall reconsider the conditional license and shall either affirm, limit, condition, restrict, revoke, suspend or modify the conditional license in the discretion of the commission.

- (b) The commission shall issue findings in accordance with G.L. c. 30, §61 and 301 CMR 11.12. Notwithstanding any provision in 205 CMR 120.00 to the contrary, the commission may impose any condition necessary to comply with G.L. c. 30, §§61-62H in its findings pursuant to G.L. c. 30, §61 and 301 CMR 11.12(5).
- (c) The applicant shall submit to the commission documentation demonstrating that it has obtained all federal, state, and local permits or approvals necessary for the construction and operation of the proposed category 1 or category 2 gaming establishment (except those required from the commission), and that either:



1. the conditions imposed by those permits or approvals will not cause significant and material adverse impacts on a host or surrounding community, or impacted live entertainment venue, ~~not previously anticipated and~~ **that have not been** addressed in a host or surrounding community agreement or impacted live entertainment venue agreement; or
2. any conditions of federal, state, or local permits or approvals expected to cause significant and material adverse impacts on a host or surrounding community or impacted live entertainment venue ~~not previously anticipated and~~ **that have not been** addressed in a host or surrounding community agreement or impacted live entertainment venue agreement have been adequately addressed pursuant to 205 CMR 127.00.

(2) In the event the commission finds that the applicant cannot satisfy, the conditions in 205 CMR 120.02(1), the commission may, pursuant to G.L. c. 23K, §4(15), deny, limit, condition, restrict, revoke or suspend the conditional or final category 1 or category 2 license. In the event that the commission revokes the conditional license or denies or revokes the final license, the commission will reopen the RFA-2 process in accordance with 205 CMR 118.00.

REGULATORY AUTHORITY

205 CMR 120: M.G.L. c.23K, §§1, 4(15), 4(37), 5, 13, 15(12), 17, 18(14).

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 121.00: LICENSING FEE

Section

121.01: Licensing Fee

121.02: Payment of the Fee

121.01: Licensing Fee

- (1) Within 30 days after the award of category 1 license by the commission, the licensee shall pay a non-refundable license fee of \$85,000,000 to the Commission.
- (2) Within 30 days after the award of a category 2 license by the commission, the licensee shall pay a non-refundable license fee of \$25,000,000 to the commission.
- (3) Within 30 days after the award of a category 1 or category 2 license by the commission, the licensee shall remit:
  - a. a license fee, as provided by M.G.L. c.23K, §56(a), of \$600 for each slot machine approved by the commission for use by a gaming licensee at a gaming establishment; and
  - b. a license fee, as provided by M.G.L. c.23K, §56(c), to be determined by the commission upon issuance of the license, to cover costs of the commission necessary to maintain control over gaming establishments, in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit additional funds or a credit may be issued towards the payment the following year; and
  - c. a license fee, as provided by M.G.L. c.23K, §56(e), to be determined by the commission upon issuance of the license, reflecting the applicant's share of \$5,000,000 to be deposited into the Public Health Trust Fund in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit additional funds or a credit may be issued towards the payment the following year.

121.02: Payment of the fee

(1) All fees shall be submitted in the form of a certified check or secure electronic funds transfer payable to the “Massachusetts Gaming Commission.”

(2) In the event that a licensee fails to pay the fee as provided in 205 CMR 121.01, the commission may take any remedial action it deems necessary up to and including revocation of the gaming license.

REGULATORY AUTHORITY

205 CMR 121: M.G.L. c.23K, §§4(26); 4(37); 5; 10(d); 11(b); and 56.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 122.00: CAPITAL INVESTMENT

Section

- 122.01: Scope and Purpose
- 122.02: Minimum Capital Investment
- 122.03: Costs Included in the Calculation of Capital Investment
- 122.04: Costs Excluded from the Calculation of Capital Investment
- 122.05: Deposit or Bonding of Funds

122.01: Scope and Purpose

205 CMR 122.00 shall govern the calculations of the proposed capital investment for category 1 and category 2 gaming establishments to be included in an applicant's RFA-2 application as set forth in M.G.L. c.23K, §§10(a) and 11(a).

122.02: Minimum Capital Investment

(1) The minimum capital investment for a category 1 gaming establishment license shall be \$500,000,000. The capital investment shall be calculated in accordance with 205 CMR 122.03, and 122.04.

(2) The minimum capital investment for a category 2 gaming establishment license shall be \$125,000,000. The capital investment shall be calculated in accordance with 205 CMR 122.03 and 122.04.

122.03: Costs Included in the Calculation of Capital Investment

For purposes of calculating the capital investment for a category 1 or category 2 gaming license, the following costs shall be included:

- 1) Costs related to the actual construction of the gaming establishment and site including any hotels, gaming areas, and other amenities, including overhead and indirect costs attributable to the construction activities.
- 2) Costs related to preparation of the site including, clearing, demolition and abatement.
- 3) Costs related to the design of the project, including building design, interior design, and exterior site design.
- 4) Costs associated with consulting and due-diligence necessary to fund studies and devise engineering solutions in accordance with M.G.L. c.23 K including traffic studies, environmental studies, and other associated mitigation studies.

- 5) Costs associated with minimizing the environmental impact of the project including upfront costs aimed at minimizing a carbon footprint or implementing sustainable elements and/or smart growth practices.
- 6) Costs associated with designing, improving or constructing the infrastructure inside the property boundaries of the site of the gaming establishment including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation. Provided, however, in accordance with M.G.L. c.23K, §11(a), that any infrastructure improvements necessary to increase visitor capacity and account for traffic mitigation for a category 2 gaming establishment shall not be considered as part of the capital investment in a category 2 gaming establishment license application.
- 7) Costs associated with the pre-opening purchase of fixtures, equipment, gaming equipment, information technology equipment, and personal property to be used within the gaming establishment and site including those within hotels, restaurants, retail and other service businesses associated with the establishment.
- 8) Costs associated with applying for federal, state, or municipal permits.
- 9) Professional and management fees including for engineers, architects, developers, contractors, or operators to the extent that they represent indirect and overhead costs related to the development of the project, and do not represent profits or payout as part of partnership agreements or “home office” overhead (i.e., out of state).
- 10) Costs associated with the safety, training, quality assurance, or testing incurred during the construction of the gaming establishment and site.

#### 122.04: Costs Excluded from the Calculation of Capital Investment

For purposes of calculating the capital investment for a category 1 or category 2 gaming license, the following costs may not be included:

- 1) Costs associated with the purchase or lease or optioning of land where the gaming establishment will be located including costs relative to registering, appraising, transferring title, or obtaining title insurance for the land.
- 2) Carried interest costs and other associated financing costs.
- 3) Costs associated with mitigating impacts on host and surrounding communities as set forth in Host and Surrounding Community agreements, whether directly attributable to a specific impact or not.
- 4) Costs associated with designing, improving or constructing the infrastructure outside the property boundaries of the site of the gaming establishment including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation whether or not such costs are the result of a

host community agreement, a surrounding community agreement, required by any regulatory body or as part of the permitting process.

- 5) Any and all legal fees.
- 6) Promotional, communications and marketing costs prior to and attributable to the efforts of a local referendum including all costs associated with local outreach.
- 7) Fees and costs paid to the commission in accordance with M.G.L. c.23K, §15(11), §10(d), or §11(b) and/or 205 CMR 114.00 and other similar fees and costs paid to municipalities.
- 8) Licensing costs including any costs payable to the commission to obtain pre-opening licensing of individuals or vendors.
- 9) Costs associated with marketing, advertising and promotions.
- 10) Upfront costs designed to implement workforce development plans.
- 11) Upfront costs designed to implement efforts to combat problem gambling and/or support the efforts of the commission's research agenda.
- 12) Political contributions and community contributions under 205 CMR 108.00.

#### 122.05: Deposit or bonding of funds

(1) Within 30 days after the ~~Upon~~ award of a category 1 gaming license, the applicant shall either:

- (a) Deposit 10 percent of the total investment proposed in the RFA-2 application into an interest bearing escrow account held by the commission in accordance with M.G.L. c.23K, §10(a); or
- (b) Secure a deposit bond, in a form and from an institution acceptable to the commission, insuring that 10 percent of the proposed capital investment shall be forfeited to the Commonwealth of Massachusetts if the applicant is unable to complete the gaming establishment, as determined by the commission.

(2) The proposed capital investment figure calculated in accordance with 205 CMR 122.00 shall be used for purposes of calculating 10 percent deposit or bond required by 205 CMR 122.05(1) and M.G.L. c.23K, §10(a).

(3) The commission shall return monies received from the applicant in accordance with 205 CMR 122.05(1)(a) upon written request of the applicant if the commission determines that the project has reached the final stage of construction as detailed in the timeline of construction submitted with the RFA 2 application. In making the determination the commission shall consider whether the amount held in escrow exceeds the amount of capital required to complete the project.

#### REGULATORY AUTHORITY

205 CMR 122: M.G.L. c.23K, §§ 1(5), 4(37), 5(3), 5(a)(16), 10, 11, 18(3).

205 CMR: MASSACHUSETT GAMING COMMISSION  
205 CMR 123.00: HOST COMMUNITIES

Section

123.01: Definition of Host Community

123.02: Host Community Agreement

123.01: Definition of Host Community

In accordance with M.G.L. c.23K, §2, a host community is a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment; provided, however, that if a proposed gaming establishment is situated in 2 or more cities or towns each shall be a host community for purposes of M.G.L. c.23K and 205 CMR.

123.02: Host Community Agreement

- (1) An applicant for a gaming establishment license must sign an agreement with the host community setting forth the conditions to have a gaming establishment located within the host community; provided, however, that the agreement shall include a community impact fee for the host community and all stipulations of responsibilities between the host community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment.
- (2) The signed host community agreement, along with a fair, concise summary, approved by the city solicitor or town counsel of the host community, shall be made public in accordance with 205 CMR 124.04.
- (3) Upon requesting a host community election in accordance with 205 CMR 124.02(1), the applicant shall forward the executed host community agreement and summary to the commission. The commission shall promptly post a copy of the agreement and summary on its website. The posting shall outline the process by which any community may request that it be added to a list of prospective surrounding communities to that gaming establishment.

REGULATORY AUTHORITY

205 CMR 123: M.G.L. c.23K, §§ 2; 4(37); 5; 15(8).

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 124.00: HOST COMMUNITY ELECTION PROCESS

Section

- 124.01: Scope and Purpose
- 124.02: Request for an Election
- 124.03: Call for and Scheduling of the Election
- 124.04: Preparing for the Election
- 124.05: Conduct of the Election
- 124.06: Reimbursing the Expenses of the Host Community Election
- 124.07: Post-Election

124.01: Scope and Purpose

205 CMR 124.00 establishes parameters for elections as provided in M.G.L. c.23K, §15(13). In accordance with M.G.L. c.23K, §15(13) an applicant for a gaming license must have received a certified and binding vote on a ballot question at an election in the host community in favor of such license as a prerequisite to filing an RFA-2 application in accordance with 205 CMR 119.00.

124.02: Request for an Election

- (1) After a host community and an applicant for a gaming establishment license execute a host community agreement, the applicant shall file a with the governing body of the host community a written request for an election on the question whether the host community shall permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission located at a specified site within the community. The applicant shall send a copy of the request to the commission along with a copy of the executed host community agreement.
- (2) Upon receipt of the request, the governing body shall acknowledge receipt of the request by letter. The letter shall state the date that the applicant's request was received by the community. The governing body shall send a copy of the letter to the commission.
- (3) In the event that a proposed gaming establishment is to be situated in more than one community, the applicant shall not request an election in either community until it has executed a host community agreement with all of the affected prospective host communities or a joint agreement with each prospective host community.
- (4) A host community may not hold an election in accordance with 205 CMR 124.02(1) until the commission has issued a positive determination of suitability to the applicant in accordance with 205 CMR 115.05(3).



#### 124.03: Call for and Scheduling of the Election

Upon receipt of a request for an election by an applicant in accordance with 205 CMR 124.02(1), the governing body of the municipality shall call for the election to be held not less than 60 days but not more than 90 days from the date that the request was received. The city or town clerk shall then set a date certain for an election. Provided, however, in the event that a municipality has executed a host community agreement with more than one applicant the election on each shall be set for the same date.

#### 124.04: Preparing for the Election

(1) The host community agreement signed by the governing body of the community and the applicant shall be made public by publishing the agreement, along with a fair, concise summary of the agreement, in a periodical of general circulation at the applicant's expense and on the official website of the municipality not later than seven days after the agreement is signed by the parties. The fair, concise summary of the agreement shall be approved by the city solicitor or town counsel prior to publication, and shall outline the contents of the host community agreement.

The agreement and summary shall remain on the municipal website until the election has been certified.

(2) Host communities shall make voting information available to its citizens including deadlines for registering to vote in the election and hours that polling places shall be open.

(3) No notice to or approval by the commission is required prior to engaging in the process set forth in 205 CMR 124.04(1).

(4) For purposes of 205 CMR 124.00, unless a city opts out in accordance with the seventh proviso of G.L. c. 23K, §15(13) by a vote of the local governing body, if the gaming establishment is proposed to be located in a city with a population of at least 125,000 residents as enumerated by the most recent enumerated federal census, "host community" shall mean the ward in which the gaming establishment is to be located for the purpose of receiving a certified and binding vote on a ballot question at an election. If a city opts out, it shall publish notice of such determination in the manner provided by 205 CMR 124.04(1).

#### 124.05: Conduct of the Election

In addition to the applicable provisions of M.G.L. c. 54 and 950 CMR the following shall apply to host community elections:

- (1) The polls may be open as early as fifteen minutes before 6 a.m., and shall be open not later than 7 a.m., and shall be kept open at least thirteen hours. The polls shall not be closed before 8 p.m.
- (2) The question on the ballot submitted to the voters shall be worded as follows: "Shall the (city/town) of \_\_\_\_\_ permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at \_\_\_\_\_ [description of site] \_\_\_\_\_? YES \_\_\_\_ NO \_\_\_\_".
- (3) In the event that a host community has entered into a host community agreement with more than one applicant, a separate question, as provided in 205 CMR 124.05(2), shall be posed on the ballot relative to each applicant. The questions shall be preceded with an advisory that the questions are not presented in any particular order and that a voter may vote 'yes' on both questions, 'no' on both questions, or 'yes' on one and 'no' on the other.
- (4) The ballot question(s) shall be accompanied on the ballot by a fair, concise summary of the host community agreement as determined by the city solicitor or town counsel.

#### 124.06: Reimbursing the Expenses of the Host Community Election

- (1) The applicant shall reimburse the municipality that conducts the election for its reasonable and customary expenses related to the host community election within 30 days after the election, provided, however, that if the election occurs as part of a general election, the applicant shall be responsible only for that portion of the general election expenses that related to the host community election. The expenses may include the costs for staffing and securing all voting locations, printing of the ballots, and all related costs as prescribed by the city or town clerk for conducting elections.
- (2) Unless otherwise agreed by the parties, within seven days of the election, the municipality shall provide the applicant with an itemized invoice of the costs for which it seeks reimbursement.
- (3) The commission shall deny an application for a gaming license if the applicant has not fully reimbursed the municipality as provided in 205 CMR 124.06(1).
- (4) The applicant shall disclose the reimbursement in accordance with 970 CMR 1.19.
- (5) If the result of the election is in the negative and the applicant fails or refuses to reimburse the municipality that conducted the election in accordance with 205 CMR 124.06(1) for all or any part of its cost, then in an action by the municipality against the applicant in a court of competent jurisdiction, the municipality shall be entitled to recover treble the disputed costs of the election as determined by the court together with the municipality's reasonable attorney fees and cost of that action. The applicant's request for an election under 205 CMR 124.02 shall constitute its binding agreement to abide by this provision.

124.07: Post-Election

- (1) If a majority of the votes cast in a host community in answer to the ballot question is in the affirmative, the host community shall be taken to have voted in favor of the applicant's license.
- (2) In accordance with M.G.L. c.23K, §15(13), if a ballot election question is voted in the negative, the applicant shall not submit a new request to the governing body for a new election within 180 days of the last election.
- (3) The city or town clerk or election officer shall provide a certified copy of the election results to the license applicant and the applicant shall include the certified copy in its license application to the commission in accordance with 205 CMR 122.00 and M.G.L. c.23K, §15(13).
- (4) The commission may refuse to accept the certified election results if the election was conducted in violation of any provision of G.L. c.23K or 205 CMR as determined by the commission or in violation of G.L. c.54 or 950 CMR as determined by the Office of the Secretary of the Commonwealth, and the commission determines that the violation materially affected the outcome of the election.

REGULATORY AUTHORITY

205 CMR 128: M.G.L. c.23K, §§ 4(34); 4(37); 5; 15(13).

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 125.00: SURROUNDING COMMUNITIES

Section

125.01: Determination of Surrounding Communities and execution of mitigation agreements

125.01: Determination of Surrounding Communities and execution of mitigation agreements

(1) General. The following communities are determined to be surrounding communities concerning the development and operation of a specific gaming establishment for purposes of M.G.L. c. 23K and 205 CMR:

- a. Each community located in the commonwealth that both (i) has been designated as a surrounding community by an applicant for a category 1 or category 2 license in the RFA-2 application, written notice of which designation shall be provided by the applicant to the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B, at the time the application is filed with the commission; and (ii) submits to the commission a written assent, signed by the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B, to the designation within 10 days of its receipt of the notice. Such notice to the community of designation by the applicant shall also include written notice of the requirement that each community must, to obtain final surrounding community designation, assent to such designation in writing within 10 days of the date of the application. Upon receipt of the written assent, the commission shall issue a written notice designating the community as a surrounding community; and
- b. Each community located in the commonwealth that has executed a surrounding community agreement with the applicant for a category 1 or category 2 license which agreement was submitted with the RFA-2 application and is determined by the commission to be in compliance with M.G.L. c. 23K, §15(9); and
- c. Each community located in the commonwealth that has been designated a surrounding community by the commission under M.G.L. c. 23K, §17(a) and 205 CMR 125.01(2) after the submission of an applicant's RFA-2 application upon written petition by the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B for the community to be designated a surrounding community with respect to the specific gaming establishment.

(2) Surrounding Community Determination by Commission.

- a. A community seeking to be designated a surrounding community in accordance with 205 CMR 125.01(1)(c) shall submit a written petition to the commission no later than 10 days after receipt by the commission of the RFA-2 application for a gaming establishment for which the community seeks to be designated a surrounding community; provided, the petition must include proof of service of the petition upon the applicant. If an applicant assents in writing to the petition, the commission shall designate the community a surrounding community without further review. The applicant may reply in favor or opposition to the petition in writing within 10 days after receipt by the commission of the petition. The commission will make a determination on the petition at an open meeting, at which it may allow presentations or information from the applicant and the proposed surrounding community, at least 30 days prior to the public hearing on the application held pursuant to M.G.L. c. 23K, §17(c).
- b. In determining whether a community is a surrounding community, the commission will exercise its discretion based on a review of the RFA-2 application, the RFA-2 applicant's detailed plan of construction, any independent evaluations, pertinent information received from the community seeking to be designated as a surrounding community, the RFA-2 applicant, the host community, and the public, and any additional information that the commission determines to be beneficial in making its determination. In exercising its discretion in the determination as to whether a community meets the definition of surrounding community in accordance with M.G.L. c.23K, §2, the commission shall consider factors, pursuant to M.G.L. c. 23K, §§4(33) and 17(a), such as population, infrastructure, distance from the gaming establishment and political boundaries, and will evaluate whether:
  - i. The community is in proximity to the host community and the gaming establishment included in the RFA-2 Application, taking into account such factors as any shared border between the community and the host community; and the geographic and commuting distance between the community and the host community, between the community and the gaming establishment, and between residential areas in the community and the gaming establishment.
  - ii. The transportation infrastructure in the community will be significantly and adversely affected by the gaming establishment, taking into account such factors as ready access between the community and the gaming establishment; projected changes in level of service at identified intersections; increased volume of trips on local streets; anticipated

- degradation of infrastructure from additional trips to and from a gaming establishment; adverse impacts on transit ridership and station parking impacts; significant projected vehicle trip generation weekdays and weekends for a twenty-four hour period; and peak vehicle trips generated on state and federal roadways within the community.
- iii. The community will be significantly and adversely affected by the development of the gaming establishment prior to its opening taking into account such factors as noise and environmental impacts generated during its construction; increased construction vehicle trips on roadways within the community and intersecting the community; and projected increased traffic during the period of construction.
  - iv. The community will be significantly and adversely affected by the operation of the gaming establishment after its opening taking into account such factors as potential public safety impacts on the community; increased demand on community and regional water and sewer systems; impacts on the community from storm water run-off, associated pollutants, and changes in drainage patterns; stresses on the community's housing stock including any projected negative impacts on the appraised value of housing stock due to a gaming establishment; any negative impact on local, retail, entertainment, and service establishments in the community; increased social service needs including, but not limited to, those related to problem gambling; and demonstrated impact on public education in the community.
  - v. The community will be significantly and adversely affected by any other relevant potential impacts that the commission considers appropriate for evaluation based on its review of the entire application for the gaming establishment.
- c. In determining whether a potential impact on a community is a significant and adverse impact, the commission may consider whether the impact to be experienced by the community is different in kind or greater in degree than impacts on other communities that are geographically nearby the community, the host community and the gaming establishment.
  - d. The commission may evaluate whether the positive impacts on a community that may result from the development and operation of a gaming establishment are of such a nature so as to outweigh any negative impacts.

(3) Surrounding Community Agreements.

The applicant shall submit to the commission a signed agreement with each surrounding community to its proposed gaming establishment as part of its RFA-2 application in accordance with M.G.L. c.23K, §15(9) or the parties shall follow the procedure outlined in 205 CMR 125.01(6). The agreement may be for any term necessary to satisfy the purposes for which the agreement is required by M.G.L. c.23K.

(4) Availability of Other Impact Funding. Any finding by the commission that a community is not a surrounding community for purposes of the RFA-2 application shall not preclude the community from applying to and receiving funds from the Community Mitigation Fund established by M.G.L. c. 23K, §61, the Transportation Infrastructure and Development Fund established by M.G.L. c. 23K, §62 and the Public Health Trust Fund established by M.G.L. 23K, §59.

(5) Limited Surrounding Community Definition to Encourage Community Disbursements. To encourage applicants to make funds available to communities to evaluate potential impacts and to potentially negotiate a surrounding community agreement prior to the submission of an RFA-2 application and prior to the commission's final designation of the surrounding communities of a proposed gaming establishment pursuant to 205 CMR 125.01(2), an applicant's execution of a letter of authorization pursuant to 205 CMR 114.03 shall not be considered evidence that the community receiving disbursements is or should be designated as a surrounding community pursuant to 205 CMR 125.01(2); rather, the applicant's execution of a letter of authorization and the community's receipt of funds pursuant to 205 CMR 114.03 shall designate the community as a surrounding community only for the limited purposes of providing funding to pay for the cost of determining the impacts of a proposed gaming establishment and for potentially negotiating a surrounding community agreement.

(6) Negotiation of a Surrounding Community Agreement after the applicant has submitted an RFA-2 application.

a. Participation in Process. In accordance with M.G.L. c.23K, §17(a), 205 CMR 125.01(6) provides the procedure for reaching a fair and reasonable surrounding community agreement between the applicant and the surrounding community. Upon being designated a surrounding community by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2) the community and the applicant shall be bound by this procedure.

1. In the event the applicant shall fail or refuse to participate in the arbitration process set forth in 205 CMR 125.01(6)(c) with any community determined to be a surrounding community under 205 CMR 125.01(1)(a) or 125.01(2), the

commission may deny the applicant's RFA-2 application for a category 1 or category 2 license or condition the issuance of the license on mitigation terms with respect to the proposed surrounding community that the commission determines are appropriate.

2. In the event a community designated a surrounding community fails or refuses to participate in the arbitration process set forth in 205 CMR 125.01(6)(c), the commission may deem the community to have waived its designation as a surrounding community. Provided, however, the commission may nevertheless impose as a condition on any a Category 1 or 2 license a community impact fee and any requirements it deems appropriate requirements for mitigation of impacts from the development or operation of a licensed gaming establishment.
3. An applicant or surrounding community may petition the commission for a finding that the other party has failed or refused to participate in the arbitration process set forth in 205 CMR 125.01(6)(c) and may request a remedy in accordance with 205 CMR 125.01(6)(a)(1) or (2).

b. Negotiated Agreement.

Pursuant to M.G.L. c.23K, §17(a), the applicant shall negotiate a signed agreement with a community within 30 days from the surrounding community determination by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2). In the event that the applicant and surrounding community cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure outlined in 205 CMR 125.01(6)(c). The parties may, however, engage in binding arbitration in accordance with 205 CMR 125.01(6)(c) at any time during that 30 day period.

c. Binding Arbitration Procedure.

1. The applicant and surrounding community may, by mutual agreement, engage in this binding arbitration procedure at any time after the date the surrounding community determination is made by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2). Provided, however, the parties must engage in this binding arbitration procedure if no surrounding community agreement is filed with the commission within 30 days of the date the surrounding community designation is made by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2).
2. The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.



3. No later than 5 days after the passage of 30 days since the surrounding community designation is made by the commission in accordance with 205 125.01(1)(a) or CMR 125.01(2) the parties shall select a neutral, independent arbitrator and submit their best and final offer for a surrounding community agreement pursuant to M.G.L. c. 23K, §15(9) to the arbitrator and to the other party. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.
4. In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 125.01(6)(c)(3), the applicant shall submit a copy of the surrounding community agreements it has executed with other surrounding communities concerning the applicant's proposed gaming establishment. Either party may submit executed surrounding community agreements from other proposed gaming establishments in the commonwealth which the party considers relevant.
5. The reasonable fees and expenses of the single arbitrator shall be paid by the applicant. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the surrounding community.
6. Within 20 days after receipt of the parties' submissions under 205 CMR 125.01(6)(c)(3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the terms of the surrounding community agreement between the applicant and the community. In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s), ~~however,~~ may make any adjustments to the selected best and final offer only if necessary to ensure that the report is consistent with M.G.L. c. 23K, §15(9).
7. No later than 5 days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 125.01(6)(c)(6), the parties shall sign a surrounding community agreement and file it with the commission in accordance with M.G.L. c.23K, §15(9) and 205 CMR 125.01(3) or the arbitrator's report shall be deemed to be the surrounding community agreement between the parties.

REGULATORY AUTHORITY  
205 CMR 125: M.G.L. c.23K, §§4(37); 5; and 17.

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205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 126.00: IMPACTED LIVE ENTERTAINMENT VENUES

Section

126.01: Determination of Impacted Live Entertainment Venues

126.01: Determination of Impacted Live Entertainment Venues

(1) General. The following shall be an impacted live entertainment venue for purposes of M.G.L. c. 23K and 205 CMR:

- a. A venue located in the commonwealth that has executed an impacted live entertainment venue agreement with the applicant for a category 1 or category 2 license which agreement was submitted with the RFA-2 application and is in compliance with M.G.L. c. 23K, §15(10); or
- b. A venue located in the commonwealth that has been designated an impacted live entertainment venue by the commission under M.G.L. c. 23K, §17(b), and 205 CMR 110.01(2) after the submission of an applicant's RFA-2 application upon written request by the venue for the venue to be designated an impacted live entertainment venue with respect to the specific gaming establishment.

(2) Impacted Live Entertainment Venue Determination by Commission. A venue seeking to be designated an impacted live entertainment venue in accordance with 205 CMR 110.01(1)(b) shall submit a written request to the commission no later than 10 days after the commission posts notice on its website that it has received the RFA-2 application for a gaming establishment for which the venue seeks to be designated an impacted live entertainment venue. The commission will make a determination on the request at an open meeting at least 30 days prior to the public hearing on the application held pursuant to M.G.L. c. 23K, §17(c). In determining whether a venue will be designated as an impacted live entertainment venue, the commission shall ensure that the venue meets the definition of *impacted live entertainment venue* as set forth in M.G.L. c.23K, §2, and shall, in accordance with M.G.L. c.23K, §4(39), consider factors including, but not limited to, the venue's distance from the gaming establishment, venue capacity and the type of performances offered by that venue. Further, the commission will consider whether the applicant intends to include a geographic exclusivity clause in the contracts of entertainers at the proposed gaming establishment, or in some other way intends to limit the performance of entertainers within Massachusetts. The commission's determination will be made after a review of the entire RFA-2 application

submitted by the applicant for a gaming license as well as any independent evaluations provided by either the venue or otherwise.

(3) Impacted Live Entertainment Venue Agreements. An applicant for a license for a gaming establishment shall negotiate an agreement with each venue determined by the commission to be an impacted live entertainment venue for their proposed gaming establishment. The applicant shall submit to the commission a signed agreement with each impacted live entertainment venue to its proposed gaming establishment either as part of its RFA-2 application in accordance with M.G.L. c.23K, §15(10) or the parties shall follow the protocol and procedure outlined in 205 CMR 110.01(4).

(4) Negotiation of an impacted live entertainment venue Agreement after the applicant has submitted an RFA-2 application.

a. Participation in Process. In accordance with M.G.L. c.23K, §17(b), 205 CMR 126.01(4) provides the protocol and procedure for reaching a fair and reasonable impacted live entertainment venue agreement between the applicant and the venue. Upon being designated an impacted live entertainment venue by the commission in accordance with 205 CMR 126.01(2) the venue and the applicant shall be bound by this procedure.

1. In the event the applicant shall fail or refuse to participate in the arbitration process set forth in 205 CMR 126.01(4)(c) with any venue determined to be an impacted live entertainment venue under 205 CMR 126.01(2), the commission may deny the applicant's RFA-2 application or condition the issuance of the license.

2. In the event a venue designated an impacted live entertainment venue fails or refuses to participate in the arbitration process set forth in 205 CMR 126.01(4)(c), the commission may deem the venue to have waived its designation as an impacted live entertainment venue. Provided, however, the commission may nevertheless impose as a condition on any a Category 1 or category 2 license any requirements it deems appropriate for mitigation of negative impacts from the development or operation of a licensed gaming establishment.

3. An applicant or venue may petition the commission at any time for a finding that the other party has failed or refused to participate in the arbitration process set forth in 205 CMR 126.01(4)(c) and may request a remedy in accordance with 205 CMR 126.01(4)(a)(1) or (2).

b. Negotiated Agreement.

Pursuant to M.G.L. c.23K, §17(b), the applicant shall negotiate a signed agreement with a venue within 30 days from the impacted live entertainment venue designation by the commission in accordance with 205 CMR 126.01(2). In the event that the applicant and venue cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure outlined in 205 CMR 126.01(4)(c). The parties, however, may engage in binding arbitration in accordance with 205 CMR 126.01(4)(c) at any time during that 30 day period.

c. Binding Arbitration Procedure.

1. The applicant and impacted live entertainment venue may, by mutual agreement, engage in this binding arbitration procedure at any time after the date the impacted live entertainment venue determination is made by the commission in accordance with 205 CMR 126.01(2). Provided, however, the parties must engage in this binding arbitration procedure if no impacted live entertainment venue agreement is filed with the commission within 30 days of the date the designation is made by the commission in accordance with 205 CMR 126.01(2).
2. The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.
3. No later than 5 days after the passage of 30 days since the designation is made by the commission in accordance with 205 126.01(2) the parties shall select a neutral arbitrator and submit their best and final offer for an impacted live entertainment venue agreement pursuant to M.G.L. c. 23K, §15(10) to the arbitrator and to the other party. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.
4. In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 126.01(4)(c)(3), the applicant shall submit a copy of the impacted live entertainment venue agreements, if any, it has executed with other venues concerning the applicant's proposed gaming establishment. Either party may submit executed impacted live entertainment venue agreements from other proposed gaming establishments in the Commonwealth which the party considers relevant.

5. The reasonable fees and expenses of the single arbitrator shall be paid by the applicant. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the venue.
6. Within 20 days after receipt of the parties' submissions under 205 CMR 126.01(4)(c)(3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the terms of the impacted live entertainment venue agreement between the applicant and the venue. In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s), ~~however,~~ may make any adjustments to the best and final offer only if necessary to ensure that the report is consistent with M.G.L. c. 23K, §15(10).
7. No later than 5 days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 126.01(4)(c)(6), the parties shall sign an impacted live entertainment venue agreement and file it with the commission in accordance with M.G.L. c.23K, §15(10) and 205 CMR 126.01(3) or the arbitrator's report shall be deemed to be the impacted live entertainment venue agreement between the parties.

REGULATORY AUTHORITY

205 CMR 126: M.G.L. c.23K, §§4(37); 4(39); 5; and 17

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 127.00: REOPENING MITIGATION AGREEMENTS

Section

- 127.01: Definitions
- 127.02: Reasons for Reopening a Mitigation Agreement
- 127.03: Negotiations to Reopen a Mitigation Agreement
- 127.04: Commission Review of a Petition to Reopen a Mitigation Agreement
- 127.05: Renegotiation and Arbitration
- 127.06: Voluntary Reopening of a Mitigation Agreement

127.01: Definitions

As used in 205 CMR 127.00, the following words and phrases shall have the following meaning:

Mitigation agreement or mitigation agreements means a fully executed host community agreement as governed by 205 CMR 123.02, surrounding community agreement as governed by 205 CMR 125.01, or an impacted live entertainment venue agreement as governed by 205 CMR 126.00.

Significant and material adverse impact means a substantial negative affect on a host community, surrounding community, or impacted live entertainment venue from an unforeseen event, act, or circumstance occurring after a mitigation agreement is executed and which directly undermines a basic premise on which the mitigation agreement was made, a principal purpose of the mitigation agreement, or a vital portion of the mitigation agreement without fault of the affected party.

127.02: Reasons for Reopening a Mitigation agreement

The parties to a mitigation agreement may reopen negotiations on a signed mitigation agreement pursuant to any of the following triggering events:

- (a) In the event that an applicant is granted a conditional gaming establishment license subject to the issuance of the secretary of EOEEA's certificate on the applicant's final, supplemental, or single environmental impact report pursuant to 301 CMR 11.08(8) and 205 CMR 120.02, and the project as so certified and mitigated in accordance with the secretary of EOEEA's certificate would, if the applicant receives a final license from the commission, likely cause a significant and material adverse impact.
- (b) In the event that an applicant is granted a conditional gaming establishment license subject to the issuance of a federal, state or local permit or approval, and the permit or approval is either denied or issued in a manner such that the project

would, if the applicant receives a final license from the commission, likely cause a significant and material adverse impact.

#### 127.03: Negotiations to Reopen a Mitigation Agreement

In the event that a party to a mitigation agreement believes that a triggering event in accordance with 205 CMR 127.02 has occurred, it may take the following actions:

- 1) Request that the other party voluntarily enter into discussions to supplement or amend the mitigation agreement. A party that receives such a request shall enter into such discussions where it is reasonably clear that one of the triggering events provided in 205 CMR 127.02 has occurred. Supplemental or amended mitigation agreements must be filed with the commission promptly upon execution.
- 2) Petition the commission to mandate the reopening of the mitigation agreement. The petition shall clearly set forth the facts and circumstances supporting the request, and shall contain either:
  - a) A sworn statement by the petitioning party that an impasse has been reached in the discussions referenced in 205 CMR 127.03(1); or
  - b) A sworn statement by the petitioning party that the other party has refused to engage in the discussions referenced in 205 CMR 127.03(1).

Petitions under 205 CMR 127.03(2) shall be delivered to the commission and to every party to the mitigation agreement in hand or by any form of email requiring a return receipt. Responses shall be delivered to the commission and to every party to the mitigation agreement in hand or by any form of email requiring a return receipt not later than fourteen days after delivery of the petition.

#### 127.04: Commission Review of a Petition to Reopen a Mitigation agreement

The commission shall review any petition filed in accordance with 205 CMR 127.03(2) and grant the petition if it finds that a triggering event referenced in 205 CMR 127.02 has occurred.

The commission may convene a hearing on the petition on its own volition or if requested by a party. Upon granting the petition, the commission shall order the parties to re-negotiate any affected provision of the mitigation agreement specified by the commission.



### 127.05: Renegotiation and Arbitration

If the parties are unable to come to terms on an amended mitigation agreement within 60 days of the commission's order, the parties shall enter into binding arbitration. The arbitration shall be limited to incorporating into the mitigation agreement measures necessary and reasonable to mitigate the significant and material adverse impact(s). The following shall apply to any such arbitration:

- 1) The parties may, by mutual agreement, engage in this binding arbitration process at any time after the date the commission determines that a triggering event has occurred in accordance with 205 CMR 127.02; provided, however, the parties must engage in this binding arbitration process if no amended mitigation agreement is filed with the commission within 60 days after the date the commission determines that a triggering event has occurred in accordance with 205 CMR 127.04; provided further that the parties may execute an amended mitigation agreement at any time during the arbitration process.
- 2) The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.
- 3) No later than 5 days after filing with the commission of a notice of intent to arbitrate, the parties shall select a neutral, independent arbitrator and submit their best and final offer relative to amending the mitigation agreement to the arbitrator and to the other party. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.
- 4) The reasonable fees and expenses of the single arbitrator shall be paid by the applicant/licensee. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the community or venue.
- 5) Within 45 days after receipt of the parties' submissions under 205 CMR 127.05(3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the amended terms of the mitigation agreement between the parties. In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s), however, may make any

adjustments to the best and final offer necessary to ensure that the report is consistent with M.G.L. c. 23K, §15(9) and (10) as applicable, and that it preserves the original mitigation agreement to the maximum extent reasonable.

- 6) No later than 5 days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 127.05(5), the parties shall either sign an addendum to the original mitigation agreement or an amended mitigation agreement consistent with the arbitrator's report or sign an independently negotiated addendum. In the event that they fail to do so, the arbitrator's report shall be binding on the parties.
- 7) The parties may, by a mutual agreement in writing filed with the commission, extend any of the timelines set forth in 205 CMR 127.00.

#### 127.06: Voluntary Reopening of a Mitigation Agreement

In addition to the reasons stated in 205 CMR 127.02 the parties to a mitigation agreement may reopen the mitigation agreement for any reason stated in the mitigation agreement itself, provided that in the case of a host community agreement the option to reopen the agreement and the condition under which such agreement may be reopened has been described in the fair, concise summary referenced in M.G.L. c.23K, § 15(13) and 205 CMR 124.05.

#### REGULATORY AUTHORITY

205 CMR 127: M.G.L. c.23K, §§4(37); 5; and 17

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 128.00: FORM OF THE GAMING LICENSE

Section

128.01: Form of the Gaming License  
128.02: Posting of the Gaming License

128.01: Form of the Gaming License

- (1) The commission, after selection of a particular qualified and suitable applicant to receive either a category 1 or category 2 gaming license shall issue a formal license document which shall contain the following information:
  - (a) A complete identification of the applicant's identity, address and the agent for all service of process by agencies and agents involved in regulating the gaming industry in the commonwealth;
  - (b) The category and term of the license;
  - (c) The document shall contain an official commission serial number and be printed on security protected paper material utilized in the financial and securities industries;
  - (d) A statement that all statutory conditions set forth in M.G.L. c.23K §21 are incorporated by reference, included as if completely set forth therein and made a part of the issued form of gaming license;
  - (e) A statement that all additional conditions set forth by the commission shall also be incorporated by reference, included as if completely set forth therein and also made a part of the issued form of the gaming license;
  - (f) The form of gaming license shall depict the official seal of the Commonwealth of Massachusetts and be signed by the chair of the commission after receiving a commission resolution authorizing such license issuance and signature execution;

128.02: Posting of the Gaming License

A copy of the gaming license issued in accordance with 205 CMR 128.00 shall be posted in a location continuously conspicuous to the public within the gaming facility at all times.

REGULATORY AUTHORITY

205 CMR 128: M.G.L. c.23K, §§4(37); 5; and 17.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 129.00: TRANSFER OF INTERESTS

Section

- 129.01: Transfer of Gaming License, Establishment, Property or Interest
- 129.02: Disposition of Securities
- 129.03: Transfer of Gaming Establishment
- 129.04: Waiting Period
- 129.05: Restriction of Interest in Multiple Gaming Licenses

129.01: Transfer of Gaming License

- (1) The following requirements apply to any proposed transfer of a category 1 or category 2 gaming license, establishment, property or interest:
  - (a) Without prior notification to and approval of the commission, no gaming licensee shall (i) transfer a gaming license, (ii) transfer any interest in a gaming license, establishment, property or interest, or (iii) enter into an option contract, management contract or other agreement or contract providing for such transfer of a gaming license or any interest in a gaming license, establishment, property or interest in the present or future.
  - (b) Prior to effectuating any transfer, agreement or contract described in 205 CMR 129.01(1)(a), a gaming licensee shall notify the commission in writing of its intent to do so and shall identify the intended transferee and its qualifiers.
  - (c) Within thirty (30) days of the written notice under 205 CMR 129.01(1)(b), the intended transferee shall file with the commission an RFA-1 application pursuant to 205 CMR 111.00, including a non-refundable application fee in the amount of \$400,000.00 under 205 CMR 114.01, and shall be responsible for the payment of all additional fees for investigations of the intended transferee and its qualifiers under 205 CMR 114.04.
  - (d) Upon receipt of a RFA-1 application under 205 CMR 129.01(1)(c), the application shall be referred to the bureau which shall conduct an investigation and issue a written report concerning the qualifications and suitability of the intended transferee and its qualifiers pursuant to 205 CMR 115.03.
  - (e) After the commission has received the bureau's report under 205 CMR 129.01(1)(d), the commission shall provide a copy to the intended transferee and shall initiate a process for a public hearing or adjudicatory proceeding under 205 CMR 115.04.

- (f) After the proceedings under 205 CMR 129.01(1)(e), the commission shall issue a written determination of suitability pursuant to 205 CMR 115.05.
- (g) The commission shall reject any transfer proposed under 205 CMR 129.01(1)(a) to an unsuitable person. The commission may reject any transfer proposed under 205 CMR 130.01(1)(a) that, in the opinion of the commission, would be disadvantageous to the interests of the commonwealth or which the commission otherwise considers unsuitable.
- (h) In the event the commission makes a positive determination concerning any proposed transfer proposed under 205 CMR 129.01(1)(a), the commission may require the transferor, transferee or both to pay to the commission an amount representing the commonwealth's share of the increased value for the transferred licenses, property or interest; provided further, that the commission shall consider as a factor in determining the amount of the payment the market value of the gaming license, property or interest when it was acquired and at the time of the transfer; provided further, that the commission may place additional conditions or restrictions on a transfer that the commission considers suitable.
- (i) If approved and finalized, the transfer of a gaming license under 205 CMR 129.01(1)(a)(i) or (iv) shall divest the transferor of all authority, influence, control, rights and benefits associated with the gaming license.
- (j) Pursuant to M.L.G. c. 23K, §17(g) the proposed transferor and transferee shall not be entitled to any further review of the commission's determination on the transfer proposed under 205 CMR 129.01(1)(a).
- (k) No bona fide banking institution, as defined in M.G.L. c. 167A, §1, or a commercial financial institution which becomes a substantial party of interest with a gaming licensee shall be considered a transferee.

129.02: Disposition of Securities

- (1) The proposed sale, assignment, transfer or other disposition of any security issued by a corporation which holds a gaming license in Massachusetts, or any holding or intermediary company, shall be considered a transfer of a direct or indirect interest in a gaming license or a gaming establishment pursuant to 205 CMR 129.01(1)(a)(ii) if the transfer directly or indirectly constitutes more than a 5 per cent interest in the corporation, shall require prior approval of the commission ~~in accordance with 205 CMR 118.24~~, and shall be ineffective if disapproved by the commission; provided, however, that the commission may waive qualification requirements for prospective purchaser, assignee or transferee of any security under 205 CMR 129.01(1) pursuant to 205 CMR 116.03.

- (2) Unless the commission grants such a waiver, the commission shall determine the qualifications and suitability of a prospective purchaser, assignee or transferee of such a security under 205 CMR 129.01(1) prior to any approval of a transaction.
- (3) 205 CMR 129.02 shall not apply to the disposition of securities that are publicly traded, unless the transfer directly or indirectly constitutes more than 5 per cent of the common stock of the company or a holding, intermediary or subsidiary company of the licensee or the applicant company.

#### 129.03: Transfer of Gaming Establishment

Without prior notification to and approval of the commission, no gaming licensee shall transfer any direct or indirect interest in a gaming establishment, or transfer any direct or indirect real interest, structure, real property, premises, facility, personal interest or pecuniary interest under a gaming license.

#### 129.04: Waiting Period

Whenever a person contracts to transfer any property relating to an ongoing gaming establishment pursuant to 205 CMR 129.03, including a security holding in a gaming licensee or holding or intermediary company pursuant to 205 CMR 129.02, under circumstances which require that the transferee obtain licensure under M.G.L. c. 23K and 205 CMR, the contract shall not specify a closing or settlement date which is earlier than 121 days after the submission of a completed application for licensure or qualification, as applicable.

#### 129.05: Restriction of Interest in Multiple Gaming Licenses

- (1) No person or affiliate shall be permitted to hold more than one gaming license.
- (2) No person or affiliate shall be permitted to hold, directly or indirectly a financial interest in more than one gaming license. For purposes of this section, a financial interest shall not include the interest of an institutional investor as to which the commission has waived licensure or qualification.

#### REGULATORY AUTHORITY

205 CMR 129: M.G.L. c. 23K, §§ 2, 4(37); 5; 14(c), 19(c), 20(e), 21(b), 21(e), 23(c), 31(e).

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 130.00: CONSERVATORS

Section

- 130.01: Scope
- 130.02: Appointment
- 130.03: Qualifications of the Conservator
- 130.04: Insurance
- 130.05: Terms, Conditions, and Duties of Conservator
- 130.06: Termination of the Conservatorship

130.01: Scope

205 CMR 130.01 shall govern the appointment and duties of a conservator.

130.02: Appointment

- (1) Upon revocation or suspension of a gaming license or upon the failure or refusal to renew a gaming license, the commission may appoint a conservator to temporarily manage and operate the business of the gaming licensee relating to the gaming establishment.
- (2) Prior to appointment, a candidate must submit to the commission a Multi-jurisdictional Personal History Disclosure form in accordance with 205 CMR 111.03 and a Massachusetts Supplement Form in accordance with 205 CMR 111.04. An investigation shall be undertaken and a recommendation made by the bureau in accordance with 205 CMR 115.03. All costs incurred by the commission and the bureau for conducting an investigation into any conservator or potential conservator shall be paid from the revenues of the gaming establishment.
- (3) The appointment shall be made by vote of the commission by a written instrument which outlines all terms and conditions of the appointment as provided in 205 CMR 130.00 and G.L. c.23K, §34.
- (4) Upon appointment, the person shall be designated a temporary key gaming employee and deemed licensed as such in accordance with G.L. c.23K, §30.

130.03: Qualifications of the Conservator

- (1) A conservator shall be ~~a person~~ an individual of similar or greater experience in the field of gaming management to the person they are succeeding.
- (2) If the conservator is replacing a gaming licensee they shall have experience operating a gaming establishment of similar caliber in another jurisdiction.
- (3) At the time of the appointment, the conservator shall be in good standing in all jurisdictions in which the conservator operates, or has operated, a gaming establishment.

#### 130.04: Insurance

The former or suspended gaming licensee shall purchase liability insurance, in an amount determined by the commission at the time of the appointment of a conservator, to protect a conservator from liability for any acts or omissions of the conservator during the conservator's appointment which are reasonably related to and within the scope of the conservator's duties. A copy of the policy shall be filed with the commission.

#### 130.05: Terms, Conditions, and Duties of Conservator

- (1) A conservator shall, before assuming, managerial or operational duties, execute and file a bond for the faithful performance of its duties payable to the commission with such surety and in such form and amount as the commission shall approve at the time of appointment.
- (2) The terms of compensation shall be fixed by the commission at the time of appointment of the conservator. The terms shall include a requirement that the conservator submit itemized billings for expenses to the commission on a monthly basis, which billings shall be considered by the commission for reasonableness. Payment of compensation and expenses shall be made from the revenues of the gaming establishment.
- (3) The conservator shall file reports with the commission regarding the management and operation of the gaming establishment in the form and at such intervals as the commission may prescribe at the time of appointment.
- (4) The conservator shall take possession immediately of all books and records relating to the gaming establishment.
- (5) The conservator shall be responsible for ensuring that all taxes relating to the gaming establishment are paid in a timely fashion.
- (6) The conservator shall abide by all licensing provisions applicable to the former or suspended gaming licensee upon appointment.
- (7) The conservator may, by approval of the commission, appoint any consultants needed to assist in the operation of the gaming establishment; provided, however, that the commission may require any such consultant to submit the completed forms, undergo the investigation, and receive an appointment as a designated temporary key gaming employee in accordance with 205 CMR 130.02(2)-(4) or to undergo such other investigation into the background, integrity, honesty, character, reputation, financial stability, criminal history and responsibility of the consultant as the commission may require. All costs incurred by the commission and the bureau for conducting an investigation into any such consultant or potential consultant shall be paid from the revenues of the gaming establishment.

#### 130.06: Termination of the Conservatorship

The conservatorship shall serve at the pleasure of the commission and shall continue until terminated by the commission:

- (1) upon the award of a new gaming license pursuant to 205 CMR 131.02; or



- (2) upon the voluntary resignation of the conservator in which case the commission shall appoint a new conservator in accordance with 205 CMR 130.00; or
- (3) upon a non-reviewable finding by the commission to appoint a replacement in accordance with this 205 CMR 130.00.

REGULATORY AUTHORITY

205 CMR 130: M.G.L. c. 23K, §§ 4(19); 4(37); 5; 12; 30(i); and 34.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 131.00: AWARDING OF A NEW GAMING LICENSE

Section

- 131.01: Commencement of Application Process  
131.02: Application and Award of a New Gaming License

131.01: Commencement of Application Process

In the event of a revocation of, or failure to renew a gaming license the commission shall initiate proceedings in accordance with 205 CMR 131.00 to award a new gaming license to a qualified applicant as promptly as possible.

131.02: Application and Award of a New Gaming License

- (1) Prior to soliciting applications, the commission shall determine the required minimum capital investment by an applicant into the preexisting gaming establishment. In making the determination the commission shall consider, among other things, the length of time the establishment has been in operation, the amount of the initial capital investment, and reason the previous gaming license was revoked or not renewed.
- (2) The new gaming licensee's gaming establishment must be located at the site of the preexisting gaming establishment.
- (3) Upon transfer of good, clear, record, marketable title in the gaming establishment to the new licensee, the new licensee shall pay to the prior licensee ~~the lesser of the depreciated capital investment in the gaming establishment or the fair market value of the gaming establishment as determined by the commission.~~ **If the new licensee and the prior licensee are unable to come to an agreement on the fair market value within 60 days of the date that the new licensee is approved by the commission, the following arbitration procedure shall apply:**
- (a) **The new licensee and the prior licensee shall select a neutral, independent arbitrator and submit their calculated fair market value to the arbitrator and to the other party along with any supporting materials. If the parties cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within 5 days of the first two arbitrators being selected, the commission or its designee shall select the third neutral, independent arbitrator. The parties shall promptly submit their calculated fair market value for the gaming establishment to the arbitrators and the other party along with any supporting materials. The 3 arbitrators shall preside over the matter and determine the fair market value of the gaming establishment by majority vote.**

- (b) The reasonable fees and expenses of the single arbitrator shall be paid by the prior licensee. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the prior licensee and one third shall be paid by the new licensee.
- (c) Within 30 days after receipt of the parties' submissions under 205 CMR 131.02(3)(a), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the fair market value of the gaming establishment. In reaching the final decision, the arbitrator(s) shall employ procedures customarily accepted by the appraising profession as valid.

(4) The commission shall request applications for the available license in accordance with 205 CMR 110.00. The applications shall be in conformance with 205 CMR 111.00. The applicant shall pay all application fees and additional fees for investigation in conformance with 205 CMR 114.00. The process of review and determination of suitability shall be in conformance with 205 CMR 115.00, 116.00, and 117.00.

(5) Upon a positive determination of suitability, the applicant shall file with the commission an application to operate the gaming establishment on a form prescribed by the commission.

(6) The applicant shall agree to assume and be bound by all obligations imposed upon the original licensee provided in any applicable host community agreement(s), surrounding community agreement(s), and impacted live entertainment venue agreement(s).

(7) Upon award of a new gaming license, the new gaming licensee shall pay the original licensing fee required under M.G.L. c. 23K in the manner prescribed by 205 CMR 121.00.

(8) The commission shall review and award the new license in accordance with 205 CMR 119.00. The new license shall incorporate such terms and conditions as the commission, in its discretions, considers necessary and appropriate.

#### REGULATORY AUTHORITY

205 CMR 131: M.G.L. c. 23K, §§ 1(9); 4(15, 17, 19, 27, 37); 5; 10; 12; 15; 21; 23(b); 34; and 35(d).

MASSACHUSETTS GAMING COMMISSION

DRAFT REGULATIONS- **UPDATES TO 205 CMR 102 through 117**



205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 102.00: CONSTRUCTION AND APPLICATION

102.01: Authority

205 CMR 101.00 through 117.00 *et. seq.* are issued pursuant to M.G.L. c. 23K, §§ 4(37) and 5, unless otherwise specified.

102.02: Definitions

As used in 205 CMR 101.00 through 117.00 *et. seq.*, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise:

\*\*\*

Massachusetts Supplement Form (PHD-MA-SUPP) is defined in 205 CMR 111.04: *Massachusetts Supplemental Form.*

MEPA means the Massachusetts Environmental Policy Act

Money means cash or instruments that are convertible to cash in any negotiable currency.

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RFA-P1 or RFA-1 Process is defined in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications.*

RFA-2 is defined in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications.*

Secretary means the secretary of the commission.

Secretary of EOEEA means the Secretary of the Executive Office of Energy and Environmental Affairs.

Security Protocols means the system for securing and preserving the confidentiality of records in accordance with 205 CMR 103.14: *Security Protocols; Restricted Access.*

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### 102.03: Construction and Amendments

(1) 205 CMR, shall be construed in accordance with generally accepted principles of statutory construction in the Commonwealth of Massachusetts, including those set forth in M.G.L. c. 23K.

(2) 205 CMR shall be liberally construed to permit the commission, the bureau, and their agents and employees to effectively carry out their respective statutory functions and to secure a just and expeditious determination of issues properly presented to the commission and the bureau.

(3) Nothing in 205 CMR shall be construed to conflict with any provision of M.G.L. c. 23K.

(4) Waivers and variances.

(a) General. The commission may in its discretion waive or ~~modify~~ grant a variance from any provision or requirement contained in 205 CMR 101.00 through 117.00 *et. seq.*, not specifically required by law, where the commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K;

2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;

3. Granting the waiver or variance will not adversely affect the public interest; and

4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

(b) Filings. All requests for waivers or variances shall be in writing, shall set forth the specific provision to which a waiver or variance is sought, and shall state the basis for the proposed waiver or variance.

(c) Determination. The commission may grant a waiver or variance, deny a waiver or variance, or grant a waiver or variance subject to such terms, conditions and limitations as the commission may determine. Any waiver request not acted on by the commission within 60 days of filing shall be deemed denied. ~~There shall be no further review from any determination by the commission or any constructive denial of a waiver request.~~

#### 102.04: Words and Terms: Tense, Number and Gender

In construing 205 CMR 101.00 through 117.00 *et. seq.*, except when otherwise plainly declared or clearly apparent from the context: words in the present tense shall include the future tense; words in the masculine shall include the feminine and neuter genders; and words in the singular shall include the plural and the plural shall include the singular.

#### 102.05: Computation of Time

(1) Unless **specified** otherwise ~~specifically provided by law~~, computation of any time period referred to in 205 CMR 101.00 through 117.00 *et. seq.* shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is to be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next business day. When the time period is seven days or less, intervening Saturdays, Sundays, or legal holidays shall be excluded in the computation. When a time period is greater than seven days each intervening calendar day shall be included in the computation.

(2) Whenever a provision of 205 CMR ~~101.00 through 117.00~~ requires that an act or event occur on a specified day or date, and such day or date falls upon a Saturday or Sunday or legal holiday, such provision shall be construed to refer to the next business day immediately following such day or date.

#### 102.06: Matters Not Provided For

In recognition of the inherent difficulty of drafting a functional code that contemplates every situation that may arise in the regulation of gaming in the Commonwealth, this section provides the Commission, the IEB, and other designated Commission staff, with reasonable discretion to ensure that all issues that may arise in the enforcement of 205 CMR may be appropriately addressed. Matters not specifically provided for in 205 CMR regarding the licensing of a gaming establishment, individual, or vendor, or the operation of a gaming establishment, shall be determined by the Commission or, where applicable, IEB in a manner consistent with the principles set forth in M.G.L. c.23K, §1. If this provision is used, the Commission or IEB shall make written findings outlining the reasons therefor and file them with the Commission for discussion at a public meeting.

#### 102.07: Legal challenges

No person or local government entity may challenge or seek to enjoin commission action based on a claim that an applicant and/or the commission has not complied with any provision of 205 CMR 102.00 *et. seq.*

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 103.00: ACCESS TO AND CONFIDENTIALITY OF COMMISSION RECORDS

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103.04: Determinations by the Official Custodian, the General Counsel and the Commission

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~~(2) Subject to 205 CMR 103.04(1), and to the Commission's determinations pursuant to 205 CMR 103.11 and 205 CMR 103.12, the official custodian designated in accordance with 205 CMR 103.03 shall determine whether any particular record within his or her jurisdiction is subject to disclosure as a public record or is exempt from disclosure as described in 205 CMR 103.02(1) through (5). Whenever the official custodian has a doubt or question about whether any particular record is subject to disclosure as a public record or exempt from disclosure as described in 205 CMR 103.02(1) through (5), and whenever any confidentiality claimant asserts in writing that any particular record is exempt from disclosure as described in 205 CMR 103.02(1) through (5), the official custodian shall consult the general counsel who shall, subject to 205 CMR 103.04(1), resolve such doubt, question or dispute, and such request shall be granted or denied, only in accordance with a written determination signed by the general counsel; provided further that the general counsel may refer any such doubt, question or dispute to the commission for its resolution.~~

(DELETED)

103.05: Effect of Requests for Confidentiality

Whenever a confidentiality claimant requests in writing that particular records be deemed to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions*, such records or information shall be treated as confidential and may not be ~~deemed public records~~ disclosed until the confidentiality request has been approved or denied pursuant to 205 CMR 103.04, 103.10 and 103.11.

103.06: Postponing Denial of Confidentiality Pending Appeal

Whenever the commission denies a request to deem records to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* or exempt from disclosure as described in 205 CMR 103.02(1) through (5), such denial shall take effect ten days after the date thereof so that any person aggrieved by said denial may appeal to ~~another State agency with jurisdiction over the subject matter thereof, or to~~ a court of competent jurisdiction. During this ten-day



period, the records in question shall be treated as confidential and ~~may not be deemed public records~~ and accordingly exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a). This ten-day period may be extended by the commission in extraordinary situations. Any extension shall be in writing and signed by the general counsel.

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#### 103.09: Information Provided in Response to Request for Applications - Phase 1 & Phase 2

(1) In accordance with M.G.L. c. 23K, § 9(b), an application for a license in response to the commission's Request for Applications-Phase 1, 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*, and an RFA-2 application submitted in accordance with 205 CMR 118.00: *Phase 2- Applying For a License* shall be a public record except those portions of the application containing information otherwise exempt from disclosure pursuant to 205 CMR 103.02(1) through (5).

(2) As guidance to applicants and the public, the commission shall issue a set of specimen annotated application forms and distribute such forms together with the Request for Applications-Phase 1 pursuant to 205 CMR 111.00: *Phase 1 Application Requirements* and with the Request for Applications- Phase 2 pursuant to 205 CMR 118.00: *Phase 2- Applying For a License*. These specimen annotated application forms shall designate as “Exempt/Redact” all information or categories of information which, at a minimum, the commission considers to be exempt from disclosure in accordance with 205 CMR 103.02(1) through (5).

(3) To assist the commission in protecting from inadvertent disclosure information subject to 205 CMR 103.02(1) through (5), applicants shall follow the procedures in 205 CMR 103.10(1) in completing and submitting the required forms pursuant to 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 118.00: *Phase 2- Applying For a License*.

(4) All information submitted by an applicant in the RFA Phase 1 or Phase 2 application, other than that described as “Exempt/Redact” in 205 CMR 103.09(2), shall be presumed to be available for public disclosure on request unless a confidentiality claimant demonstrates or the commission otherwise finds that a separable portion of the information is exempt from disclosure pursuant to 205 CMR 103.02(1) through (5). Confidentiality claimants shall make such a demonstration in accordance with the provisions of 205 CMR 103.10 through 103.12.

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#### 103.10: Requests for Protecting Confidential Information

Except as set forth in 205 CMR 103.09, no record shall be deemed to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* unless a person submits a written requests to the commission in writing to protect to deem the information as confidential information and accordingly exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a). The request shall be made and substantiated as follows:

(1) Each record containing information that is the subject of a confidentiality request shall be clearly marked “CONFIDENTIAL”. To assist the commission in complying with 205 CMR

103.02, persons shall separately submit confidential portions of otherwise non-confidential records. If submitted separately, the record that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL" and the record from which confidential information has been redacted shall be clearly marked "REDACTED".

(2) The request for confidentiality shall be supported with the following information, which shall be treated as a public record:

(a) The time period for which confidential treatment is desired.

(b) The reason the record was provided to the commission or the bureau, and the date of submittal.

(c) The basis for the claim that the record contains confidential information and, if applicable, the basis for believing that the criteria in 205 CMR 103.11 are satisfied.

(d) The extent to which the person requesting that the record be kept confidential has disclosed the contents of that record to other persons without a restriction as to confidentiality imposed by agreement or by law.

(e) A statement whether, to the best of the provider's knowledge, the information has previously been provided to a governmental entity that does not treat the information as confidential or that has denied a request for confidential treatment.

(f) A statement that the information is not required to be disclosed or otherwise made available to the public under any other Federal or state law.

(g) ~~How making the record a public record would place the applicant at a competitive disadvantage pursuant to M.G.L. c. 23K, § 9(b), be detrimental to a gaming licensee if it were made public pursuant to M.G.L. c. 23K, § 21(a)(7), or otherwise cause irreparable harm or damage to the person requesting confidentiality.~~ A statement as to how the record, or portion thereof, meets the definition of *confidential information* as set forth in 205 CMR 102.02

(h) If the record was submitted voluntarily for use in developing governmental policy and upon a promise of confidentiality pursuant to M.G.L. c. 4, § 7, cl. 26(g), and not in compliance with a regulation or order of the commission or a court, whether and if so why making the record a public record would tend to lessen the availability to the commission or the bureau of similar records in the future.

103.11: Procedure for Acting on Requests for Protecting Confidential Information

The commission shall act on a confidentiality request made pursuant to 205 CMR 103.10 subject to the following provisions:

(1) If the commission has received a request to inspect or copy a record which is the subject of a confidentiality request on which the commission has not made a final decision, the commission shall notify:

(a) the person who made the request to inspect or copy the record that:

~~1. the record in question is the subject of a pending confidentiality request, and therefore not a public record;~~

~~2. the request to inspect or copy is initially denied; and~~

~~3. a final decision will be made when the commission determines whether the record in question is entitled to confidentiality protection-, and shall notify~~

(~~b~~) the confidentiality claimant of the request to inspect or copy the record.

(2) The commission shall determine whether the record, ~~if made public, would divulge~~ **is** confidential information as defined in 205 CMR 102.02: *Definitions*. The Commission shall give notice of its determination(s) to the confidentiality claimant and all persons who requested to inspect or copy the record.

(3) If the commission determines that a record ~~would, if made public, divulge~~ **is** confidential information as defined in 205 CMR 102.02: *Definitions*, the record in question, **or portion thereof**, shall be ~~deemed confidential and may not be deemed a public record~~ **exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a)** for such length of time, and subject to such terms, conditions and limitations, as the commission may include in the determination. The commission shall so notify the person who submitted the record to the commission or the bureau, the confidentiality claimant, and all persons making a request to inspect or copy the record in question.

(4) All notices given pursuant to 205 CMR 103.11(2) and (3) shall be in writing, shall be delivered by hand, by ~~certified~~ **first class** mail, ~~return receipt requested~~, or by electronic mail, and shall include:

(a) the reasons for the determination,

(b) notice that the determination constitutes a final decision of the commission,

(c) notice that the determination may be subject to review by ~~one or more other State agencies~~ **the supervisor of records of the Office of the Secretary of the Commonwealth** or by the courts, **as applicable**,

(d) if the determination is that the record in question, **or portion thereof** ~~if made public, would not divulge~~ **is not** confidential information as defined in 205 CMR 102.02: *Definitions*, notice that the record in question shall become a public record 14 days after the date of the commission's determination unless, a person aggrieved by said determination appeals the determination ~~to another State agency with jurisdiction over the subject matter thereof, or to a court of competent jurisdiction~~. This 14-day period may be extended only in extraordinary situations, and any such extension must be in writing and signed by the commission's general counsel ~~pursuant to 205 CMR 103.04~~.

(5) If pursuant to 205 CMR 103.11, the commission's ~~determination~~ denies a request to protect confidential information made pursuant to 205 CMR 103.10, the confidentiality claimant may, within ten days from the date of the commission's notice of such determination, submit to the commission one request to reconsider such determination, which request to reconsider shall set forth any and all supplemental information supporting the claim of confidentiality and further addressing the criteria of 205 CMR 103.10(2). The commission shall act on the request to reconsider following the procedures in 205 CMR 103.11(1) through (4). The request for reconsideration shall stay the effect of the commission's original denial and the 14-day period set forth in 205 CMR 103.11(4) shall run from the date of the commission's notice of its ruling on the request for reconsideration.

(6) If pursuant to 205 CMR 103.11, the commission's ~~determination~~ denies a request to protect confidential information made pursuant to 205 CMR 103.10, the confidentiality claimant may, at any time before the expiration of the applicable 14 day period set forth in 205 CMR 103.11(4), submit a written request to the commission pursuant to 205 CMR 111.05: *Withdrawal of Application*, to withdraw with prejudice the application to which the information relates and to order the information permanently sealed or returned to the applicant. If the commission allows the request to withdraw the application with prejudice, the commission may order the information permanently sealed or returned to the applicant to the extent permitted by M.G.L. c. 4, § 7, cl. 26, and M.G.L. c. 23K.

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## 205 CMR: MASSACHUSETTS GAMING COMMISSION

### 205 CMR 104.00: DELEGATION OF AUTHORITY

#### 104.01: Delegation of Commission Authority

- (1) Subject to M.G.L. chs. 23K and 30A, the commission may, in its discretion, delegate the authority of the commission to perform any of its functions under M.G.L. c. 23K or 205 CMR 101.00 through 117.00 *et. seq.*, with the exception of final decisions regarding Phase 1 and Phase 2 determinations of qualification for gaming licenses, to a commissioner or commissioners, or to the executive director, the bureau, the deputy director, or any other employee of the commission, on such terms and conditions as the commission may specify. Any action taken and determination made pursuant to such delegation shall not require further approval, ratification or other action by the commission.
- (2) All delegations of commission authority made pursuant to 205 CMR 104.01(1) shall remain in effect until amended, suspended, modified or revoked by the commission.
- (3) The commission may review, reconsider, amend, modify, suspend or revoke any action taken or determination made pursuant to such delegation.
- (4) Whenever M.G.L. c. 23K or 205 CMR 101.00 through 117.00 *et. seq.* requires that the commission provide notice of an action taken or determination made, and such action is taken or determination is made pursuant to delegation pursuant to 205 CMR 104.01(1), such notice shall be provided by the individual or entity exercising delegated authority.
- (5) In any delegation to the bureau, pursuant to M.G.L. c. 23K, § 4(32), the commission shall not place any restriction upon the bureau's ability to investigate or prosecute violations of M.G.L. c. 23K or 205 CMR.

#### 104.02: Delegation of Chair's Authority

- (1) The chair may, in his or her discretion, delegate to another commissioner or commissioners or to the executive director the authority of the chair to perform any of his or her duties and responsibilities under M.G.L. c. 23K or 205 CMR.
- (2) All delegations of made pursuant to 205 CMR 104.02(1) shall remain in effect until amended, suspended, modified or revoked by the chair.
- (3) The chair may, on his or her own initiative, review, reconsider, amend, modify, suspend or revoke any action taken or determination made pursuant to such delegation.
- (4) Whenever M.G.L. c. 23K or 205 CMR 101.00 through 117.00 *et. seq.* requires that the chair provide notice of an action taken or determination made, and such action is taken or

determination is made pursuant to delegation pursuant to 205 CMR 104.02(1), such notice shall be provided by the individual exercising delegated authority.

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205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 105.00: INVESTIGATIONS AND ENFORCEMENT BUREAU

105.01: Duties and Responsibilities

- (1) The bureau shall be the primary enforcement agent for regulatory matters under M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.* and shall have all of the powers and duties of the bureau enumerated in St. 2011, c. 194, M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.*.
- (2) The bureau shall be under the supervision and control of the deputy director who shall be the executive and administrative head of the bureau and shall be responsible for administering and enforcing the laws relative to the bureau and to each administrative unit of the bureau. The duties of the deputy director shall be exercised and discharged subject to the direction, control and supervision of the chair or to the executive director by appropriate delegation of authority pursuant to 205 CMR 104.02: *Delegation of Chair's Authority*.
- (3) The bureau shall be a law enforcement agency and its employees shall have such law enforcement powers as necessary to effectuate the purposes of M.G.L. c. 23K, including the power to receive intelligence on an applicant or licensee, and to investigate any suspected violations of M.G.L. c. 23K.
- (4) With respect to the investigation and enforcement of gaming establishments and licensees, the bureau may obtain or provide pertinent information regarding applicants or licensees from or to law enforcement entities or gaming authorities and other domestic, Federal or foreign jurisdictions, including the Federal Bureau of Investigation, and may transmit such information to each other electronically or via other secure methods.
- (5) The bureau shall conduct investigations into the qualifications and suitability of all applicants, qualifiers and other persons required to be registered or investigated in connection with any form of license or registration pursuant to M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.*, including without limitation an investigation of qualifications and suitability to hold a gaming license pursuant to M.G.L. c. 23K.

105.10: Authority to Retain and Utilize Contractor Investigators

- (1) The commission may, pursuant to M.G.L. c. 23K, § 4, and any applicable procurement procedures, retain qualified contractor investigators, either directly or pursuant to a contract or contracts with a private investigative business or businesses, to assist the bureau in conducting



initial suitability, qualification, and background investigations of license applicants and qualifiers in accordance with the criteria set forth in M.G.L. c. 23K and 205 CMR ~~101.00 through 117.00~~.

(2) In retaining contractor investigators, the commission may establish minimum qualifications in terms of education, training, and experience in Federal, state or local, civil or criminal, law enforcement, regulatory and investigative matters.

(3) Prior to entering a contract with the commission, each prospective contractor investigator and, if applicable, his or her related business shall be subject to an expedited background inquiry by the bureau through the gaming and enforcement unit, which shall include, without limitation, an examination of prior criminal history, financial stability, reputation for integrity, honesty, good character; and education, training, and experience in Federal, state or local, civil or criminal, law enforcement, regulatory and investigative matters. If a contractor investigator and, if applicable, his or her business entity is deemed suitable and qualified by the bureau in its discretion based on this expedited background inquiry, then the commission on behalf of the bureau may enter into a contract for the professional services of the contractor investigator in a form and with terms such acceptable to the commission.

(4) Once retained, each contractor investigator shall be provided with the necessary authority and credentials to serve as an official agent of the bureau in conducting initial suitability, qualification, and background investigations of license applicants and qualifiers in accordance with the criteria set forth in M.G.L. c. 23K and 205 CMR ~~101.00 through 117.00~~ *et. seq.*.

(5) Immediately on being retained each contractor investigator shall be sworn to the faithful performance of his or her official duties under M.G.L. c. 23K and 205 ~~101.00 through 117.00~~ *et. seq.*. Before a contractor investigator can participate in any investigation under M.G.L. c. 23K or 205 CMR ~~101.00 through 117.00~~ *et. seq.*, the investigator shall execute a certification acknowledging his full understanding and acceptance of the authority given, applicable confidentiality provisions, and the limits to such an investigative authority.

(6) Each contractor investigator shall report to the deputy director of the bureau. In the case of an absence or vacancy in the office of the deputy director, each contractor investigator shall report to an interim supervisor designated by the chair to supervise such investigators and investigations.

(7) Any contract entered by the commission for the services of any contractor investigator may be terminated by the commission, without cause, liability or recourse.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 106.00: INFORMATION AND FILINGS

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106.02: Communications; Notices

(1) Except as otherwise provided by 205 CMR 101.00 ~~through 117.00~~ *et. seq.* or as specified by the commission on its website, all applications, papers, process or correspondence relating to the commission or the bureau shall be addressed to, submitted to, filed with or served upon the commission or the bureau, respectively, at its main office.

(2) Service of process upon the commission or the bureau shall be made in accordance with Mass. R. Civ. P. 4(d)(3).

(3) Service of all papers, documents, notices and pleadings in adjudicatory proceedings conducted by or on behalf of the commission or the bureau shall be made in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(4) Except as set forth in 205 CMR 106.03, all other applications, papers, documents, notices, correspondence or filings shall be deemed to have been received by the commission when delivered to the main office of the commission or to the chair, a commissioner, or such employee or employees of the commission as may be designated by the chair and posted on the commission's website. Except as set forth in 205 CMR 106.03, all other applications, papers, documents, notices, correspondence or filings shall be deemed to have been received by the bureau when delivered to the main office of the bureau or to the deputy director or such employee, employees, or agents of the bureau as may be specified by 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* or as may be designated by the deputy director as posted on the commission's website.

(5) Except as otherwise specifically provided by M.G.L. c. 23K or 205 CMR ~~through 117.00~~ *et. seq.*, the commission or the bureau as applicable:

(a) will send any notice of public hearing and any decision of the commission or the bureau concerning a specific applicant, licensee or registrant to the applicant, licensee or registrant either by in hand delivery, by ~~certified, registered, or express~~ mail, or by electronic mail to the address shown in the most recent application or notice of change of address received from such person; and

(b) may send any other papers, documents, notices, or correspondence by any method specified in 205 CMR 106.02(5)(a) or by first class mail, postage prepaid. Notices from the commission or the bureau shall be deemed to have been received upon the earlier of in hand delivery, electronic mail transmission, or deposit in the United States mail, postage prepaid, and the time specified in any such notice shall commence to run from that date.

~~(6) Applicants, licensee and registrants shall immediately notify the commission and the bureau in writing of any change of address, and shall specifically request that all future notices or other communications be sent by the commission or the bureau to the new address.~~ Any applicant or person or entity holding a license or registration issued by the Commission shall have an ongoing duty to report any change of mailing address, email address, or other contact information to the Commission. The contact information on file at the Commission shall be deemed accurate for purposes of service of any notification required to be provided including that required by 205 CMR, M.G.L. c.30A, and/or M.G.L. c.23K.

(7) Any applicant, licensee or registrant who desires to have notices or other communications from the commission or the bureau sent to an address other than that specified in the most recent application or notice of change of address on file with the commission and the bureau shall file with the commission and the bureau a written notice of change of address, and, within a reasonable time after receipt thereof by the commission and the bureau, subsequent notices and other communications from the commission or the bureau will be sent to the applicant, licensee or registrant at such address.

#### 106.03: Electronic Filing by Applicants during RFA-1 and RFA-2 Processes

(1) The commission shall develop and post on its website administrative procedures pursuant to which all applications, papers, documents, correspondence and other information submitted by an applicant to the commission or the bureau during the RFA-1 process pursuant to 205 CMR 115.00: *Phase 1 Suitability Determinations, Standards and Procedures* and the RFA-2 process described in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications* must be filed by electronic means as provided therein. Any document required by 205 CMR 101.00 through 117.00 *et. seq.* to be signed or notarized shall be signed or notarized, scanned and submitted in PDF form. All applicants must comply with those administrative procedures.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 107.00: PROFESSIONAL PRACTICE

107.01: General Provisions

No person may practice law, accountancy, architecture, professional engineering, land surveying or any other profession or occupation regulated by the laws of the Commonwealth of Massachusetts before the commission in any manner other than in accordance with law, the ethical standards applicable to the particular profession and 205 CMR 101.00 ~~through 117.00~~ *et. seq.* Practice shall include any matter connected with the representation of the interest of a client, including the making of any appearance and the preparing or filing of any necessary written document, correspondence or other paper relative to such interests.

107.02: The Practice of Law

(1) No individual, other than a member, in good standing, of the bar of the Commonwealth of Massachusetts, shall practice law before the commission; provided, that a member of the bar, in good standing, of any other state may appear and practice, by permission of the commission, in any particular matter before the commission as set forth in 205 CMR 107.02(2).

(2) Notwithstanding 205 CMR 107.02(1), an attorney who is a member of the bar of the highest court of any state may appear and practice before the commission in a particular matter by leave granted in the discretion of the commission, provided he or she files a certificate that:

(a) he or she is a member of the bar in good standing in every jurisdiction where he or she has been admitted to practice;

(b) there are no disciplinary proceedings pending against him or her as a member of the bar in any jurisdiction; and

(c) he or she has read and is familiar with M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.*; and provided further, that his or her application for leave to practice before the commission is on request of a member, in good standing, of the bar of the Commonwealth of Massachusetts, who shall:

1. represent the client concurrently as its local counsel on the same particular matter;

2. appear of record in the particular matter; and

3. be responsible for the conduct of the out-of-state attorney in the particular matter; and provided further that both such attorneys shall sign all papers submitted or filed by counsel with the commission on behalf of their mutual client.

(3) A natural person who is not a member of the bar and to whom 205 CMR 107.02(1) and (2)

are not applicable may appear and practice before the commission only in his or her own behalf.

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205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 108.00: COMMUNITY AND POLITICAL CONTRIBUTIONS

108.01: Prohibited Political Contributions

(1) As specified in M.G.L. c. 23K, § 46, no applicant for a gaming license, nor any holding, intermediary or subsidiary company thereof, nor any prohibited person, nor any person or agent on behalf of any such applicant, company or prohibited person, shall directly or indirectly, pay or contribute any money or thing of value to:

(a) an individual who holds a municipal, county or state office;

(b) any candidate for nomination or election to any public office in the Commonwealth of Massachusetts, including a municipal office; or

(c) any group, committee or association organized in support of any such candidate; provided, however, that the provisions of 205 CMR 108.01 shall not prohibit an individual who is a candidate for public office from contributing to the candidate's own campaign.

(2) In determining whether a contribution or payment was made by a prohibited person or any entity described in 205 CMR 108.01(1), the commission shall consider all relevant facts and circumstances, including, but not limited to, the following:

(a) Whether the person making the contribution or payment is a spouse or dependent person with regard to the prohibited person;

(b) The nature and importance of any economic, business, personal, familial or other relationship between the person making the contribution or payment and the entity or prohibited person that currently exists, that existed at the time the contribution or payment was solicited and made, or that is reasonably anticipated to exist in the foreseeable future;

(c) The timing and nature of any communications that may have occurred between the person making the contribution or payment and the entity or prohibited person regarding the prohibited person's desire to raise funds for the candidate or political organization that received the contribution or payment;

(d) The ability or inability of the entity or prohibited person to control or affect the actions of the person making the contribution or payment, and any evidence that any such ability played a role in the decision to make the contribution or payment;

(e) Any prior contributions or payments to or expressions of support for the candidate or political organization that was the recipient of the contribution or payment by the person making the contribution or payment, and the timing of any such prior contributions or payments or expressions in relation to the establishment of the relationship between the prohibited person and the person making the contribution or payment;

(f) Whether the person making the contribution or payment is a resident of Massachusetts or has significant property or business interests in Massachusetts;

(g) The timing and nature of any communications that may have occurred between the person making the contribution or payment and the recipient of the contribution or payment regarding the entity or prohibited person's solicitations on behalf of or expressions of support for the candidate or political organization;

(h) Whether there is a pattern or regular course of conduct involving contributions or payments to one or more candidates or political organizations by the person making the contribution or payment;

(i) Whether there is a pattern or regular course of conduct involving contributions or payments to one or more candidates or political organizations on the part of a spouse, employees, contractors or other dependent persons of a prohibited person or any affiliated person or entity thereof; and

(j) Whether the entity or prohibited person has, directly or indirectly, reimbursed or offered to reimburse the person making the contribution or payment for all or any portion of the contribution.

#### 108.02: Mandatory Disclosure of Political Contributions and Community Contributions

(1) An applicant or qualifier shall disclose to the commission in the Phase 1 application all political contributions and community contributions from November 22, 2011 through the date the Phase 1 application is filed **and shall disclose in the Phase 2 application all political contributions and community contributions from January 15, 2013 through the date the Phase 2 application is filed.** This duty of disclosure shall continue after the submission of the application and throughout the period of examination and investigation of the applicant and its qualifiers by the bureau and commission. The failure to make such disclosures shall constitute a violation of M.G.L. c. 23K, § 13 and 205 CMR 112.00: *Required Information and Applicant Cooperation*, and may subject the applicant licensee or qualifier to a negative determination of suitability or denial of its application for a gaming license or to a revocation of a gaming license or determination of suitability for licensure, and any other remedial actions by the commission.

(2) All political contributions or contributions in kind made by an applicant for a gaming license to a municipality or a municipal employee, as defined in M.G.L. c. 268A, § 1, of the host community of the applicant's proposed gaming establishment shall be disclosed by the applicant to the commission in accordance with 205 CMR 111.00: *Phase 1 Application Requirements* **and contributions made from January 15, 2013 through the date the Phase 2 application is filed shall be disclosed in the Phase 2 application** and to the city or town clerk of the host community. Applicants shall also fully and completely comply with 970 CMR 1.19: *Contributions from Gaming License Applicants and Persons Holding Such Licenses* (Office of Campaign and Political Finance) so as to enable timely and expeditious public reporting.

(3) The duty to disclose set forth in 205 CMR 108.02(1) and (2) shall not prohibit disbursements to host or surrounding municipalities pursuant to 205 CMR 114.03: *Community Disbursements*.

#### 108.03 Mandatory Disclosure of Requests Any Thing of Value

(1) For purposes of 205 CMR 108.03, a request for any thing of substantial value means a request for compensation, contribution(s), services, gifts, request(s) to do or take or refrain from doing or taking any action with a face value or fair market value of \$1000 or more at the time it was requested. Examples of any thing of value include, but are not limited to, case, food or drink, contributions to a charity or non-profit or tickets to entertainment, cultural or sporting events. To determine the value of attendance at an event, the calculation shall include, if such information is available, the admission fee or ticket price or per person cost to the sponsor or the actual cost of the event may be divided by the number of attendees.

(2) An applicant shall disclose to the commission in the RFA-2 application all requests to an agent or employee of the applicant or any qualifier by persons or persons listed in 108.01(1) for any thing of substantial value from January 15, 2013 through the date the RFA-2 application is filed. This duty of disclosure shall continue after the submission of the application and throughout the period of examination and investigation of the applicant and its qualifiers by the bureau and commission. The failure to make such disclosures shall constitute a violation of M.G.L. c. 23K, §13 and 205 CMR 112.00: *Required Information and Applicant Cooperation*, and may result in the denial of the application for a gaming license or to a revocation of a gaming license or any other remedial actions deemed reasonably by the commission.

(3) The disclosure shall include the name of the person making the request, the date the request was made and the nature of the request.

(4) The duty to disclose set forth in 205 CMR 108.03(1) and (2) shall not include requests for disbursements by municipalities pursuant to 205 CMR 114.03: *Community Disbursements*.



205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 112.00: REQUIRED INFORMATION AND APPLICANT COOPERATION

112.01: Additional information

(1) The commission, the bureau or their agents and employees may request additional information and documents from an applicant throughout the application review process including after the application has been deemed administratively complete under 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 118.03: *RFA-2 Administrative Completeness Review*. Failure by the applicant to timely submit the additional information as requested by the commission, the bureau or their agents and employees may be grounds, in the discretion of the commission, for denial of the application.

(2) All applicants, licensees, registrants and qualifiers under M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.* shall comply with all requests of the commission, the bureau and their agents and employees for information and documents as authorized by the M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.*

112.02: Obligation to Cooperate

(1) Applicants, licensees, registrants and qualifiers shall respond within ten days or within the time specified in an information request by the commission, the bureau and their agents and employees under 205 CMR 112.01 to said information request.

(2) All applicants, licensees, registrants and qualifiers under M.G.L. c. 23K shall have a continuing duty to provide all information and documents requested by the commission, bureau, and their agents and employees and to cooperate in any investigation or hearing conducted by the commission, bureau, and their agents and employees, as authorized by M.G.L. c. 23K. Without limitation, an applicant, licensee, registrant and qualifier shall have a continuing duty to provide updated information to the commission, the bureau and their agents and employees in connection with the Phase 1 investigation by the bureau pursuant to 205 CMR 115.03: *Phase 1 Investigation and Recommendations by the Bureau*, the Phase 2 application review conducted in accordance with 205 CMR 118.00: *Phase 2 Administrative Proceedings*, and any hearing by the commission or the bureau pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(3) If the commission determines that an applicant, licensee, registrant, or qualifier has knowingly withheld information, knowingly failed to provide information or documents requested by the commission, bureau, or their agents and employees, or knowingly failed to cooperate with any investigation or hearing conducted by the commission, bureau, or their agents and employees, the commission may, with respect to such person:

(a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;

- (b) Suspend the relevant license, registration or qualification; or
- (c) Revoke the relevant license, registration or qualification.

112.03: Obligation to Provide Truthful Information

(1) No applicant, licensee, registrant or qualifier shall knowingly provide materially false or misleading information to the commission, the bureau, or their agents and employees.

(2) If the commission determines that an applicant, licensee, registrant, or qualifier has knowingly provided materially false or misleading information to the commission, the bureau, or their agents and employees, the commission shall, with respect to such person:

- (a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;
- (b) Suspend, condition or revoke the relevant license, registration or qualification.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 114.00: FEES

114.03: Community Disbursements

(1) Pursuant to M.G.L. c. 23K, § 15(11), not less than \$50,000 of the initial application fee for a gaming license shall be used to reimburse the host and surrounding municipalities in accordance with 205 CMR 114.03 for the cost of determining the impact of a proposed gaming establishment and for negotiating community impact mitigation agreements.

(2) (a) Based on a letter of authorization to the commission signed by authorized representatives of an applicant and a host or surrounding municipality, the commission may, at any time and from time to time, make community disbursements to that host or surrounding municipality from available amounts paid by that applicant to the commission for community disbursements. If the total amount of payments authorized by an applicant exceeds the initial \$50,000 amount, the applicant shall immediately pay to the commission all such additional amounts authorized by such letters of authorization for community disbursements. If the applicant fails to pay any such additional amount to the commission within 30 days after notification from the commission of insufficient funds, the application shall be rejected.

(b)(i) In addition to the process provided in 205 CMR 114.03(2)(a), 30 days after the Commission has posted a host community agreement to its website in accordance with 205 CMR 127.02(3), any community that believes it may be a surrounding community to the gaming establishment that is the subject of the host community agreement may apply to the Commission for community disbursements without a letter of authorization signed by the applicant. To do so, the community must submit an application on a form provided by the Commission and shall, identify all legal, financial and other professional services deemed necessary by the community for the cost of determining the impact of the proposed gaming establishment and for the negotiation and execution of a surrounding community agreement and the attendant costs.

(ii) The Commission may approve the application upon a finding that there is a reasonable likelihood that the community will be designated a surrounding community pursuant to 205 CMR 109.01(2) and that the risk that the community will not be able to properly determine the impacts of a proposed gaming establishment without the requested funds outweighs the burden of the actual financial cost that will be borne by the applicant.

(iii) If the application is approved, the community shall be designated a surrounding community for the limited purpose of receiving funding to pay for the cost of determining the impacts of a proposed gaming establishment and for potentially negotiating a surrounding community

agreement. Such determination, however, shall not be considered evidence that the community receiving disbursements is or should be designated as a surrounding community pursuant to 205 CMR 109.01(2).

(iv) The Commission shall make the approved community disbursements from available amounts paid by the applicant to the Commission for community disbursements. If the total amount of payments authorized by the Commission exceeds the initial \$50,000 amount, the applicant shall immediately pay to the Commission all such additional authorized amounts for community disbursements. If the applicant fails to pay any such additional amount to the Commission within 10 days after notification from the Commission of insufficient funds, the application shall be rejected.

(3) If 30 days have elapsed after the final issuance, denial or withdrawal of an application for a gaming license and there remains a balance of funds previously paid by the applicant for community disbursements and not previously encumbered or disbursed pursuant to 205 CMR 114.03(2), ~~the commission in its discretion may disburse the remaining balance of such funds to the applicant's host or surrounding municipalities as the commission in its discretion may determine and in accordance with such policies and procedures as the commission may determine~~ the funds shall be distributed as follows:

- a) If the funds represent a remaining balance of the initial \$50,000 portion of the \$400,000 application fee filed in accordance with M.G.L. c.23K, §15(11), the funds shall be deposited in the Community Mitigation Fund established in accordance with M.G.L. c.23K, §61; or
- b) If the funds represent monies paid to the Commission by the applicant in accordance with 205 CMR 114.03(2)(a) or (b)(iv), the monies shall be refunded to the applicant.

(4) The provisions of 205 CMR 114.03 do not prohibit community contributions permitted and reported in accordance with M.G.L. c. 23K, § 47, and 205 CMR 108.02: *Mandatory Disclosure of Political Contributions and Community Contributions*.

#### 114.04: Additional Fees for Investigations

(1) Pursuant to 205 CMR 114.00, the applicant shall be responsible for paying to the Commission all costs incurred by the commission, directly or indirectly, for conducting any investigation into an applicant. As required by the procedure established pursuant to 205 CMR 114.04(5), the applicant shall pay to or reimburse the commission for all such investigation costs that exceed the initial application fee.

(2) For purposes of 205 CMR 114.00, the costs for conducting any investigation into an applicant shall include, without limitation:

(a) All costs for conducting an investigation into an applicant and its qualifiers, the applicant's affiliates and close associates, and any other person subject to the jurisdiction of the commission under M.G.L. c. 23K relating to the application in question; and

(b) All fees for services, disbursements, out of pocket costs, allocated overhead, processing charges, administrative expenses, professional fees, and other costs directly or indirectly incurred by the commission, including without limitation all such amounts incurred by the commission to and through the bureau, the division, the gaming enforcement unit, the gaming liquor enforcement unit, and any contractor investigator.

(3) The commission in its discretion shall establish, and, post on its website, a schedule of hourly fees, wages, applicable fringe benefits, payroll taxes, overhead rates and other charges to be assessed by the commission to applicants for in-house personnel, services and work of the commission, the bureau, the division, the gaming enforcement unit, and the gaming liquor enforcement unit for conducting investigations into an applicant pursuant to 205 CMR 114.00.

(4) The commission shall assess to the applicant all other costs paid by or for the commission, directly or indirectly, to any other person for conducting an investigation into an applicant plus an appropriate percent for overhead, processing and administrative expenses.

(5) The commission in its discretion shall establish, and post on its website, a procedure by which it will calculate, assess, invoice, collect, require payment for, account for and reconcile payments by applicants to the commission for the costs for conducting any investigation pursuant to 205 CMR 114.00. In the case of a gaming license applicant, this procedure may include, without limitation, the requirement for the applicant to fund in advance a force account held by the commission and to maintain therein and replenish a minimum required balance of at least \$100,000 against which the commission may charge, with interest at 1% per month and late payment penalties, any costs for conducting the investigation not timely paid by the applicant in response to an invoice from the commission.

6.2

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

**Massachusetts Gaming Commission**

**Draft Evaluation Criteria**

Update Date: March 8, 2013

Minimum requirements under G.L. c. 23K, § 9, 15

Factors Commission must consider under G.L. c. 23K, § 18

Factors Commission originated

Criteria Grouped by Topic	Required Information	YES	NO
<p><b>I OVERVIEW</b></p> <p>Since it began operations more than a year ago and throughout its nearly sixty public meetings and eight public educational sessions, the members of the Massachusetts Gaming Commission have tried to articulate a vision, rooted in the expanded gaming legislation, of how we would like to see expanded gaming conceived of and operated in the Commonwealth. The backbone of that vision will be found in considerable detail in the four following sections of the application: Finance, Economic Development, Design, and Mitigation. In addition to this basic structure's, we have tried to articulate our aspirations for something more – something unique, something special, something innovative – in the architecture of the gaming industry in Massachusetts. In this first part of the application, we would like you to respond in detail to the following broad, thematic questions that, in combination, embrace that architecture:</p>	<p>How does the project you propose manifest an appreciation for and collaboration with the existing Massachusetts "brand," i.e., our intellectual/knowledge economy, our biomedical, life sciences, educational and financial services economic driver, and our long history of innovation and economic regeneration over the 400 years of our existence?</p> <p>How does the project you propose embrace the legislature's mandate to present "destination resort casinos" rather than "commercial casinos"?</p> <p>How do you propose to merge a "destination resort casino" with an outward looking physical structure and business strategy that leverages our existing assets, and enhances and coordinates with our existing tourism and other leisure venues?</p> <p>How do you propose to work with affiliated attractions and amenities to broaden the market base of the gaming facility and to meet unmet needs in our array of entertainment, education and leisure resources?</p> <p>How do you intend to market aggressively outside Massachusetts and internationally, perhaps in cooperation with our existing industries, and certainly in collaboration with our existing institutional drivers of economic and international development?</p> <p>Describe your commitment to a diverse workforce and supplier base, and an inclusive approach to marketing, operations and training practices that will take advantage of the broad range of skills and experiences represented in our Commonwealth's evolving demographic profile.</p> <p>What is your overall perspective and strategy for broadening the appeal of each region of our Commonwealth to travelers inside and outside of Massachusetts?</p> <p>Describe any post-licensing actions by the Commission or the Commonwealth of Massachusetts that you believe will be essential for the success of the project you are proposing.</p>		

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission		Minimum requirements under G.L.c. 23K, § 9, 15
Draft Evaluation Criteria		Factors Commission must consider under G.L.c. 23K, § 18
Update Date: March 8, 2013		Factors Commission originated
Criteria Grouped by Topic	Required Information	YES NO
<b>II FINANCIAL</b>		
<b>PREREQUISITES</b>		
(4) (11) Pay license deposit		
(5) Demonstrate ability to pay license fee		
(2) Invest not less than required capital into the gaming establishment		
(3) Own land within 60 days of license issuance		
<b>EVALUATION CRITERIA</b>		
Financial & Capital Structure	<p>Provide applicant's audited financial statements for each of the last five years, including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past 5 years. If applicant is comprised of more than one legal entity, provide financial statements for each. Do not include financial statements for individual partners, officers or shareholders.</p> <p>Provide unaudited financial statements and all SEC filings for the current fiscal year through the end of the most recent quarter prior to filing.</p> <p>Describe financing structure and plan including all sources of capital. Include current capital commitments as well as plan and timing for meeting future capital needs.</p> <p>Provide a detailed budget of the total project cost. Identify separately construction costs (labor, materials), design costs, consulting fees and all other development costs. Also identify all other pre-opening costs including training, marketing and initial working capital.</p> <p>Describe the attributes and resources that will allow the project to succeed in the event of a significant economic downturn during the initial license term.</p> <p>9(9)&amp; (10) Provide a timeline of construction of the facility that includes detailed stages of construction for the gaming establishment, non-gaming structures and any racecourse, where applicable, and provide the number of construction hours estimated to complete the work.</p> <p>Provide an enterprise pro-forma with a summary budget and cash-flow. Identify sources and uses of cash on a quarterly basis during the construction period and annually for five years (Category I facility) or 15 years (Category II facility) after opening. Discount cash flows at 4% and estimate the project's internal rate of return.</p> <p>Describe all existing credit arrangements and financial commitments including the identity of each lender and the terms or conditions under which loan proceeds can be obtained.</p> <p>Provide a description of any contract, loan agreement or commitment that the applicant has breached or defaulted on during the last 10 years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default.</p> <p>Provide a description of any administrative or judicial proceeding during the last 10 years in which the applicant or any entity that owns a 5% or greater share of the applicant was found to have violated a statute or regulation governing its operations.</p> <p>List any entities owned or controlled by the applicant and any entity that owns a 5% or greater share of the applicant that have filed for bankruptcy in the last 10 years.</p> <p>Describe the racial, gender and ethnic diversity in the composition of the individual and corporate sources of financing for the project.</p>	
<b>(11) Maximize revenues to the Commonwealth</b>	<p>Provide projections for gross gaming revenue each year for the first five years of casino operations on a best, average and worst case basis.</p> <p>Provide projections for gross non-gaming revenue generated by elements of the casino complex each year for the first five years of operations on a best, average and worst case basis, identifying the source of each element of the non-gaming revenue.</p>	

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission	
Draft Evaluation Criteria	
Update Date: March 8, 2013	
Criteria Grouped by Topic	Required Information
	Minimum requirements under G.L. c. 23K, § 9, 15
	Factors Commission must consider under G.L. c. 23K, § 18
	Factors Commission originated
	Provide projections for tax revenue to the Commonwealth each year for the first five years of operations on a best, average and worst case basis, identifying the source of each element of the tax revenue.
	9(7) Provide a full description of the proposed internal controls and security systems for the proposed gaming establishment and any related facilities, including internal audits, count room supervision and processes and other internal controls.
	The Commission will likely utilize a central, computerized accounting and auditing system to assure the integrity, security, honesty, accountability and fairness in the operation and administration of games played at the facility. Describe the measures that the applicant will take to facilitate installation and maintenance of any hardware and software necessary for the system's operation and the applicant's experience with similar systems at all other locations the applicant owns, controls or operates.
	If the applicant or any entity that owns a 5% or greater share of the applicant has an investment in a gaming facility within 300 miles of the applicant's proposed location within the Commonwealth, describe the plans and methods the applicant intends to use to ensure that revenues are maximized at the Massachusetts facility even if maximizing revenues in Massachusetts requires or leads to reduction of revenues at the out of state facility.
	If the applicant or any entity that owns a 5% or greater share of the applicant has an investment in a gaming facility beyond 300 miles from the applicant's proposed location within the Commonwealth, describe any plans the applicant has to use those facilities or customers who patronize those to enhance revenues at the applicant's Massachusetts facility.
	Provide a history of meeting/revenue projections over the last ten years with respect to each facility of a size comparable to or larger than the facility you are proposing for Massachusetts.
	7) Provide a market analysis showing benefits of the site location and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments.
	Provide projections for increases in gross revenues for regional businesses as a result of casino operations each year for the first five years of operations on a best, average and worst case basis, identifying and describing the methodology used to produce the projections and describe the assumptions on which each projection is based.
	Provide documentation that outlines applicant's record of success in meeting these objectives at other operational sites.
	18(i) Show the total investment in the gaming facility and infrastructure within the property boundaries.
	18(ii) Show the total investment in the infrastructure outside the property boundaries.
	Describe all financial commitments and guarantees the applicant is prepared to provide to the Commission and to the host community over and above the deposit or bond required by G.L. c. 23K, § 10(a) to ensure that the project is completed, license conditions are fulfilled and sufficient working capital is available to allow operation in the promised fashion. Include examples of letters of credit, MOUs or other agreements or commitments the applicant is willing to provide.
	Provide a construction plan and schedule that includes major construction milestones, key dates, and measures the applicant will take to reduce the impact of construction on the local community.
	13) Offer highest and best value to create a secure and robust gaming market
	Provide business plan describing how applicant will meet revenue generation plans in the near term and over time.
	Describe the applicant's strategy for ensuring maximum use of the facilities throughout the calendar year including how that strategy will take account of the seasonal nature of tourism in the Northeast.
	Describe the applicant's plans for maintaining a robust gaming market at its facility if, and as, internet gaming becomes more widespread.
	YES NO



CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission		Minimum requirements under G.L.c. 23K, § 9, 15		
Draft Evaluation Criteria		Factors Commission must consider under G.L.c. 23K, § 18		
Update Date: March 8, 2013		Factors Commission originated		
Criteria Grouped by Topic		Required Information	YES	NO
		Describe the applicant's marketing plan for its Massachusetts facility. If that marketing plan is the same as, or similar to, marketing plans the applicant has used elsewhere, describe how those plans succeeded or failed. Including whether the applicant met its financial projections for the facilities where the plans were used. If the marketing plan for a Massachusetts facility differs from the marketing plans used elsewhere, describe the factors that led the applicant to devise its Massachusetts plan.		
		<b>18(iii) Provide a completed study showing the overall economic benefit to the Commonwealth and the region from the applicant's proposed facility.</b>		
		Describe the components of the applicant's marketing plan that focus on out of state visitors and the anticipated gaming and non-gaming gross revenues the applicant anticipates from out of state visitors during each of the first five years of the facility's operations on a best, average and worst case scenario.		
		Describe the measures the applicant or any entity owning a 5% or greater share of the applicant has taken to ensure a secure and robust gaming market at each other gaming facility it owns or controls.		

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission		Minimum requirements under G.L.c. 23K, § 9, 15		
Draft Evaluation Criteria		Factors Commission must consider under G.L.c. 23K, § 18		
Update Date: March 8, 2013		Factors Commission originated		
Criteria Grouped by Topic		Required Information	YES	NO
<b>III ECONOMIC DEVELOPMENT</b>				
<b>GENERAL</b>		9(13) Provide completed studies and reports showing the proposed gaming establishment's: (i) economic benefits to the region and the commonwealth; (ii) local and regional social, environmental, traffic and infrastructure impacts; (iii) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host community and surrounding communities; (iv) cost to the host community and surrounding communities and the commonwealth for the proposed gaming establishment to be located at the proposed location; and (v) the estimated municipal and state tax revenue to be generated by the gaming establishment.		
<b>JOB CREATION</b>				
<b>(4) Implement workforce development plan that utilizes and enhances existing labor force</b>		Describe any plans the applicant has for working with the Massachusetts Community College Workforce Training Institute or other training organizations as the applicant trains and hires the staff for its facility. Provide strategy as to how applicant will focus on areas and demographics of high unemployment and underemployment. 9(12) State the number of employees to be employed at the proposed gaming establishment, including detailed information on the pay rate and benefits for employees; 9(6) Demonstrate plan for workforce development as set forth in memoranda of understanding Describe how the applicant's workforce development plan 17 (ii) utilizes the existing labor force in the commonwealth; 17(iv) identifies the establishment's workforce training programs; 17(v) identifies the methods for accessing employment; (9) (i) establishes transparent career paths; (9) (ii) provides a means for employee training and education necessary for advancement; (9) (iii) provides on-site day care; and 17(i) incorporates an affirmative action program that includes people with disabilities. 9(9) Establish, fund and maintain HR practices that promote development of skilled and diverse workforce. 1(8) State whether the applicant has a contract with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies: (i) the number of employees to be employed at the gaming establishment, including detailed information on the pay rate and benefits for employees and contractors; (i) and (iv) whether the applicant has included detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment. 1(4) Show plans for ensuring labor harmony during the construction and operational phases of the project. 17(iii) Estimate the number of construction jobs and provide equal employment opportunities for them. Provide documentation that outlines applicant's employee retention record at other operational sites. 1(6) Describe the applicant's affirmative action plan for its Massachusetts facility. Provide documentation that describes the ethnic diversity of the applicant's workforce at other locations, the plans for workforce diversity the applicant has used at those facilities, the results of those plans and, unless they are self explanatory, the metrics the applicant has used to determine those results. Provide the applicant's plans for collaboration with Massachusetts tourism and related industries. Provide details of the applicant's plans for using entertainers and entertainment, including athletic events, to attract patrons to the applicant's facility.		
<b>SUPPORTING EXTERNAL BUSINESS AND JOB GROWTH</b>		2) Promote local businesses in host and surrounding communities Develop and provide plans to assist businesses owners ID needed goods and services.		
Supplier development & relations				

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission		Minimum requirements under G.L.c. 23K, § 9, 15		
Draft Evaluation Criteria		Factors Commission must consider under G.L.c. 23K, § 18		
Update Date: March 8, 2013		Factors Commission originated		
Criteria Grouped by Topic	Required Information		YES	NO
	Provide plans to demonstrate how applicant will promote regional businesses.			
	Provide documentation detailing outside spending budget for vendor supplied goods and services.			
	(16) Implement marketing program that IDs specific goals for utilization of (i) minority, women and veteran businesses as design contractors; (ii) minority, women and veteran businesses as building contractors; and (iii) minority, women and veteran businesses enterprises to participate as vendors for goods and services.			
	(10) Describe plans for contracting with local business owners for provision of goods and services.			
	(15) Formulate marketing program with percentage of total dollar amount of overall contracts for utilization of: (i) mbe, wbe, vbe as contractors in the design of the gaming establishment; (ii) mbe, wbe, vbe as contractors in the construction of the gaming establishment; (iii) mbe, wbe, vbe as vendors for goods and services to gaming establishments and any businesses operated as part of the gaming establishments.			
	(15) Describe any plans the applicant has for purchasing domestic slot machines			
	9(14) Provide the names of all proposed vendors of gaming equipment.			
	Provide reports and analysis documenting projections for Third-party revenue impacts.			
<b>REGIONAL TOURISM AND ECONOMIC IMPACT</b>				
<b>(5) Build a gaming establishment of high caliber with quality amenities in partnership with local facilities</b>				
	Provide local agreements designed to expand casino draw.			
	Provide plans that demonstrate how applicant will cross-market with other attractions.			
	Provide plans that detail collaboration with tourism and other related industries			
	Provide plans for International marketing efforts.			
	Provide plans for planned attractions and amenities beyond hotel, casino, restaurants and in-house entertainment to draw customers.			
	Provide additional plans that demonstrate unique business & marketing strategies to draw new customers.			
	18(iii) Provide completed economic studies as required by the Commission including economic benefits to the Commonwealth and the region.			
	Provide documentation demonstrating inclusion and coordination with regional economic plans.			
	Provide documentation of community support and agreement relationships with local organizations.			
	Provide plans outlining community enhancements not covered by Section III.			
	Provide documentation that outlines applicant's record of success in meeting these objectives at other operational sites.			

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission		
Draft Evaluation Criteria		
Update Date: March 8, 2013		
Criteria Grouped by Topic	Required Information	YES NO
<b>IV BUILDING &amp; SITE DESIGN</b>		
<b>PREREQUISITES</b>		
(12) comply with state & local building codes & local ordinances & bylaws, including sections 61 to 62H, inclusive, of chapter 30;	Minimum requirements under G.L. c. 23K, § 9, 15 Factors Commission must consider under G.L. c. 23K, § 18 Factors Commission originated	
<b>EVALUATION CRITERIA</b>		
Demonstrate creativity in design and overall concept excellence	Describe the overall theme and concept underlying the proposed design of the facility, including how that theme and concept promote attraction of visitors to the facility and interaction by those visitors with the facility's immediate and regional surroundings. Describe the relationship, if any, between the proposed facility and the architecture, history and culture of its immediate and regional surroundings. 9(9) Provide the names and addresses of the architects, engineers and designers of the gaming facility. Provide a color rendering of the casino and all structures located on the casino site. Provide a schematic design as defined/understood by AIA along for each structure within the boundaries of the site showing at least the total and usable floor area, interior and exterior themes and finished, building elevations and perspectives. Provide a site plan showing the proposed landscaping and other site improvements. Describe the number, location and accessibility of parking spaces for employees, patrons and buses. Describe the plans for tour bus, taxi and valet drop-off and for service vehicle parking, satellite parking and other related transportation infrastructure.	
(5) Build a gaming establishment of high caliber with quality amenities in partnership with local facilities	Describe the proposed casino, including the square feet of gaming area, the number and types of table games and slot machines it will contain, the number of gaming positions as defined in G.L. c. 23K, § 2, it will contain and the specific location of the games and machines in the proposed gaming establishment. Describe the restaurants, retail spaces, bars, lounges and other non-gaming amenities located within the boundaries of the casino site, along with the names of their proposed operators. Describe any exhibition space or spaces the applicant plans to include in its facility, including the square footage of the spaces and the amenities they will contain. Describe any conference space or spaces the applicant plans to include in its facility, including the square footage of the spaces and the amenities they will contain. Describe how the restaurants, retail spaces, bars, lounges and other non-gaming amenities located within the boundaries of the casino site will serve the surrounding community. Describe the entertainment venues located on the casino site inside or outside the casino proper, the capacity of each and uses to which the venues will be dedicated. Describe the convention, meeting and other public spaces located on the casino site inside or outside the casino proper, the capacity of each and uses to which the venues will be dedicated. Describe the proposed hotel, including the types of rooms, the numbers of each type, and the number that will be reserved for casino promotions. Describe any other facilities or amenities that will be located on the site.	

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission		Minimum requirements under G.L. c. 23K, § 9, 15	
Draft Evaluation Criteria		Factors Commission must consider under G.L. c. 23K, § 18	
Update Date: March 8, 2013		Factors Commission originated	
Criteria Grouped by Topic	Required Information		YES NO
	g11.7) State how the hotels, hotel rooms, restaurants and other amenities that are part of the proposed facility will compare in quality to other area hotels and amenities.		
	Describe any public art that will be located on the casino site.		
	Describe the existing or anticipated contracts or agreements between the applicant and local hotels and dining, retail and entertainment facilities designed to ensure that patrons experience that diversified regional tourism industry.		
	Describe the existing or anticipated contracts or agreements between non-gaming entities within the boundaries of the casino complex and local hotels and dining, retail and entertainment facilities designed to ensure that patrons experience that diversified regional tourism industry.		
Compatibility with surroundings	Describe all adjacent streets, highways, buses, and other public transportation facilities and how they will be utilized for access to and egress from the casino site.		
	Provide an analysis of the adequacy of the existing transportation facilities to deliver patrons to and from the casino site and the measures the applicant will take, including infrastructure and other improvements, to remedy any inadequacy.		
	Describe the steps, plans and measures the applicant will take, including infrastructure improvements, to mitigate traffic flow in the vicinity of the casino by stimulating use of public transit.		
	Describe the parking facilities and how they will be linked to the casino complex in a manner consistent with other design elements.		
	Describe the relationship of the project to adjacent land uses and proposed land uses to ensure compatibility between the casino complex and the adjacent uses.		
	Describe applicable zoning requirements and how the applicant proposes to meet them.		
	Describe how the facilities for delivery of supplies and trash removal are integrated with the overall project complex.		
	Describe the proposed signage and the plans to ensure that it is energy efficient and sensitive to surroundings.		
	Describe plans to minimize impact of noise on surroundings areas.		
	Describe how the site will be integrated with and provide access to and from surrounding areas restaurants, hotels, bars, entertainment venues and other attractions through multiple entry and exit points.		
	Describe how the landscaping and other site improvements will integrate the casino complex with its surroundings.		
	Describe how the facility will stimulate retail activity in the immediate vicinity.		
	State whether facilities will be available for community use in the event of extreme weather and, if so, describe how.		
	(8) Utilize sustainable development principles in the construction and during the life cycle of the facility		
	(i) Describe plans for becoming certifiable as gold or higher under the appropriate certification category in the Leadership In Environmental and Energy Design program created by the United States Green Building Council.		
	describe the extent building and site complies with LEED-ND, LEED Existing Building, LEED EBOM Water, ISI, & IGCC Standards.		
	(ii) Describe plans to meet or exceed the stretch energy code requirements contained in Appendix 120AA of the Massachusetts Building energy code or equivalent commitment to advanced energy efficiency as determined by the secretary of energy and environmental affairs.		
	(iii) Describe plans for mitigating vehicle trips to and from the site.		
	(iv) Describe plans for conservation of water and management of storm water.		
	Describe plans, if any, to target use of 40% less water than standard buildings of same size and design & promotes reuse and recharge		
	Describe plans, if any, to use ISI techniques to minimize impact of storm water and maximize its reuse.		

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

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Draft Evaluation Criteria		Factors Commission must consider under G.L.c. 23K, § 18		
Update Date: March 8, 2013		Factors Commission originated		
Criteria Grouped by Topic	Required Information		YES	NO
	(v) Describe plans for ensuring EnergyStar compliant electrical and HVAC throughout the casino complex. Describe plans for ensuring that all gaming equipment conforms to best practices for energy use.			
	(vi) Describe plans for procuring or generating on-site 10 per cent of the facility's annual electricity consumption from renewable sources qualified by the department of energy resources under section 11F of chapter 25A. Describe plans, if any, for ensuring that 25% generated on site is from renewables and the date by which that goal will be reached			
	(vii) Describe plans for obtaining off site power from renewables or with renewable energy credits. (viii) Describe plans for developing an ongoing system that will submeter and monitor all major sources of energy consumption and for undertaking regular and sustained efforts throughout the life-cycle of the facility to maintain and improve energy efficiency and reliance on renewable sources of power in all buildings and equipment that are part of the facility.			
	Describe plans for use of centralized & efficient heating and cooling systems, e.g., co-generation. Describe plans, if any, for operation of one 50m ft2 building at net zero energy within 3 years.			
Security	Describe the applicant's approach to surveillance within and in the immediate vicinity of the gaming establishment and the types and kinds of security surveillance facility will contain. State how the design of the building will support emergency evacuation. Describe all of the applicant's plans for dealing with emergencies, including any and all use with local, state or regional public safety and medical facilities that will be utilized in the event emergencies occur. Describe the spaces within the facility that will be provided for regulatory staff, including members of the State Police. Describe the applicant's approach to remote regulatory surveillance, including the facilities and equipment in the establishment that will be available for facilitating surveillance of that type. Describe the provisions the applicant intends to make to facilitate the Commission's use of central accounting and auditing hardware and software to monitor financial activities at the applicant's facilities.			
Other	Describe the design features that will allow other uses of the buildings in the casino complex in the event that the applicant decides to cease gaming operations in the facility at some future date.			

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission		Minimum requirements under G.L.c.23K, § 9, 15		
Draft Evaluation Criteria		Factors Commission must consider under G.L.c.23K, § 18		
Update Date: March 8, 2013		Factors Commission originated		
	Criteria Grouped by Topic		Required Information	YES NO
<b>V MITIGATION</b>				
<b>PREREQUISITES</b>				
	(1) Agree to be lottery agent and not to run competing games			
	(6) Demonstrate plan for mitigation of lottery impact and compulsive gambling problems, community development and host and surrounding community impact and mitigation issues as set forth in memoranda of understanding			
	(7) Identify the infrastructure costs of the host and surrounding construction and operation and commit to a mitigation plan			
	(8) (13) provide a signed host community agreement with favorable community vote			
	(9) provide surrounding community agreements			
	(10) provide impacted live entertainment venues agreements			
	(14) Pay agreed upon community impact fee			
<b>EVALUATION CRITERIA</b>				
	Host community agreement		Provide all host community agreements into which the applicant has entered	
			Provide the summary of the host community agreement provided to the voters and a description of the election at which the agreement was approved by the voters, including the date of the election, the polling procedures, and a certified copy of the election results	
			State the total amount of money the applicant spent on advertising or organizing for a favorable election outcome.	
			State the total value of contributions of money or other things of value the applicant or anyone acting on behalf of the applicant or the applicant's casino project have made to any elected or appointed public official or any City or Town or any Massachusetts entity at the request of an elected or appointed public official since November 21, 2011.	
			List each request for a contribution of money or other thing of value the applicant or anyone acting on behalf of an applicant has received from any elected or appointed public official or any city or town or any Massachusetts since the applicant deposited its initial application fee with the Commission.	
			(19) Describe in detail the public support for the casino project the applicant has obtained in the host and surrounding communities in addition to that reflected by the host community vote, including the names and affiliations of all individuals, organizations and groups that have given public support to the project	
			Provide evidence of partnerships with or other support for non-profit and community groups in the host community	
			Provide all information required by 205 CMR 108.01 through 108.03.	
	Surrounding community agreements		Provide a copy of all surrounding community agreements into which the applicant has entered.	
			List all communities that requested a surrounding community agreement that the applicant declined to enter and the reasons the applicant has declined to enter the agreement and describe the discussions or negotiations the applicant had with the applicant before declining to enter the agreement.	

CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

Massachusetts Gaming Commission		Minimum requirements under G.L.c. 23K, § 9, 15	
Draft Evaluation Criteria		Factors Commission must consider under G.L.c. 23K, § 18	
Update Date: March 8, 2013		Factors Commission originated	
Criteria Grouped by Topic	Required Information		YES NO
Impacted live entertainment venue agreements	Provide a copy of all impacted live entertainment venue agreements into which the applicant has entered. List all entities that requested an impacted live entertainment venue agreement that the applicant declined to enter and the reasons the applicant has declined to enter the agreement and describe the discussions or negotiations the applicant had with the applicant before declining to enter the agreement. List all cross-marketing agreements with impacted live entertainment venues the applicant has entered. Describe the applicant's plans for use of exclusivity provisions in contracts it enters with entertainers or entertainment entities. It engages to perform at its facility and provide all exclusivity terms it has utilized at the other facilities it owns or controls during the last three years.		
(1) Protect and enhance lottery	Describe the plans, measures and steps the applicant plans to take to avoid any negative impact on the revenues currently generated by the Massachusetts State Lottery, including cross-marketing strategies with the lottery and increasing ticket sales to out-of-state residents.		
(6) Implement measures to address problem gambling	Describe the on-site resources that will be available to those affected by gambling-related problems. Describe the signs, alerts and other information that will be available in the casino complex to identify the on-site resources available for those affected by gambling-related problems. Describe the self-exclusion policies that will be available for casino patrons, including the process that will be utilized to notify individuals of the availability of self-exclusion and the steps that will be taken to assist those who request exclusion. Describe the training that will be used to help casino employees identify those who may have gambling-related problems and assist them to obtain help for those problems. Describe the policies the applicant will use to ensure that credit extensions are not being abused by those with gambling-related problems. Provide a copy of the code of ethics employees, including senior managers, are required to follow in the process by which the code is promulgated. Describe the metrics the applicant will use to measure whether it is succeeding in its efforts to reduce gambling at its facility but by those with gambling-related problems and the use to which those metrics will be put and provide the data those metrics have generated for each of the last five years at each of the applicant's facilities. Describe the extent to which responsible gambling messages will be part of the applicant's advertising. Describe the plans the applicant has to coordinate with local providers to facilitate assistance and treatment for those with gambling-related problems. Describe the processes the applicant uses to address problem gambling at the other facilities it owns or controls, the effect of those processes and the metrics the applicant uses to determine the effects. 9(8) Provide the Commission with an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including: (iii) prominently displaying information on the signs of problem gambling and how to access assistance; (iv) describing a process for individuals to exclude their names and contact information from a gaming licensee's database or any other list held by the gaming licensee for use in marketing or promotional communications.		
Traffic	Describe the plans for traffic control measures the applicant proposes for the casino complex and the surrounding areas. Describe the applicant's plans for accommodating special events and the traffic those events may generate.		
Other	Describe the applicant's snow-removal plans.		



CATEGORY 1 and CATEGORY 2  
EVALUATION CRITERIA

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Update Date: March 8, 2013		Factors Commission originated		
Criteria Grouped by Topic	Required Information		YES	NO
	9(g) Provide the Commission with an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including: (i) maintaining a smoke-free environment within the gaming establishment under section 22 of chapter 270; (ii) providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission; and (v) instituting other public health strategies as determined by the commission;			
	Provide an assessment of the likely impact on the housing stock in the host and surrounding communities resulting from the new jobs the casino provides.			
	Provide an assessment of the likely impact on school populations in the host and surrounding communities resulting from new jobs the casino provides.			
	Provide an analysis of available police, fire and emergency/medical services available to the casino complex, the adequacy of those resources, the steps the applicant plans to take to remedy any deficiencies, and the agreements the applicant has made with the service providers to ensure that the appropriate levels of protection are available.			
	Provide an analysis of existing regional water facilities available to the project, the impact the facilities water usage will have on those who share the same water resources the applicant plans to take to remedy any deficiencies the impact produces.			
	Provide an analysis of existing sewage facilities and their capacity to absorb the effluent from the casino complex during average and peak flows, including an estimate of those flows in gallons per day, and the steps the applicant plans to take to remedy any deficiencies in the ability of the existing infrastructure to absorb that flow.			
	Describe the steps and measures the applicant will take to ensure that minors are excluded from the casino premises			
	Describe the steps and measures that the applicant will take with respect to security and prevention of unlawful behavior on the casino premises and in its immediate vicinity.			
	Describe the measures they applicant has utilized with respect to security and prevention of unlawful behavior at other facilities it owns and operates, how well those measures have succeeded and the metrics used to measure their success			

7b.



*Division of Racing*

**To:** Stephen Crosby, Chairman  
Gayle Cameron, Commissioner  
James McHugh, Commissioner  
Bruce Stebbins, Commissioner  
Enrique Zuniga, Commissioner

**From:** Jennifer Durenberger, Director of Racing JD

**Date:** 28 March, 2013

**Re:** Proposed regulatory changes to 205 CMR 4.00 – Phase II

**Recommendation:** Adoption of proposed regulations on an emergency basis

The Racing Division has completed Phase II of its proposed regulatory changes. In this Phase, we have considered the current CMR as it pertains to Horse Racing (205 CMR 4.00), the *Model Rules of Racing for the Use of the Pari-Mutuel Industry* of the Racing Commissioners International (the "RCI Model Rules"), and submissions from stakeholders.

These amendments can be broadly described as amendments to existing rules and adoption of the bulk of the RCI Model Rules as they pertain to the health and safety of racing's participants. We believe we have assembled a set of proposed changes that will do several important things including, but not limited, to:

- Amending language regarding specifications and use of the riding crop;
- Adopting model rule standards for safety helmets and vests;
- Amending the scale of weights for jockeys;
- Eliminating heel traction devices on front horseshoes; and
- Developing guidance for consideration of occupational license applications.



Massachusetts Gaming Commission

Many of these regulations have been already been in practice as “house policy” at Suffolk Downs in recent years. Their adoption by the Commission will provide additional regulatory oversight for the health and safety of racing’s participants while bringing 205 CMR 4.00 in line with industry best practices.

We note that one of the proposed changes (205 CMR 4.11(6)(e)(11)) would, without more, create conflict with a provision in 205 CMR 6.00: *Pari-mutuel rules for thoroughbred racing, harness racing, and greyhound racing*. The affected provision (205 CMR 6.01(5)) has been amended to resolve that conflict. Additionally, we propose that 205 CMR 6.29 be amended to reduce the minimum payout in the event of a minus pool, per the request of Suffolk Downs.

Because of the unusual procedural requirements for rulemaking pertaining to live horse racing found in M.G.L. c.128A §9B, we recommend the Commission use its statutory authority to vote to adopt these rules on an emergency basis so that they may be in effect prior to the start of live racing at Suffolk Downs. The Racing Division is prepared to initiate its “regular” rulemaking process, as well, so that the regulations may be adopted on a permanent basis.

Respectfully submitted,



Jennifer Durenberger, DVM, JD  
Director of Racing



Massachusetts Gaming Commission

***Written Submissions  
Received***

***Proposed Changes to  
205 CMR 4.00***



February 4, 2013

Mrs. Jennifer Durenberger  
Massachusetts Gaming Commission  
84 State Street, Ste 720  
Boston, MA 02109

Dear Jennifer:

Please accept this letter on behalf of the Jockeys' Guild and those riders who regularly ride in Massachusetts in response to the release dated January 31, 2013. We applaud the Massachusetts Gaming Commission's decision to pursue the adoption of national best practices and operational standards regarding health and medication procedures for racing.

The Guild has been actively involved in the adoption of many of the ARCI model rules pertaining to jockeys and the health and safety of both the human and equine athletes. We are very supportive of the adoption of the Model Rules and creating uniformity with regards to the regulations of racing. For your review, please see the attached RCI Model Rules that the Guild has been able to get adopted over the past 5 years regarding the safety and welfare of the jockeys and the horses.


We would like to work with the MGC to get as many, if not all, of the rules adopted as soon as possible. We feel that the safety of both our human and equine athletes should be paramount at all times.

During the Guild's 2013 Annual Assembly, The membership of the Jockeys' Guild voted to support tightening of race day medication rules and penalties during its annual Assembly in Hollywood, Florida.

Members passed a resolution supporting The Jockey Club's Reformed Racing Medication Rules including a two category medication system, progressive points style penalties and reciprocity among jurisdictions. That resolution also includes the statement that, "*No race day medication shall be permitted with the exception of Lasix, which should be administered by an independent regulatory veterinarian.*" With that being said, I have also attached the Guild's policy with regards to Race Day Medications.

Please let me know if you have any questions or if I can provide you with any additional information. You can also contact Mindy Coleman at [mcoleman@jockeysguild.com](mailto:mcoleman@jockeysguild.com) or (859) 523-5625.

Sincerely,

  
Terence J. Meyocks  
Jockeys' Guild, Inc.  
National Manager

TJM/mlc

Enclosure

cc: Heriberto Rivera Jr.

## Rules Amended by RCI Board, July 2012

- ARCI-001-010 General Provisions- Safety Equipment
- ARCI-007-025 Operations- Security
- ARCI-011-015 Prohibited Practices

The following are considered prohibited practices:

(1) The possession or use of a drug, substance or medication on the premises of a facility under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing; or,

(2) The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the Commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in (human or animal) is forbidden without prior permission of the Commission or its designee.

(3) The possession and/or use of blood doping agents, including but not limited to those listed below, on the premises of a facility under the jurisdiction of the Commission is forbidden:

- (a) Erythropoietin;
- (b) Darbepoetin;
- (c) Oxyglobin®; and
- (d) Hemopure®.

(4) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:

(a) Any treated horse shall not be permitted to race or train for a minimum of 10 days following treatment;

(b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed to practice by the Commission using registered and approved machines at a previously-disclosed location;

(c) Any Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines on the association grounds must be registered with and approved by the Commission or its designee before use;

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments must be reported within one (1) day to the official veterinarian on the prescribed form. The horse shall be added to a list of ineligible horses. This list shall be kept in the race office and accessible to jockeys and/or their agents during normal business hours;

(e) Any person participating in the use of ESWT and/or in the possession of ESWT machines in violation of this rule shall be considered to have committed a prohibited practice and is subject to a Class A penalty.

(5) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of the official veterinarian or his/her designee.

**• ARC 008-030 Jockeys**

**B. Apprentice Jockeys**

(5) An apprentice jockey may ride with a five pound weight allowance beginning with his/her first mount and for one full year from the date of his/her fifth winning mount. If after riding one year from the date of his/her fifth winning mount, the apprentice jockey has failed to ride a total of forty winners from the date of his/her first winning mount, he/she may continue to ride with a five pound weight allowance for one more year from the date of his/her fifth winning mount or until he/she has ridden forty winners, whichever comes first. Apprentice allowances may be waived with the stewards' permission at the time of entry by the trainer or the trainer's designee. If an apprentice jockey is unable to ride for a period of fourteen consecutive days or more after the date of his/her fifth winning mount because of service in national armed forces, enrollment in an institution of secondary or higher education, or because of physical disablement, the Commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such apprentice jockey was unable to ride (see APPRENTICE JOCKEY EXTENSION FORM). The Commission will take jurisdiction only on certificates which it has issued. All other requests for extensions shall be directed to the Commission that approved the apprentice certificate.

**• ARC 019-020 Weights**

**A. Allowances**

(8) All allowances are optional and may be waived at the time of entry by the trainer or the trainer's designee with the permission of the stewards.

**Rules Amended by RCI Board, December 5, 2011**

**• ARC 007-025 Duties and Requirements of Associations (RACE MEET LICENSEES)**

**DUTIES AND REQUIREMENTS OF ASSOCIATIONS (RACE MEET LICENSEES) - CHAPTER 7**

**ARC 007-025 Operations**

**H. Posting of On-Track Insurance Coverage for Jockeys**

An association shall have on file with the commission a copy of the actual policy and post in the jockeys' quarters a summary of the association's on-track insurance coverage for jockeys who are injured while acting in the performance of their duties as a jockey on the grounds of the association and shall on the request of any licensed jockey that is participating in the race meeting provide a

copy of the insurance policy. Such request shall be in writing to a racing official designated by the association in the notice to respond to such requests. In the event that the policy is changed during a race meeting, the association shall promptly post notice of any such changes.

- ~~ARCI-010-020 Weights~~

#### **D. Scale of Weights**

- (1) With the exception of apprentices allowances, handicap races, three (3) year old horses entered to run in races against horses four (4) years old and upwards, and the allowance provided in subsection (2) of this section, no jockey shall be assigned a weight of less than 118 pounds. For three (3) year old horses entered to run in races against horses four (4) years old and upwards from January 1 through August 31, no jockey shall be assigned a weight of less than 116 pounds.
- (2) Except in handicaps, fillies two (2) years old shall be allowed three (3) pounds, and fillies and mares three (3) years old and upward shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in races where competing against horses of the opposite sex.
- (3) Quarter Horses, Appaloosas and Paints minimum scale weights shall be 120 pounds for two-year-olds, 122 pounds for three-year-olds, and 124 pounds for four-year-olds and older.
- (4) A notice shall be included in the daily program that all jockeys will carry approximately three (3) pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures. Additionally, jockeys may weigh in with an additional three (3) pounds for inclement weather gear when approved by the stewards.

#### **Rules Amended by RCI Board, July 27, 2011**

- ARCI-001-010 False Start Definition
- ARCI-006-050 Starter False Start
- ~~ARCI-008-010 Altering Safety Equipment~~

#### ***ARCI-008-010 General Provisions***

##### **Z. Safety Equipment**

(3) A safety helmet or a safety vest shall not be altered in any manner nor shall the product marking be removed or defaced.

- ARCI-010-035 Stewards Action False Start
- ARCI-011-20 and ARCI-025-020 NSAID Penalties

#### **Rules Approved by RCI Board, October, 2010**

- ARCI-011-020 Medications and Prohibited Substances (Bute Rule)
- ~~ARCI-008-030 Jockeys, Jockey Fee Earned Rule~~

#### ***ARCI-008-030 Jockeys***

##### **H. Jockey Fee Earned**

A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. In the event an owner or trainer elects to remove a jockey from his or her mount after naming a



rider at the time of the draw, the stewards may require a double jockey fee to be paid. The fee to be paid is equal to that earned by the jockey who rode the horse. The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the stewards. All jockey protests must be filed prior to the race.

Adopted in Version 1.4 ARCI 8/27/02 NAPRA 10/2/02  
 Version 4.3 to 4.4 ARCI Board 12/10/08: Amended jockey eligibility language  
 Version 4.7 to 4.8 ARCI Board 10/22/10 Added H. Jockey Fee Earned language

**Rules Approved by RCI Board, December, 2009**

- ARCI-004-007 Real Time Transaction Monitoring System
- ~~ARCI-006-020 Program Notice Jockey Weights~~

***ARCI-006-020 Racing Secretary***

**I. Daily Program**

The racing secretary shall publish the official daily program, ensuring the accuracy therein of the following information:

- (7) A notice shall be included in the daily program that all jockeys will carry approximately three (3) pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures. Additionally the jockeys may weigh in with an additional (3) pounds for inclement weather gear when approved by the stewards, and;
- (8) such other information as may be requested by the association or the Commission.

- ~~ARCI-008-030 Jockeys (Jockeys Fees)~~

***ARCI-008-030 Jockeys***

**G. Jockey Mount Fees**

The organizations representing the majority of horse owners and jockeys should reach and present an agreement to the commission 30 days prior to the start of a race meet. In the absence of a contract or special agreement, and taking into consideration local conditions and total purses paid at their racing facility, the commission shall use the following as a guideline for establishing jockey mount fees.

PURSE	WINNING MOUNT	SECOND MOUNT	THIRD MOUNT	FOURTH MOUNT	OTHER MOUNTS
0 to \$2,499	10%	\$55	\$50	\$45	\$40

\$2,500 to \$4,999	10%	\$60 - \$75	\$55 - \$70	\$50 - \$65	\$45 - \$60
\$5,000 to \$9,999	10%	\$65 - \$85	\$60-\$80	\$55 - \$75	\$50 - \$65
\$10,000 to \$24,999	10%	5%	\$90 - \$100	\$70 - \$90	\$65 - \$80
\$25,000 to \$49,999	10%	5%	5%	\$80 - \$100	\$75 - \$95
\$50,000 to \$99,999	10%	5%	5%	5%	\$80 - \$100
\$100,000 and up	10%	5%	5%	5%	\$105 - \$115

Using a base year of 2010 commissions should adjust this table based on an average of the following indexes: US Social Security Administration's Cost of Living Adjustment (COLA), US Department of Labor's CPA inflation calculator ([HTTP://BLS.GOV](http://BLS.GOV)), and Consumer Price Index (CPI), local percent change in pari-mutuel handle. As a guideline, taking into account local circumstances, tracks paying purses in excess of \$250,000 per day should move to the higher range in each category and tracks paying below \$125,000 per day in purses should be considered at the lower of the range.

**ARCI-010-020 Change of Scale of Weights**

**ARCI-010-020 Weights**

**D. Scale of Weights (MODIFIED DECEMBER 2011 RE THOROUGHBREDS)**

(2) Quarter Horses, Appaloosas and Paints minimum scale weights shall be 120 pounds for two-year-olds, 122 pounds for three-year-olds, and 124 pounds for four-year-olds and older.

(3) A notice shall be included in the daily program that all jockeys will carry approximately three (3) pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in require weighing out procedures. Additionally, upon stewards' approval, jockeys may weigh in with an additional three (3) pounds for inclement weather gear.

**ARCI-010-035 Weighing Out and In**

**ARCI-010-035 Running of the Race**

**C. Jockey Requirements**

(7) Weighing Out

(a) A jockey's weight shall include his/her clothing, boots, saddle and its attachments and any other equipment except the bridle, bit, blinkers, goggles, number cloth and safety equipment including helmet, vest, over-girth, reins and breast collar.

(b) Upon Stewards approval, jockeys may be allowed up to three (3) pounds more than published weights to account for inclement weather clothing and equipment.

#### **E. Post to Finish**

##### **(11) Weighing In**

(a) A jockey shall weigh in at no less than the same weight at which he/she weighed out, and if under that weight, and after consideration of mitigating circumstances by the board of stewards, his/her mount may be disqualified from any portion of the purse money.

(b) In the event of such disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

(c) A jockey's weight shall include clothing, boots, saddle and its attachments and any other equipment except the bridle, bit, blinkers, number cloth and over-girth, reins and breast collar.

(d) Upon approval of the stewards, the jockeys may be allowed up to three (3) pounds more than published weights to account for inclement weather clothing and equipment.

(e) The post-race weight of jockeys includes any sweat, dirt and mud that have accumulated on the jockey, jockey's clothing, jockey's safety equipment and over-girth. This accounts for additional weight, depending on specific equipment, as well as weather, track and racing conditions.

- ARCI-011-030 C Postmortem Exams

#### **Rules Approved by RCI Board, Del Mar, California, August 2009**

- ARCI-008-020 Trainer CE Requirements
- ARCI-008-010 Safety Vest Standards

#### **ARCI-008-010 General Provisions**

##### **Z. Safety Equipment**

###### **(2) Vests**

Any person mounted on a horse or stable pony on the association racing surface, all assistant starters and anyone handling a horse in a starting gate must wear a safety vest at all times. The safety vest must comply with one of the following minimum standards:

(a) British Equestrian Trade Association (BETA):2000 Level 1

(b) Euro Norm (EN) 13158:2000 Level 1

(c) American Society for Testing and Materials (ASTM) F2681-08

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3

(e) Australian Racing Board (ARB) Standard 1.1998

- SPMO Rule
- ARCI-013-020 Greyhound Racing Officials
- ARCI-013-025 Racing Secretary-Director of Racing

- ARCI-013-030 Lure Operators
- ARCI-013-045 Paddock Judge
- ARCI-013-055 Starter
- ARCI-013-075 Lead Outs
- ARCI-014-015 Documents Reports Required
- ARCI-014-020 Facilities and Equipment
- ARCI-014-035 Program
- ARCI-015-015 Licences
- ARCI-016-010 Prohibited Acts
- ARCI-017-015 Qualifying Conditions
- ARCI-017-020 Schooling
- ARCI-017-025 Grading
- ARCI-017-035 Withdrawals and Scratches
- ARCI-017-050 Running of the Race
- ARCI-018-020 Medications and Drugs
- ARCI-018-025 Euthanasia

**Rules Adopted by RCI Board, Lexington, KY, April 2009**

- ARCI-001-010 Terms
- ARCI-005-010 Traction Device Definition
- ARCI-006-010 List of Officials Association Employed Vet and Horseshoe Inspector
- ARCI-006-035 identifier Microchip and Freeze Brand
- ARCI-006-070 Official Vet Flat
- ARCI-006-076 Horseshoe Inspector
- ARCI-008-010 Interaction with Inactive Persons Prohibited
- ARCI-008-015 Transfer of Owner
- ARCI-008-020 Trainer Suspension Flat
- ARCI-009-035 Paper Registration Certificates
- ARCI-010-020 Weights Assignment for Graded Stakes
- ARCI-010-025 Workouts Microchipping Freeze Brand
- ARCI-010-030 Horses Ineligible - Microchip and Freeze Brand
- ARCI-010-030 Paper Registration Certificates
- ARCI-011-020 TCO2
- ARCI-011-023 TCO2
- ARCI-011-030 Pre Race Exams and Vets List Flat
- ARCI-025-030 Pre Race Exams and Vets List Harness
- ARCI-024-035 SB Whip Rule

**Rule Proposals as Approved by RCI Board, Tucson, AZ, December 10, 2008**

- ARCI-010-035 Running of the Race (Crop Rule & Jockey's Weight)

***ARCI-010-035 Running of the Race***

**A. Equipment**

(1) All riding crops are subject to inspection and approval by the stewards and the clerk of scales.

(a) Riding crops shall have a shaft and a flap and will be allowed in flat racing including training, only as follows.

- (A) Maximum weight of eight ounces;
  - (B) Maximum length, including flap of 30 inches
  - (C) Minimum diameter of the shaft of three-eighths inch; and
  - (D) Shaft contact area must be smooth, with no protrusions or raised surface, and covered by shock absorbing material that gives a compression factor of at least one-millimeter throughout its circumference.
- (b) The flap is the only allowable attachment to the shaft and must meet these specifications:
- (A) Length beyond the end of the shaft a maximum of one inch;
  - (B) Width a minimum of 0.8 inch and a maximum of 1.6 inches;
  - (C) No reinforcements or additions beyond the end of the shaft;
  - (D) No binding within seven inches of the end of the shaft; and
  - (E) Shock absorbing characteristics similar to those the contact area of the shaft.

#### **E. Post to Finish**

##### **(7) Use of Riding Crop**

- (a) Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his/her best efforts to win.
- (b) In all races where a jockey will ride without a riding crop, an announcement of such fact shall be made over the public address system.
- (c) No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, shall be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.
- (d) Riding crops shall not be used on two-year-old horses before April 1 of each year.
- (e) The riding crop shall only be used for safety, correction and encouragement.
- (f) All riders should comply with the following when using a riding crop:
- (A) Showing the horse the riding crop and giving it time to respond before hitting it;
  - (B) Having used the riding crop, giving the horse a chance to respond before using it again;
  - (C) Using the riding crop in rhythm with the horse's stride.
- (g) Prohibited use of the riding crop includes but are not limited to striking a horse:
- (A) on the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;
  - (B) during the post parade or after the finish of the race except when necessary to control the horse;
  - (C) excessively or brutally causing welts or breaks in the skin;
  - (D) when the horse is clearly out of the race or has obtained its maximum placing;
  - (E) persistently even though the horse is showing no response under the riding crop; or
  - (F) striking another rider or horse.
- (h) After the race, horses will be subject to inspection by a racing or official veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.

(i) The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions

**ARCI-008-030 Provisional Licenses for Jockeys**

**ARCI-008-030 Jockeys**

**A. Eligibility**

- (1) No person under 18 years of age shall be licensed by the Commission as a jockey, except persons who have been licensed by this Commission prior to the date of adoption of this rule.
- (2) A jockey shall pass a physical examination given within the previous twelve months by a licensed physician affirming fitness to participate as a jockey. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.
- (3) An applicant shall show competence by prior licensing and the demonstration of riding ability, which may include participation in up to five races with the prior approval of the stewards with the consideration of the recommendations from the starter, the head outrider, and the designated representatives of the jockeys and the horsemen at the track. The demonstration of riding ability is defined at a minimum of:
  - (a) Breaking with a horse in company from the starting gate;
  - (b) Working a horse in company around the turn and down the stretch;
  - (c) Switching the riding crop from one hand to the other while maintaining control of the horse in a stretch drive;
  - (d) Causing a horse to switch leads coming out of the turn.
- (4) A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.
- (5) A person whose weight exceeds 130 pounds at the time of application shall not be licensed as a jockey.

**B. Apprentice Jockeys**

- (1) An applicant may be prohibited from riding until the stewards or the Commission has sufficient opportunity (not to exceed 14 days) to verify the applicant's previous riding experience.
- (2) The conditions of an apprentice jockey license do not apply to quarter horse racing. A jockey's performances in quarter horse racing do not apply to the conditions of an apprentice jockey license.
- (3) An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.
- (4) An apprentice certificate may be obtained from the stewards on a form provided by the Commission. A person shall not receive more than one apprentice certificate. In case of emergencies, a copy of the original may be obtained from the Commission where it was issued.
- (5) An apprentice jockey shall ride with a five pound weight allowance beginning with his/her first mount and for one full year from the date of his/her fifth winning mount. If after riding one year from the date of his/her fifth winning mount, the apprentice jockey has failed to ride a total of forty winners from the date of his/her first winning mount, he/she shall continue to ride with a five pound weight allowance for one more year from the date of his/her fifth winning mount or until he/she has ridden forty winners, whichever comes first. If an apprentice jockey is unable

to ride for a period of fourteen consecutive days or more after the date of his/her fifth winning mount because of service in national armed forces, enrollment in an institution of secondary or higher education, or because of physical disablement, the Commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such apprentice jockey was unable to ride (see APPRENTICE JOCKEY EXTENSION FORM). The Commission will take jurisdiction only on certificates which it has issued. All other requests for extensions shall be directed to the Commission that approved the apprentice certificate.

(6) The conditions set forth in Section A or this rule shall also apply.

#### **• ARCI-008-010 Helms Standards**

##### ***ARCI-008-010 General Provisions***

##### **Z. Safety Equipment**

##### **(1) Helmets**

Any licensee mounted on a horse or stable pony on association grounds must wear a properly secured safety helmet at all times. The licensee is responsible for providing sufficient evidence that his/her helmet meets one of the following safety standards: American Society for Testing and Materials (ASTM 1163); UK Standards (EN-1384 and PAS-015); or, Australian/New Zealand Standard (AS/NZ 3838).

#### **• ARCI-007-020 Emergency Procedures & Transport**

##### ***ARCI-007-020 Facilities And Equipment***

##### **A. Facilities for Patrons and Licensees**

(1) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.

(2) An association shall provide and maintain adequate restroom facilities for the patrons and licensees.

(3) An association shall provide an adequate supply of free drinking water.

(4) An association shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.

(5) During a race performance, the association shall provide:

(a) a first aid room equipped with at least two beds and other appropriate equipment; and

(b) the services of at least one physician, a nurse practitioner or paramedic.

(6) An association shall provide a properly equipped to transport ambulance, staffed with at least one certified paramedic during training and two certified paramedics during racing hours. If the ambulance is being used to transport an individual, the association may not conduct a race, or allow horses with riders on the racetrack, until the ambulance is replaced.

(7) An association shall provide mandatory orientation of racing emergency procedures for all emergency response personnel employed by or assigned as a result of a contract to the association grounds

(8) Unless otherwise approved by the Commission or the stewards, an ambulance shall follow the field at a safe distance during the running of races.

(9) The ambulance must be parked at an entrance to the racing strip except when the ambulance is being used to transport an individual or when it is following the field during the running of a race.

(10) An association shall provide adequate office space for the use of the stewards and other Commission personnel as required by the Commission. The location and size of the office space, furnishings and equipment required under this section must be approved by the Commission.

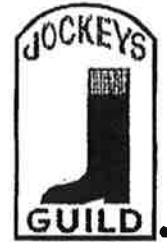
(11) An association shall promptly post Commission notices in places that can be easily viewed by patrons and licensees.

- ARCI-011-015 Shockwave Flat
- ARCI-025-015 Shockwave Harness
- ARCI-011-020J Androgenic-Anabolic Steroids-Flat
- ARCI-025-020J Androgenic-Anabolic Steroids-Harness

#### Rule Proposals Acted on by RCI Board, Saratoga Springs, August 2008

- Toe Grab ARCI-010-030 (27)
- Trainer CE Requirements





**CONTACT:** Jockeys' Guild (859) 523-JOCK (523-5625)

**FOR IMMEDIATE RELEASE**

## **STATEMENT OF POLICY ON RACE DAY MEDICATION AND SAFETY CONCERNS FROM THE JOCKEYS' GUILD**

**NICHOLASVILLE, Ky. (April 30, 2012) –** The board of directors of the Jockeys' Guild has voted to adopt the following policy statement concerning race day medications and safety concerns:

1. The safety of human and equine athletes must be paramount at all times in racing.
2. We participate on, and support the mission of, the Racing Medication Testing Consortium board ("RMTC"), which is striving to develop and promote uniform rules, policies and testing standards at the national level; coordinate research and educational programs that seek to ensure the integrity of racing and the health and welfare of racehorses and participants; and protect the interests of the racing public.
3. The rules regarding race day medication should be uniform throughout the United States through the creation of an *Interstate Compact on Horse Racing* which will enable states to act cooperatively with more uniform, effective and efficient practices, programs, rules and regulations related to racing.
4. We support the RMTC's recommendation to reduce the threshold of in blood for phenylbutazone ("Bute") from 5 micrograms/milliliter (ug/ml) to 2 micrograms/milliliter (ug/ml).
5. We support mandatory *PRE-RACE Veterinary exams* as the only real guarantee against unsafe horses on the race track. We believe there should a stronger emphasis on the responsibility of the veterinarian in the afternoon to scratch horses which are not warming up soundly during the post-parade.

(more)

6. We agree that the improper use of clenbuterol and illegally compounded non-FDA approved substances is a serious concern. We support the RMTC's current efforts to determine the withdrawal times before a horse so treated can be allowed to race.
7. We agree that corticosteroids have to be thoroughly studied and limited in use as the science dictates.
8. We support rigorous limits on extracorporeal shock wave therapy. Every owner, trainer, or veterinarian who owns or buys a shock wave therapy apparatus must register it with the Commission, Board of Stewards and race track where is being used before it is used and give notice every time it is used. Shock Wave therapy needs to be conducted at a designated area, overseen by a regulatory veterinarian or racing official, the details of any such treatment for any horse shall be provided to all jockeys and the horse shall not race within 10 days of treatment as currently stated in the ARCI Model Rules.
9. We agree that no adjunct race day medications are permissible.
10. We support continuing scientific studies of the safety of utilizing Furosemide ("Lasix") as a race day medication and will work with the industry to take any actions necessary to ensure safety. If Lasix is used it shall be administered by a regulatory veterinarian.

#### About the Guild

Jockeys' Guild, Inc., the organization representing professional jockeys in Thoroughbred and Quarter Horse racing in the United States, was founded in May 1940 and has approximately 950 members, including active, retired and disabled jockeys. The purpose is to protect jockeys, strive to achieve a safer racing environment, to obtain improved insurance and other benefits for members and to monitor developments in local, state and federal laws affecting the racing industry, and in particular, the jockeys. More information at [www.jockeysguild.com](http://www.jockeysguild.com) and [www.facebook.com/jockeysguild](http://www.facebook.com/jockeysguild).

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## Durenberger, Jennifer (MGC)

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**From:** mgccomments (MGC)  
**Sent:** Friday, February 22, 2013 9:15 AM  
**To:** Durenberger, Jennifer (MGC)  
**Subject:** FW: "Racing Regulations"

**From:** Haydon, Jamie S. [mailto:jhaydon@jockeyclub.com]  
**Sent:** Thursday, February 21, 2013 11:39 AM  
**To:** mgccomments (MGC)  
**Cc:** Cuzzo, Theresa; Iuliano, Matt  
**Subject:** "Racing Regulations"

February 22, 2013

Massachusetts Gaming Commission, Racing Division  
84 State Street, Suite 720  
Boston, MA 02109

Dear MGC Racing Division:

On behalf of The Jockey Club, I would like to take this opportunity to commend the Racing Division of the Massachusetts Gaming Commission on the comprehensive modifications proposed to the rules of racing. We support your proposed changes to 205 CMR 4.00: Horse Racing that would:

- Eliminate the race day administration of phenylbutazone while establishing a rule prohibiting stacking
- Define and establish a limited controlled therapeutic medications with thresholds and withdrawal times
- Adopt Association of Racing Commissioners International Model Rules and Uniform Guidelines
- Eliminate of traction devices
- Define veterinarian responsibilities, practices and duties
- Establish and define prohibited practices
- Establish thresholds for anabolic steroids and TCO2
- Establish a rule for Out of Competition testing
- Provide rules for pre-race inspection of horses and postmortem examinations
- Provide the commission the ability to freeze samples

The Jockey Club has been a leading advocate for medication reform in our industry. In 2008, the Thoroughbred Safety Committee was formed as a standing committee of The Jockey Club and has since issued 15 recommendations, many of which pertained to medication. All of them are available at <http://jockeyclub.com/tsc.asp>.

Working closely with the Association of Racing Commissioners International, the Racing Medication & Testing Consortium, regulators from individual racing commissions, veterinarians, trainers, breeders, owners, track operators and bettors, The Jockey Club published the Reformed Racing Medication Rules in August 2011. These rules have been endorsed by the American Quarter Horse Association, Thoroughbred Owners and Breeders Association, The Jockeys' Guild. The Thoroughbred Racing Associations have also endorsed the content of the rules.

The Reformed Rules feature a new categorization of medications, more clearly defined regulatory limits and dramatically remodeled penalties and we are encouraging all Thoroughbred racing jurisdictions to implement them in order to improve the integrity of the sport and enhance the safety of its athletes.

In 2012, The Jockey Club and the Thoroughbred Owners and Breeders Association launched the Clean Horse Racing advocacy website. It features news, videos, scientific studies and commentary in support of medication-free racing, as well as several action-oriented sections that enable industry participants to pledge their support for clean racing by contacting state racing commissions and signing petitions regarding medication reform.

If you have not done so already, I hope you will take a look at both of them.  
[http://jockeyclub.com/pdfs/reformed\\_rules.pdf](http://jockeyclub.com/pdfs/reformed_rules.pdf) and <http://cleanhorseracing.org/>.

I can assure you that the safety of your athletes and the integrity of your competition will be enhanced if the new and amended regulations are adopted in Massachusetts.

The Jockey Club continues to encourage other racing jurisdictions to make necessary reforms, as you are doing, and we would be glad to visit Massachusetts at any time to make a presentation and discuss our wide-ranging medication reform efforts.

Please don't hesitate to contact me at any time if you have questions, comments or suggestions or would like more information about any of this.

Thank you.

Sincerely,

Matt Iuliano  
Executive Vice President & Executive Director  
The Jockey Club  
cc: Members, The Jockey Club Thoroughbred Safety Committee



International President  
**[REDACTED]**



International Secretary Treasurer

*Paul C. Brooker*

The following Pages will explain the requirements needed to be inserted in the Massachusetts Racing regulations to further enforce the integrity and to further the professional degree of licensees.

These requirements have been the standard of horsehoers licensing and have been since 1847 when the International Union of Journeymen Horseshoers approved them.

Since horsehoeing involves working on living tissue we believe that these requirements be approved and enforced.

Paul C. Brooker

Director of Horsehoers and Allied Equine Trades  
Local 947/ local Chapter 15 I.U.J.H. & A.E.T.

## Blacksmith/ Horseshoer licensing Examination

A qualification examination shall be taken and passed prior to an applicant being licensed to practice as a Blacksmith/ Horseshoer on the grounds of any Racetrack under the jurisdiction of the Racing Commission.

### Examination Committee

The Examination Committee shall consist of a Licensed Qualified blacksmith/Horseshoer, Commission Veterinarian, a representative of the Horsemen and Protective Benevolent and Protective Association. All of who, shall be approved by the Racing Commission.

### Qualification Examination

The qualification examination shall consist of the following requirements.

- (1) Using the required steel, the applicant shall draw, turn and Forge weld one pair of Front Bar Shoes to fit the test Horse.  
Coal or gas forge may be used, but no Torch or Electric welding allowed.
- (2) Applicant shall also draw and turn one pair of hind shoes in a Block/Sticker configuration.
- (3) Applicant shall Forge Sweat Toe Grabs onto all four shoes and punch the appropriate Nail Holes.
- (4) The applicant shall be allotted six(6 ) hours to complete the examination.
- (5) Should for any humane reason or the showing of inability to properly perform the requirements, the examination committee shall discontinue the examination.
- (6) Upon completion of the examination the examining committee shall examine the test horse to determine as to the passing or failure of the applicant.
- (7) If the applicant fails the examination, the applicant they shall be prohibited from taking another examination for a period of three(3) months.

### Exemptions



March 30, 2011

Mr. Joseph VanDeventer, Chairman  
State Racing Commission  
Room 1313  
One Ashburton Place  
Boston, MA 02108

Dear Mr. VanDeventer:

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In order to protect Suffolk Downs and our Simulcast Partners from minus pools Suffolk Downs respectfully requests approval to change the General Calculation of Payoffs and Distribution of Pools 6.29 (1):

**From:**

The commission deducted by the association from pari-mutuel pools shall not exceed the percentage set by M.G.L. c. 128A and that said percentage of the gross amount of money handled plus any additional amount required by law and the odd cents over any multiple of ten cents winning per dollar wagered. All associations licensed by the Commission to conduct racing under the pari-mutuel or certificate system of wagering must in all cases of a minus pool pay of \$1.10 on each dollar wagered. The entire loss resulting from a minus pool shall be borne by the Association.

**To:**

The commission deducted by the association from pari-mutuel pools shall not exceed the percentage set by M.G.L. c. 128A and that said percentage of the gross amount of money handled plus any additional amount required by law and the odd cents over any multiple of five cents winning per dollar wagered. All associations licensed by the Commission to conduct racing under the pari-mutuel or certificate system of wagering must in all cases of a minus pool pay of \$1.05 on each dollar wagered. The entire loss resulting from a minus pool shall be borne by the Association.

In addition, Suffolk Downs respectfully requests approval to change it's minimum from \$1.00 (one dollar) to \$.50 (fifty cents) on boxes and wheels on Pick 3's and Pick 4's.

Thank you for your courtesy and cooperation.

Very truly yours,



James R. Alcott  
Director of Pari-Mutuel Operations

C/C: Chip Tuttle, Chief Operating Officer  
Sam Elliott, Vice President of Racing



***Proposed Changes to 205 CMR 4.00  
Rules Governing  
Running Horse Racing***

***Massachusetts Gaming Commission,  
Racing Division  
March 28, 2013***

## 205 CMR 4.00: Horse Racing

- 4.01: Foreword
- 4.02: Definitions
- 4.03: Appeal to the Commission
- 4.04: Stable Names, Registration Fees, Restrictions, etc.
- 4.05: Authorized Agent-Licenses, Filing Instrument, etc.
- 4.06: Claiming
- 4.07: Clerk of the Scales, Duties, etc.
- 4.08: Colors, Registration Fees, etc.
- 4.09: Corporations
- 4.10: Corrupt Practices
- 4.11: Rules of the Race
- 4.12: Forfeitures and Suspensions
- 4.13: General Rules
- 4.14: Handicapper
- 4.15: Jockey
- 4.16: Jockey Agents
- 4.17: Jockey Apprentices
- 4.18: Jockey Contracts
- 4.19: Jockey Room Custodian
- 4.20: Licensee's Duties, Obligations, etc.
- 4.21: Licenses, Registrations and Fees for Participants in Racing
- 4.22: Naming of Jockeys
- 4.23: Owner
- 4.24: Paddock Judge
- 4.25: Paddock to Post (*repealed*)
- 4.26: Partnerships
- 4.27: Patrol Judges
- 4.28: Placing Judges
- 4.29: Postponement and Cancellation of Races
- 4.30: Racing Officials
- 4.31: Racing Secretary
- 4.32: Urine, Other Tests and Examinations: (Repealed)
- 4.33: Starter
- 4.34: Steeplechasing
- 4.35: Stewards
- 4.36: Trainers
- 4.37: Vendors of Horse Feed or Medicine
- 4.38: Veterinarians: (Repealed)
- 4.39: Walking Over
- 4.40: Weighing In (*repealed*)
- 4.41: Weighing Out (*repealed*)
- 4.42: Winnings
- 4.43: Special Rules for State or County Fairs

- 4.44: Declarations and Scratches for State and County Fairs
- 4.45: General Rules for State and County Fairs
- 4.46: Paddock Judge for State and County Fairs
- 4.47: Practicing Veterinarians
- 4.48: Official Veterinarian
- 4.49: Racing Veterinarian
- 4.50: Veterinary Practices
- 4.51: Prohibited Practices
- 4.52: Medications and Prohibited Substances
- 4.53: Out of Competition Testing for Blood and/or Gene Doping Agents
- 4.54: Physical Inspection of Horses
- 4.55: Testing
- 4.56: Postmortem Examinations
- 4.57: Horseshoers

#### **4.01: Foreword**

The Massachusetts Gaming Commission, hereinafter called the Commission, was created by an act of the Legislature of the Commonwealth of Massachusetts in the year 2011. M.G.L. c. 23K as inserted by the session laws of 2011, chapter 194, section 16 and amendments states that the Commission shall have full power to prescribe rules, regulations and conditions under which all horse races or horse racing meetings shall be conducted in the Commonwealth.

205 CMR 4.00, applies to all persons or individuals, associations or corporations, which shall hold or conduct any running horse racing meeting within the Commonwealth of Massachusetts licensed by the Commission, where horse racing shall be permitted for any stake, purse or reward and the definitions here given are to be considered in connection with 205 CMR 4.00 and as a part of it.

All licensees and participants are charged with knowledge of 205 CMR 4.00. No licensee or other persons shall engage in his or her occupation at any Massachusetts running horseracing track without first reading 205 CMR 4.00.

Should any question arise as to the meaning of any rule or regulation, the Commission or its representatives will be available to provide an explanation.

Every license to hold a meeting is granted upon the condition that the licensee shall accept, observe and enforce 205 CMR 4.00. Furthermore; it shall be the duty of each and every officer, director and every official and employee of said licensee to observe and enforce 205 CMR 4.00.

Any and all of 205 CMR 4.00 may be amended, altered, repealed or supplemented by new and additional rules.

The Commission may make exceptions or waive any rule or rules in individual instances as in its judgment it may deem proper.

The Commission may rescind, modify or increase any penalty or decision on infraction of the rules imposed or made by the racing officials.

The laws of the Commonwealth of Massachusetts and 205 CMR 4.00 supersede the conditions of a race, or the regulations of a race meeting.

205 CMR 4.00 is supplemented by the State Administrative Procedure Law found in M.G.L. c. 30A. M.G.L. c. 30A provides the procedures that must be followed by all state agencies on such matters as the amending process and the adjudicatory procedure. Under M.G.L. c. 30A any interested party has the right to attend all hearings conducted by the Commission for the purpose of the adoption or amendment of any rule or regulation. The Commission shall afford any interested person an opportunity to present data, views or arguments in regard to any proposed rule change. Upon written notice to the Commission, a person may request the adoption, amendment or repeal of any regulation with an opportunity to present data, views or arguments in support of such request.

If a dispute should arise concerning a ruling by a steward or other racing official, any party affected by such ruling has a right to an appeal to the Commission upon written notice to the Commission within ten days. At such hearing each party shall be given an opportunity to be represented by an attorney, to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify and to submit rebuttal evidence. The Commission shall make available upon request an official record of the hearing and a party may request and receive a transcript of such record upon payment to the Commission of the cost of such transcript. The Commission shall provide, in writing, its decision along with findings of fact and conclusions of law.

Any person who does not agree with a final decision of the Commission shall be entitled to judicial review of such decision by filing a petition for review in Superior Court within 30 days after receipt of notice of the final decision of the Commission. The review shall be conducted by the court without a jury and, in most instances, shall be confined to the record.

The rules on pari-mutuel wagering are located in an entirely separate rulebook entitled *205 CMR 6.00 Pari-mutuel Rules for Horse Racing, Harness Horse Racing and Greyhound Racing*.

#### **4.02: Definitions**

The following definitions and interpretations shall apply in 205 CMR 4.00 unless the text otherwise requires:

Act is the enabling legislation permitting pari-mutuel horse racing in this jurisdiction.

Added Money is the amount added into a stakes by the Association, or by sponsors, state-bred programs or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

Administer or Administration is the introduction of a substance into the body of a horse.

Age of a horse foaled in North America shall be reckoned from the first day of January of the year of foaling.

Also Eligible pertains to:

(a) a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline;

(b) The next preferred non-qualifier for the finals or consolation from a set of elimination trials which will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.

Allowance Race is an overnight race for which eligibility and weight to be carried is determined according to specified conditions that include age, sex, earnings and number of wins.

Appeal is a request for the Commission or its designee to investigate, consider and review any decision or rulings of stewards of a meeting.

Arrears are all monies owed by a licensee, including subscriptions, jockey fees, forfeitures and any default incident to 205 CMR 4.00.

Associated Person is the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that such other person or entity would care for or train a racing animal or perform veterinarian service on a racing animal for the benefit, credit, reputation, or satisfaction of the inactive person.

Association is any person or persons, associations, or corporations licensed by the Commission to conduct horse racing within the Commonwealth of Massachusetts for any stake, purse or reward.

Association Grounds is all real property utilized by the Association in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities and parking lots.

Authorized Agent is a person licensed by the Commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

Beneficial Interest is profit, benefit or advantage resulting from a contract or the ownership of an estate as distinct from the legal ownership or control. When considered as designation or character of an estate, is such an interest as a devisee, legatee or donee taken solely for his or her own use or benefit and not as holder of title for use and benefit of another.

Betting Interest is one or more horses in a pari-mutuel contest, which are identified by a single program number for wagering purposes.

Bleeder means a horse which has demonstrated external evidence of exercise induced pulmonary hemorrhage.

Bleeder List is a tabulation of all bleeders to be maintained by the Commission.

Breeder is the owner of the horse's dam at the time of foaling.

Calendar Day is 24 hours ending at midnight.

Cheek Piece is two strips of sheepskin or any other similar material attached to the cheek pieces of the bridle.

Claiming Race is a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules.

Commission is the regulatory agency with the authority to regulate racing.

Conditions are qualifications that determine a horse's eligibility to be entered in a race.

Contest is a competitive racing event on which pari-mutuel wagering is conducted.

Contestant is an individual horse participating in a contest.

Controlled Therapeutic Medication is any medication approved by the Association of Racing Commissioners International for which the regulatory analyte concentration in the sample(s) may not exceed specified regulatory limits published herein.

Coupled Entry is two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes (also see "Entry").

Day is a 24-hour period beginning at 12:01 A.M. and ending at 12:00 P.M. midnight.

Dead Heat is the finish of a race in which the noses of two or more horses reach the finish line at the same time.

Declaration is the act of withdrawing an entered horse from a race prior to the closing of entries.

Draw means the process of assigning post positions and the process of selecting contestants in a manner to ensure compliance with the conditions of 205 CMR 4.00.

Ejected shall mean the removal from the grounds of an Association and shall apply to both patrons at racing meetings and participants in racing.

Entry is:

(a) a horse made eligible to run in a race;

(b) two or more horses, entered in the same race, which have common ties of ownership, lease or training.

Equipment as applied to a horse, shall ~~mean~~ include riding crops, spurs, blinkers, tongue straps, muzzles, hoods, nose-bands, bits, shadow rolls, martingales, breast plates, bandages, boots, plates, and cheek pieces.,~~etc.~~

Exhibition Race is a race on which no wagering is permitted.

Financial Interest is an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity; or as a result of salary, gratuity or other compensation or remuneration from any person. The lessee and lessor of a horse have a financial interest.

Flat Race is a race in which horses mounted by jockeys run over a course on which no jumps or other obstacles are placed.

Forfeit is money due from a licensee because of error, fault, neglect of duty, breach of contract or a penalty imposed by the Stewards or the Commission.

Furosemide List means a tabulation of all horses eligible to participate in a race with furosemide in ~~its~~ their system.

General Partner shall mean the person or persons having full, exclusive and complete control and discretion of the management of the affairs of a Limited Partnership.

Guest Association is an association which offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same state of another jurisdiction.

Handicap is a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

Horse is any equine (including and designated as a mare, filly, stallion, colt, ridgeling or gelding) registered for racing; specifically, an intact male five years of age or older.

Host Association is the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

Inactive Person is any person whose license has been suspended for more than 30 days; whose license has expired or been revoked; or whose license application has been denied.

Inquiry is an investigation by the Stewards of potential interference in a contest prior to declaring the result of said contest official.

Jockey is a professional rider licensed to ride in races.

Law or Laws shall mean M.G.L. c. 128A: *Horse and Dog Racing Meetings* (~~being the general laws pertaining to horse racing~~).

Licensee is any person or entity holding a license from the Commission to engage in racing or a regulated activity.

Limited Partnership shall mean any person holding an interest in a horse, who is not a general partner.

Maiden is a horse that has never won an official or recognized race as defined in breed registry rules.

Maiden Race is a contest restricted to non-winners.

Match Race is a race between two horses under conditions agreed to by their owners.

Measurement Uncertainty is a parameter associated with the results of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the measurement.

Medication is any substance or metabolite capable of exerting a pharmacological effect on the horse's system with an accepted use in the diagnosis, cure, treatment or prevention of a veterinary medical condition.

Meeting is the specified period and dates each year during which an association is authorized to conduct racing by approval of the Commission.

Month is a calendar month.

Multiple Ownership shall mean any ownership of a horse by more than one individual.

Mutuel Field is two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

Nomination is the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

Nominator is the person or entity in whose name a horse is nominated for a race or series of races.

Objection is:

(a) a written complaint made to the Stewards concerning a horse entered in a race and filed not later than one hour prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or



(b) a verbal claim of foul in a race lodged by the horse's jockey, trainer, owner or the owner's authorized agent before the race is declared official.

Official Order of Finish is the order of finish of the horses in a contest as declared official by the Stewards.

Official Starter is the official responsible for dispatching the horses for a race.

Official Running Time is the elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line.

Off Time is the moment at which, on the signal of the official starter, the doors of the starting gate are opened, officially dispatching the horses in each contest.

Optional Claiming Race. ~~is a contest restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less.~~ In the case of horses entered to be claimed in such a race, the race shall be considered, for the purpose of 205 CMR 4.00, a claiming race. In the case of horses not entered to be claimed, the race shall be considered an allowance race.

Overnight Race is a contest for which entries close at a time set by the racing secretary; also known as "Purse Race."

Owner is a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

Paddock is an enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

Pari-Mutuel System is a manual, electro-mechanical, or computerized system and all software (including the totalisator, account betting system and off-site betting equipment) that is used to record bets and transmit wagering data.

Patron is a member of the public present on the grounds of a pari-mutuel association during a meeting. ~~for the purpose of wagering or to observe racing.~~

Performance is a schedule of contests conducted on the same day as authorized by the Commission.

Permit is an authorization by the Commission to an association to conduct horse racing with pari-mutuel wagering at a specified location.

Person is any individual, partnership, corporation or other association or entity.

Place in racing shall mean first, second, third, or fourth, and in that order is called "Win," "Place," "Show" and "Fourth".

Post Position is the pre-assigned position from which a horse will leave the starting gate.

Post Time is the scheduled time for horses to arrive at the starting gate for a contest.

Prima Facie Evidence is evidence that, until other evidence overcomes its effect, will suffice as proof of fact in issue.

Produce Race is one in which the produce of horses named or described at the time of entry are the contestants.

Program is the published listing of all contests and contestants for a specific performance.

Protest is a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing an act or an owner, trainer, jockey or official prohibited by rules, which, if true, shall exclude that horse/jockey from racing.

Purse is the total cash amount for which a race is contested.

Race is a contest between horses at a licensed meeting.

Race Day means any period of 24 hours beginning at midnight and included in the period of a race meeting -- and in a matter of penalties the word "day" means a "calendar day."

Restricted Area is an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access and members of the Commission and its staff.

Result is that part of the official order of finish used to determine the pari-mutuel payoff of pools for each individual contest.

Ruled Off shall mean the act of debarring from the grounds of an Association and denying all racing privileges.

Scratch is the act of withdrawing an entered horse from a contest after closing of entries.

Scratch Time is the deadline set by the association for withdrawal of entries from a scheduled performance.

Simulcast is the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.

Stable Name is a name used other than the actual legal name of an owner or lessee and registered with the Commission.

Stakes Race is a contest in which nominations, entry and/or starting fees contribute to the purse. No overnight race shall be considered a stakes race. Special designations or classifications for

stakes races such as "Graded Stakes" or "Black Type" shall be determined by the appropriate breed registries or recognized authorities.

Starter is a horse that becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

Steeplechase Race is a contest in which horses mounted by jockeys run over a course on which jumps or other obstacles are placed.

Steward is a duly appointed racing official with powers and duties specified by rules.

Subscription shall mean the act of nomination to a stake race.

Substantial Evidence is a evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

Suspended shall mean that any privilege granted to a licensee of the Commission by the officials of a racing meeting or by the Commission has been withdrawn.

Traction Device is any modification or isolated device that extends below the ground bearing plane of the horseshoe (e.g. traction nails, toe grabs, turndowns, blocked heels, jar calks, stickers and Memphis bars) or restricts the natural forward slide of the hoof upon impact.

Trial Race is part of a series of contests in which horses participate for the purpose of determining eligibility for a subsequent contest.

Walkover is a race in which only one horse starts or in which all the starters are owned by the same interest. To claim the purse the horse(s) must start and go the distance of the race.

Week is a calendar week and/or any seven consecutive days.

Weigh In is the presentation of a jockey to the clerk of scales for weighing after a race.

Weigh Out is the presentation of a jockey to the clerk of scales for weighing prior to a race.

Weight for Age is a race in which a fixed scale is used to assign the weight to be carried by individual horse according to age, sex, distance of the race, and season of the year.

Winner is the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

Year is a calendar year.

#### **4.03: Appeal to the Commission**

- (1) A final appeal in the case of any person penalized or disciplined by the racing officials of a meeting licensed by the Commission, may be taken to the Commission.
- (2) Such an appeal must be filed in writing at the office of the Commission within ten days of date of said penalty or imposition of said discipline.
- (3) The request shall be signed by the person making it and must set forth his or her reason for believing he or she is entitled to a hearing.
- (4) An applicant for a hearing will be heard in person and may be represented by counsel.
- (5) All complaints and requests to the Commission must be in writing, and all papers filed with the Commission shall be the property of the Commission.
- (6) An appeal from a decision of a racing official to the Commission shall not affect such decision until the Commission has acted upon the appeal.

#### **4.04: Stable Names, Registration Fees, Restrictions, etc.**

- (1) Each Stable name must be duly registered with the Commission.
- (2) In applying to race under a stable name the applicant must disclose the identity or identities behind a stable name. If a partnership is involved in the identity behind a stable name, 205 CMR 4.26 must be complied with and the usual fees paid therefor in addition to the fees for the registration of a stable name.
- (3) If a corporation is involved in the identity behind a stable name, 205 CMR 4.09 must be complied with.
- (4) Changes in identities must be reported immediately to and approval obtained from the Commission.
- (5) A person cannot register more than one stable name at the same time nor can he or she use his or her real name for racing purposes, so long as he or she has a registered one.
- (6) Any person who has registered under a stable name may at any time cancel it after he or she has given written notice to the Commission.
- (7) A stable name may be changed at any time by registering a new stable name and by paying the fee required as above.
- (8) A person cannot register as his or her stable name one which has been registered by any other person with any association conducting a recognized meeting.

(9) A person may not register as his or her stable name one which is the real name of any owner of race horses nor one which is the real or assumed name of any prominent person not owning race horses.

(10) A stable name shall be plainly distinguishable from that of another duly registered stable name.

(11) No stable name shall be used, if in the judgment of the Stewards, it is being used for advertising purposes.

(12) A corporate name shall be considered a stable name for the purpose of 205 CMR 4.00, but the Commission reserves the right to refuse any corporation the privilege of registering a stable name.

(13) A trainer, who is a licensed owner or part owner, may use a stable name as owner or part owner. However, no trainer may be licensed as a trainer other than in his or her legal name.

**4.05: Authorized Agent-Licenses, Filing Instrument, etc.**

(1) Each authorized agent must obtain a license from the Commission.

(2) Application for a license must be filed for each owner represented.

(3) If a written instrument signed by the owner accompanies the application it shall clearly set forth among the delegated powers whether or not said agent is empowered to collect money from the Association.

(4) If the written instrument is a power of attorney, it shall be filed permanently with the Racing Secretary. If, however, the powers are properly delegated by the owner on the application form for a license then said application shall be in duplicate with both copies signed and sworn to before a Notary Public and one copy filed permanently with the Racing Secretary.

(5) An Authorized Agent may appoint a sub-agent only when specifically authorized so to do by the above said written instrument and, to be effective, notice of such appointment must be given immediately in writing to the Commission.

(6) Any changes must be in writing and filed as provided.

(7) If an agent represents more than one owner a separate written instrument shall be filed for each owner and the fee paid in each case.

(8) The term of the license shall be the calendar year unless the owner revokes the agent's appointment or the Commission revokes the license.

(9) Owner's revocations must be filed in writing with the Commission and with the Racing Secretary.

#### **4.06: Claiming**

(1) In claiming races any horse is subject to claim for its entered price by any owner registered in good faith for racing at the meeting or by his or her authorized agent. Said claim is for the account only of the owner making the claim or for whom the claim was made by the agent provided. No person shall claim his or her own horse or cause his or her horse to be claimed directly or indirectly for his or her own account.

(2) No one may claim more than one horse out of any one race.

(3) No authorized agent, although representing several owners shall submit more than one claim for any one race.

(4) When a stable consists of horses owned by more than one person, trained by the same trainer, not more than one claim may be entered on behalf of such stable in any one race.

(5) **If a horse is claimed, it shall not start in a claiming race for a period of 30 days from the date of claim for less than the amount for which it was claimed.** A claimed horse shall not race elsewhere until after the close of the meeting at which it was claimed or until 60 calendar days the day after the claim, whichever comes first.

(6) The adoption by any state of any rule limiting the amount at which a horse may be entered in a claiming race shall not be deemed inconsistent with 205 CMR 4.06(5).

(7) When a horse is claimed at a recognized meeting under rules that are at variance with 205 CMR 4.06, title to such horse shall be recognized in Massachusetts to follow the rule of the meeting under which it was claimed.

(8) Not more than two horses of the same ownership or interest shall be entered in a claiming race and both may start except that two horses coupled by common ownership shall not start if it deprives an uncoupled horse of starting.

(9) If a horse is claimed it shall not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from the date of claim (the day of the claim and the 30th day from the day of the claim shall not be counted), nor shall it, unless reclaimed, remain in the same stable or under the control or management of its former owner or trainer for a like period.

(10) The claiming price of each horse in a claiming race shall be printed on the program, and all claims for said horse shall be for the amount so designated. Should more than one claim be filed for the same horse, the disposition of the horse shall be determined by lot under direction and supervision of one or more of the Stewards.

(11) All claims must be made in writing, on forms and in envelopes furnished by the Association and approved by the Commission. Both forms and envelopes must be filled out completely and must be sufficiently accurate to identify the claim; otherwise the claim will be void.

(12) Each person desiring to make a claim must first deposit with the Association's horsemen's bookkeeper the whole amount of the claim in cash plus any amount that may be required by Federal, State or Local law as a tax, for which a receipt will be given unless at the time of depositing said claim he or she shall have such amount to his or her credit with the Association.

(13) All claims shall be sealed and deposited in a locked box provided for this purpose. No money shall accompany the claim.

(14) When a claim has been filed it is irrevocable and at the risk of the claimant.

(15) The money deposited for any claimed horse shall be held by the Racing Secretary until the registration certificate on the claimed horse is surrendered, though the claimed horse may go on and race for the new owner or owners, regardless.

(16) All claims shall be deposited in the claiming box at least ten minutes before the established post time of each race; shall be certified by an approved time stamp and the claim box shall be opened only in the presence of the Stewards or their deputy.

(17) No official or other employee of an Association shall give any information as to the filing of claims until after the race has been run.

(18) The Stewards or their deputy shall pass upon all claims.

(19) A horse claimed shall not be delivered by the original owner to the successful claimant until authorization shall be given by the Clerk of the Course, and every horse so claimed shall run in the interest and for the account of the owner who entered it in the race, but title to the claimed horse shall be vested in the successful claimant from time said horse becomes a starter and said claimant shall become the owner of the horse, whether it be alive or dead, sound or unsound or injured during the race or after it.

(20) The Stewards may, at any time, at their discretion, require any person making a claim for a horse in any claiming race, to make affidavit in writing that he or she is claiming said horse for his or her own account or as authorized agent and not for any other person. Any person making such affidavit willfully and falsely shall be subject to punishment in the same manner as is hereinafter provided for the punishment of other persons' violation of any of the terms of 205 CMR 4.06.

(21) No person shall refuse to deliver to the person legally entitled thereto a horse claimed out of a claiming race, and furthermore, the horse in question shall be disqualified until delivery is made.

(22) No person shall offer, or enter into an agreement, to claim or not to claim, or attempt to prevent another person from claiming, any horse in a claiming race; nor shall any person attempt by intimidation to prevent anyone from running a horse in any race for which it is entered nor shall any owner or trainer running horses in any claiming race make any agreement for the protection of each other's horses.

(23) No person or persons shall enter, or allow to be entered, in a claiming race, a horse against which any claim is held, either as a mortgage, bill of sale, or lien of any kind, unless when or before entering the horse the written consent of the holder of the claim shall be filed with the Clerk of the Course of the Association conducting said race.

(24) ~~Any alteration in the sex of a horse must be reported in writing by its owner or trainer to the Racing Secretary or Horse Identification Office on a form provided for that purpose at least 24 hours previous to the time of entry. The completed form shall be attached to the foal certificate.~~ Notwithstanding any designation of sex appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the sex of the horse claimed.

(25) When a horse is claimed out of a claiming race, the horse's engagements are included.

(26) Any person or persons claiming ownership in a horse after such horse has run in a claiming race in the name of another person having peaceful and undisputed possession of that horse shall be ruled off.

(27) The claiming rules set forth in 205 CMR 4.06(1) through (26) shall apply to all races under the jurisdiction of the Commission, including steeplechases, which are run under claiming conditions; provided, however, that in any such steeplechase no horse shall be subject to claim except by the owners of other horses running in such race, or their authorized agent, but for the account of the person making the claim.

(28) Any person violating any of the provisions of 205 CMR 4.06 shall be subject to punishment by the Stewards who may, in their discretion, punish the person so offending by forfeiture or suspension or ruling off, or by denying the privilege of the course. The Stewards shall, in every case, report their action to the Commission which may exclude such person either temporarily or permanently from all race meetings under its jurisdiction.

(29) The Stewards shall issue a claiming authorization to any person who makes an application on forms prescribed for that purpose and who meets the following three requirements:

(a) Meets all the requirements for the issuance of an owner's license, except that the applicant need not own a horse or have any previous experience in racing.

(b) Has an agreement with a licensed trainer to train any horse claimed pursuant to the claiming authorization. The holder of a claiming authorization and the trainer shall promptly notify the Stewards in writing if such agreement is terminated before a horse is successfully claimed.

(c) Has on deposit with the horsemen's bookkeeper the amount of the claim plus any amount that may be required by Federal, State, or Local law as a tax.

(30) The claiming authorization shall be valid only at the track that the authorization is granted for the calendar year in which it is issued, or until such time as the holder of the claiming authorization becomes a horse owner either through use of the claiming authorization or through



private purchase. If the authorization card does not accompany the claim blank when filed it shall be voided.

(31) The same fee charged for an Owner's license shall be payable to the Commission by the applicant prior to the issuance of a claiming authorization. The holder of a claiming authorization shall not, by virtue thereof, be entitled to admission to the stable area, grandstand, or clubhouse at prices less than those charged the general public.

~~(32) Any horse claimed under the provisions of 205 CMR 4.00 must race exclusively in Massachusetts at the track claimed for a period of 60 days following the date of the claim. If racing concludes at the track where the horse is claimed for a period in excess of 30 days and no other Massachusetts track offers other races suitable for that horse, the Stewards may permit said horse to race elsewhere prior to the end of the 60-day period.~~

(32)(33) An application for claiming authorization may be denied or revoked, for any reason that would justify denial, suspension, or revocation of an owner's license. Any person whose claiming authorization is denied or revoked shall have the same rights to notice and hearing as an owner whose license is denied, suspended or revoked.

(33)(34) When an Owner ships a horse in for racing purposes from another jurisdiction and does not have any other horses stabled on the grounds and said horse is claimed, the Owner so affected may obtain a certificate from Stewards of the meeting, and on presentation of the certificate, the Owner shall be entitled to claim during the next 30 days or until such time as he or she has claimed a horse.

#### **4.07: Clerk of the Scales, Duties, etc.**

(1) The Clerk of the Scales shall weigh all jockeys out and in.

(2) The Clerk of the Scales shall record and publish on the notice board any overweight or any change of jockey, weight or racing colors, as compared with those stated on the official program and shall promptly supply all proper racing officials with all pertinent changes.

(3) The Clerk of the Scales shall promptly report to the Stewards any infraction of 205 CMR 4.00 with respect to weight, weighing, or riding equipment.

(4) The Clerk of the Scales shall report to the Racing Secretary after the close of each day's racing, the weights carried by each horse in each race, together with the name of each horse's jockey and the overweight carried by any jockey. He or she shall also report the post time and running time in each race and other data that may from time to time be required.

(5) No horse shall carry more than two pounds overweight without consent of its owner or representative; nor shall a horse carry more than seven pounds overweight in any race. If the overweight is more than ½ pound in excess of the weight the horse is to carry, the jockey shall declare the amount of overweight to the Clerk of Scales at least 45 minutes before the time appointed for the first race of the day and the Clerk shall have the overweight posted on the

Notice Board and announced over the public address system. Failure on the part of any jockey to comply with 205 CMR 4.07(5) shall be reported to the Stewards.

(6) A horse shall not become a starter in a sweepstakes unless it has been announced as such to the Clerk of the Scales not less than 45 minutes before the time appointed for the race.

**4.08: Colors, Registration Fees, etc.**

(1) Colors registered for life with any State Gaming or Racing Commission or with the Jockey Club of New York shall be respected in Massachusetts and only the registrant shall be permitted to use them.

(2) No person shall start a horse in racing colors other than those registered in his or her own or stable name, but a temporary change from the recorded racing colors may be approved by the Stewards.

(3) The Stewards shall decide any dispute between claimants to the right of particular racing colors.

(4) The Commission will not permit the use of colors that in their opinion are not neat and clean and proper in all other respects.

**4.09: Corporations**

(1) Corporations racing horses in Massachusetts shall furnish the following information:

(a) The corporation shall furnish to the Stewards and the Commission a statement giving the names of all persons connected with the corporation including officers, directors and stockholders.

(b) The corporation shall furnish to the Stewards and the Commission a certificate stating that no person or persons connected with the corporation (officer, director or stockholder) have any beneficial interest in any horse or horses running in their name or the name of any other person or persons racing at the same track where the corporation-owned horse or horses are running.

(c) The corporation shall designate to the Stewards and the Commission the name of one individual, preferably an officer, (not the trainer) who shall act as Agent for the corporation.

(2) All licensed persons listed in the corporation shall be liable for entry fees and penalties against horses raced by the corporation.

(3) In the event that one of the persons listed in the corporation is suspended all horses owned by the corporation may be suspended at the discretion of the Stewards and or Commission.

(4) Each of the persons holding a beneficial interest in the corporation shall be in good standing in racing.

(5) The agent designated to act for the Corporation, and any person holding a beneficial interest of 20% or more in the Corporation shall be licensed as owners. Any person whose beneficial interest in the Corporation is less than 20% shall not be licensed as an owner unless they establish a *bona fide* need for the license and the issuance of the license shall be approved by the stewards. If a husband and wife are listed in the Corporation and their total beneficial interest in the Corporation represents 20% or more of the Corporation they shall both be licensed as owners.

(6) All the stockholders or members of a corporation which leases horses for racing purposes in the Commonwealth of Massachusetts and also all such corporations shall make and file with the Commission as and when requested by it, a report or reports containing such information as the Commission may specify; and upon refusal or failure to file such report or reports the Commission may refuse a license to any lessee or lessees of such corporation or may revoke any such license which it may have granted.

#### **4.10: Corrupt Practices**

(1) No person shall influence, induce or conspire or connive with or attempt so to do, any owner, trainer, jockey, agent, driver, groom or other person associated with or interested in or having charge of or access to any horse entered or to be entered in a race for the purpose of fraudulently affecting the ultimate result of such race.

(2) No person shall willfully enter, or cause to be entered, or start a horse that he or she knows or believes to be ineligible or disqualified.

(3) No person shall offer or receive money or any other benefit for declaring or scratching an entry from a race.

(4) No person shall conspire with any other person for the commission of, or connive with any other person in any corrupt or fraudulent practice in relation to racing nor shall he or she commit such act on his or her own account.

(5) No person without proper notice to the Stewards, shall be part owner or trainer of any horse in which a jockey has an interest.

(6) No person shall make a bet for the account of any jockey except the owner or trainer of the horse the jockey is riding, and then only on said horse.

(7) No person shall offer or give a jockey any money or other benefit in relation to a race, unless said person is the owner or trainer of the horse ridden in said race by said jockey.

(8) No person shall solicit bets on the grounds of an Association.

~~(9) A horse, starting in a race, shall not be shod with ordinary or training shoes.~~

~~(10) Bar plates may be used only with the consent of the Stewards and discontinuance of their use must be obtained from the Stewards.~~

(9)(11) No electrical or mechanical device or other expedient designed to increase or decrease the speed of a horse, (or that would tend so to do) other than the ordinary riding crop or spurs, shall be possessed by any one or applied by any one to a horse at any time on the grounds of an Association, during a Meeting whether in a race or otherwise.

(10)(12) No person shall tamper or attempt to tamper with any horse in such a way as to affect its speed in a race, nor shall be counsel or in any way aid or abet any such tampering.

(11)(13) No person shall assume or pay, directly or indirectly, a forfeiture imposed upon a jockey.

(12)(14) No jockey's attendant shall make a bet on any race nor shall he/she place a bet for anyone else.

#### **4.11: Rules of the Race**

(1) Entries and Nominations.

(a) Entering. No horse shall be qualified to start unless it has been and continues to be entered.

(b) Procedure.

1. Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one year.

2. An entry shall be in the name of the horse's licensed owner and made by the owner, trainer or a licensed designee of the owner or trainer.

3. Races printed in the condition book shall have preference over substitute and extra races.

4. An entry must be in writing, by telephone or facsimile machine to the Racing Secretary. The entry must be confirmed in writing should the stewards or the Racing Secretary so request.

5. The person making an entry shall clearly designate the horse so entered.

6. No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of the stewards.

7. No conditional entries will be accepted.

8. No horse may be entered in more than one race (with the exception of stakes races) to be run on the same day on which pari-mutuel wagering is conducted.

9. Any permitted medication or approved change of equipment must be declared at time of entry.

(c) Coupled Entries.

1. Two or more horses that are entered in a race shall be joined as a mutuel entry and single betting interest if they are owned or leased in whole or in part by the same owner.

2. No more than two horses having common ties through ownership or training may be entered in an overnight race. Under no circumstances may both horses of a coupled entry start to the exclusion of a single entry. When making a coupled entry, a preference for one of the horses must be made.

(d) Nominations.

1. Any nominator to a stakes race may transfer or declare such nomination prior to closing.

2. Any one of joint owners of a horse may make joint nominations and entries, and each such owner shall be jointly and severally liable for all payments due.

3. Death of a horse, or a mistake in its entry when such horse is eligible, does not release the nominator or transferee from liability for all stakes fees due. No fees paid in connection with a nomination to a stakes race that is run shall be refunded, except as otherwise stated in the conditions of a stakes race.

4. Death of a nominator to a stakes race shall not render void any subscription, entry or right of entry. All rights, privileges and obligations shall be attached to the legal heirs of the decedent or the successor owner of the horse.

5. When a horse is sold privately or at public auction or claimed, stakes engagements shall be transferred automatically to its new owner; except when the horse is transferred to a person whose license is suspended or who is otherwise unqualified to race or enter the horse, then such nomination shall be void as of the date of such transfer.

6. All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the conditions for the race. If a stakes race is not run for any reason, all such nomination fees paid shall be refunded.

(e) Closings.

1. Entries for purse races and nominations to stakes races shall close at the time designated by the association in previously published conditions for such races. No entry, nomination or declaration shall be accepted after such closing time; except in the event of an emergency or if an overnight race fails to fill, the racing secretary may, with the approval of a steward, extend such closing time.

2. Except as otherwise provided in the conditions for a stakes race, the deadline for accepting nominations and declarations is midnight of the day of closing, provided they are received in time for compliance with every other condition of the race.

(f) Number of Starters in a Race. The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and its extensions. The number of horses that, in the opinion of the stewards, can be afforded a safe, fair and equal start may further limit the number of starters.

(g) Split or Divided Races.

1. In the event a race is canceled or declared off, the association may split any overnight race for which postpositions have not been drawn.

2. Where a overnight race is split, forming two or more separate races, the racing secretary shall give notice of not less than 15 minutes before such races are closed to grant time for making additional entries to such split races.

(h) Post Positions. Post positions for all races shall be determined by lot and shall be publicly drawn in the presence of a steward or steward designee.

(i) Also-Eligible List.

1. If the number of entries for a race exceeds the number of horses permitted to start, the Racing Secretary may create and post an also-eligible list.

2. If any horse is scratched from a race for which an also-eligible list was created, a replacement horse shall be drawn from the also-eligible list into the race in order of preference. If none is preferred, a horse shall be drawn into the race from the also-eligible list by public lot.

3. Any owner or trainer of a horse on the also-eligible list who does not wish to start the horse in such race shall so notify the Racing Secretary prior to scratch time for the race.

(j) Preferred List.

1. The Racing Secretary shall maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The manner in which the preferred list shall be maintained and all rules governing such list shall be the responsibility of the Racing Secretary. Such rules must be submitted to the Commission 30 days prior to the commencement of the race meeting and are subject to the approval of the Commission.

2. A copy of the preferred list will be posted each afternoon and any claim of error must be made by 10:00 o'clock in the morning of the following race day, and the Stewards will recognize no claim of error not made within the prescribed time.

3. In entering horses on the preferred list a claim of preference must be made at the time of entry and noted on the entry or preference shall be lost, and no claim of error will be considered by the Stewards if the person making the claim has signed an entry not marked in keeping with this rule.

(2) Declarations and Scratches. Declarations and scratches are irrevocable.

(a) Declarations.

1. A declaration is the act of withdrawing an entered horse from a race prior to the closing of entries.

2. The declaration of a horse before closing shall be made by the owner, trainer or their licensed designee in the form and manner prescribed in 205 CMR4.00.

(b) Scratches.

1. A scratch is the act of withdrawing an entered horse from a contest after the closing of entries.

2. The owner, trainer or their licensed designee shall make the scratch of a horse after closing, with permission from the stewards.

3. A horse may be scratched from a stakes race for any reason at any time up until 45 minutes prior to post time for that race.

4. No horse may be scratched from an overnight race without approval of the stewards.

5. In overnight races, horses that are physically disabled or sick shall be permitted to be scratched first. Should horses representing more than ten betting interests in the daily double or exotic wagering races, or horses representing more than eight betting interests in any other overnight race, remain in after horses with physical excuses have been scratched, then owners or trainers may be permitted at scratch time to scratch horses without physical excuses down to such respective minimum numbers for such races. Lot shall determine this privilege if an excessive number of owners or trainers wish to scratch their horses.

6. Any horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness, shall not race until the expiration of a minimum of four calendar days (inclusive of the day the horse was originally scratched) after such horse was scratched or excused and the horse has been removed from the veterinarian's list by the official veterinarian.

(3) Weights.

(a) Allowances.

1. Weight allowance must be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

2. A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.
3. Horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.
4. Claim of weight allowance to which a horse is not entitled shall not disqualify it unless protest is made in writing and lodged with the stewards at least one hour before post time for that race.
5. A horse shall not be given a weight allowance for failure to finish second or lower in any race.
6. No horse shall receive allowance of weight nor be relieved extra weight for having been beaten in one or more races, but 205 CMR 4.11(3)(a) shall not prohibit maiden allowances or allowances to horses that have not won a race within a specified period or a race of a specified value.
7. Except in handicap and races which expressly provide otherwise, two-year-old fillies shall be allowed three pounds, and fillies and mares, three-years-old and upward, shall be allowed five pounds before September 1 and three pounds thereafter in races where competing against male horses.

(b) Penalties.

1. Weight penalties are obligatory.
2. Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race.
3. No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race.
4. A penalty incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.
5. The reports, records and statistics as published by Daily Racing Form, Equibase or other recognized publications shall be considered official in determining eligibility, allowances and penalties, but may be corrected.
6. When the decision of a race is in dispute, all horses involved in the dispute with respect to the winner's credit shall be liable to all weight penalties and eligibility attached to the winning of that race until a winner has been adjudged.
7. No horse shall incur a weight penalty for a placement from which he or she is disqualified, but a horse placed through the disqualification of another horse shall incur the weight penalties of that placement. No such placement, however, shall make a horse ineligible to a race that already has been run.



8. A horse shall start with only the allowance of weight to which it is entitled at the time of starting, regardless of its allowance at the time of entry.

(c) Weight Conversions.

1. For the purpose of determining weight assignments and/or allowances for imported horses, the following weight conversions shall be used:

1 kilogram = 2 ¼ pounds

1 Stone = 14 pounds

(d) Scale of Weights.

~~1. The weights required in the following table shall be carried when not otherwise specified in the conditions of the race:~~

~~TABLE SCALE OF WEIGHTS~~

Distance	Age	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
-	-	-	-	-	-	-	-	-	-	-	-	-	-
One-Half	2 ¼	*	*	*	*	*	*	*	105	108	111	114	114
	3 ¼	117	117	119	119	121	123	125	126	127	128	129	129
	4 ¼	130	130	130	130	130	130	130	130	130	130	130	130
Mile	5 & Up	130	130	130	130	130	130	130	130	130	130	130	130
-	-	-	-	-	-	-	-	-	-	-	-	-	-
Six	2 ¼	*	*	*	*	*	*	*	102	105	108	111	111
	3 ¼	114	114	117	117	119	121	123	125	126	127	128	128
	4 ¼	129	129	130	130	130	130	130	130	130	130	130	130
Furlongs	5 & Up	130	130	130	130	130	130	130	130	130	130	130	130
-	-	-	-	-	-	-	-	-	-	-	-	-	-
One	2 ¼	*	*	*	*	*	*	*	96	99	102	102	
	3 ¼	107	107	111	111	113	115	117	119	121	122	123	123
	4 ¼	127	127	128	128	127	126	126	126	126	126	126	126
Mile	5 & Up	128	128	128	128	127	126	126	126	126	126	126	126
-	-	-	-	-	-	-	-	-	-	-	-	-	-
One and a Quarter	2 ¼	*	*	*	*	*	*	*	*	*	*	*	*
	3 ¼	101	101	107	107	111	113	116	118	120	121	122	122
	4 ¼	125	125	127	127	127	126	126	126	126	126	126	126
	5 & Up	127	127	127	127	127	126	126	126	126	126	126	126
-	-	-	-	-	-	-	-	-	-	-	-	-	-
One and a Half	2 ¼	*	*	*	*	*	*	*	*	*	*	*	*
	3 ¼	98	98	104	104	108	111	114	117	119	121	122	122
	4 ¼	124	124	126	126	126	126	126	126	126	126	126	126
	5 & Up	126	126	126	126	126	126	126	126	126	126	126	126
-	-	-	-	-	-	-	-	-	-	-	-	-	-

	3 ¼	96	96	102	102	106	109	112	114	117	119	120	120
	4 ¼	124	124	126	126	126	126	125	125	124	124	124	124
Two Miles	5 & Up	126	126	126	126	126	126	125	125	124	124	124	124

Source: The American Racing Manual, 1992 Edition

- ~~2. In races of intermediate lengths, the weights for the shorter distance are carried.~~
- ~~3. In races exclusively for three year olds or four year olds, the weight is 126 pounds, and in races exclusively for two year olds, it is 122 pounds.~~
- ~~4. In all races except in handicaps and races where the conditions expressly state to the contrary, the scale of weights is less, by the following: for two year old fillies, 3 pounds; for fillies and mares, three years old and upward, five pounds before September 1, and three pounds thereafter.~~
- ~~5. In all overnight races except handicaps, not more than six pounds may be deducted from the scale of weights for age, except for allowances, but in no case shall the total allowances of any type reduce the lowest weight below 101 pounds, except that this minimum weight need not apply to two year olds or three year olds when racing with older horses.~~
- ~~6. In all overnight handicaps and in all claiming handicaps, the top weight shall not be less than 122 pounds.~~
- ~~7. In all overnight races for two year olds, for three year olds or for four year olds and upward the minimum weight shall be 112 pounds, subject to sex and apprentice allowances.~~
- ~~8. Due to the availability of horses the Racing Secretary may use, at his or her discretion, a forum that suits the situation.~~

1. With the exception of apprentice allowances, handicap races, three year old horses entered to run in races against horses four years old and upwards, and the allowance provided in subsection (2) of 205 CMR 4.11(d), no jockey shall be assigned a weight of less than 118 pounds. For three year old horses entered to run in races against horses four years old and upwards from January 1 through August 31, no jockey shall be assigned a weight of less than 116 pounds.

2. Except in handicaps, fillies two years old shall be allowed three pounds, and fillies and mares three years old and upward shall be allowed five pounds before September 1, and three pounds thereafter, in races where competing against horses of the opposite sex.

3. A notice shall be included in the daily program that all jockeys will carry approximately three pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures. Additionally, upon stewards' approval, jockeys may weigh in with up to an additional three pounds for inclement weather gear.

(e) Distance Conversions.

1. For the purpose of determining eligibility, weight assignments and/or allowances for imported horses, the racing secretary shall convert metric distances to English measures by reference to the following scale:

2. Comparative Table of Distances.

200 Meters = 1 Furlong

1,000 Meters = 5 Furlongs

1,200 Meters = 6 Furlongs

1,400 Meters = 7 Furlongs

1,600 Meters = 1 Mile

1,700 Meters = 1-1/16 Miles

1,800 Meters = 1-1/8 Miles

2,000 Meters = 1-1/4 Miles

2,200 Meters = 1-3/8 Miles

2,400 Meters = 1-1/2 Miles

2,600 Meters = 1-5/8 Miles

3,000 Meters = 1-7/8 Miles

3,200 Meters = 2 Miles

3,600 Meters = 2-1/4 Miles

4,800 Meters = 3 Miles

(4) Workouts.

(a) Requirements. A horse shall not start unless it has participated in an official race or has an approved timed workout satisfactory to the stewards. The workout must have occurred at a pari-mutuel or Commission recognized facility within the previous 30 days. A horse which has not started for a period of 60 days or more shall be ineligible to race until it has completed a timed workout approved by the stewards prior to the day of the race in which the horse is entered. The association may impose more stringent workout requirements.

(b) Identification. The owner, trainer or rider shall be required to identify the horse and the distance the horse is to be worked and the point on the track where the workout will start.

(c) Information Dissemination. Information regarding a horse's approved timed workout(s) shall be furnished to the public prior to the start of the race for which the horse has been entered.

(d) Restrictions. A horse shall not be taken onto the track for training or a workout except during hours designated by the association.

(5) Horses ineligible.

(a) A horse is ineligible to start in a race when:

1. It is not stabled on the grounds of the association or present by the time established by the Commission;

2. Its breed registration certificate is not on file with the racing secretary or horse identifier; unless the racing secretary has submitted the certificate to the appropriate breed registry for correction;

3. It is not fully identified and tattooed on the inside of the upper lip; **microchipped with a unique microchip (ISO 11784), freeze brand, or identified by any other method approved by the appropriate breed registry and the Commission;**

4. It has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo; **microchip (ISO 11784), freeze brand, or other identification method approved by the appropriate breed registry and the Commission;**

5. It is wholly or partially owned by a disqualified person or a horse is under the direct or indirect training or management of a disqualified person;

6. It is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, it being presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;

7. The stakes or entrance money for the horse has not been paid, in accordance with the conditions of the race; except with the approval of the Racing Secretary;

8. The losing jockey mount fee is not on deposit with the horsemen's bookkeeper; except with the approval of the Racing Secretary;

9. Its name appears on the starter's list, **paddock judge's list**, stewards' list or veterinarian's list;

10. It is a first time starter and has not been approved to start by the starter;

11. It is owned in whole or in part by an undisclosed person or interest;
12. It lacks sufficient official published workouts or race past performance(s);
13. It has been entered in a stakes race and has subsequently been transferred with its engagements, unless the racing secretary has been notified of such prior to the start;
14. It is subject to a lien that has not been approved by the stewards and filed with the horsemen's bookkeeper;
15. It is subject to a lease not filed with the stewards;
16. It is not in sound racing condition;
17. It has had a surgical neurectomy performed on a heel nerve, which has not been approved by the official veterinarian;
18. It has been trachea tubed to artificially assist breathing;
19. It has been blocked with alcohol or otherwise drugged or surgically denerved to desensitize the nerves above the ankle;
20. It has impaired eyesight in both eyes;
21. It is barred or suspended in any recognized jurisdiction;
22. It does not meet the eligibility conditions of the race;
23. Its owner or lessor is in arrears for any stakes fees, except with approval of the racing secretary;
24. Its owner(s), lessor(s) and/or trainer have not completed the licensing procedures required by the Commission;
25. It is by an unknown sire or out of an unknown mare; or
26. There is no current negative Coggins test certificate for Equine Infectious Anemia **on file.**  
~~attached to its breed registration certificate, as required by statute.~~
27. If a thoroughbred, it has shoes (racing plates) which have toe grabs with a height greater than two millimeters, bends, jar caulks, stickers, or any other traction device on the front hooves while racing or training on all surfaces.
28. A filly or mare may not be entered in a claiming race when it is pregnant, unless before the time of entry the owner deposits with the racing secretary a signed agreement whereby the owner

at the time of entry provides the successful claimant without cost, protest or fee of any kind, a valid stallion service certificate covering the breeding of the mare.

29. Notwithstanding 205 CMR 4.11(5)(a)(28) a pregnant mare may not be entered in a race if she is beyond 120 days of gestation.

(6) Running of the Race.

(a) Equipment.

1. All riding crops are subject to inspection and approval by the stewards and the clerk of scales.

a. Riding crops shall have a shaft and a flap and will be allowed in flat racing including training, only as follows;

i. Maximum weight of eight ounces.

ii. Maximum length, including flap of 30 inches.

iii. Minimum diameter of the shaft of ~~one-half~~ **three-eighths** inch

iv. Shaft contact area must be smooth, with no protrusions or raised surface, and covered by shock absorbing material that gives a compression factor of at least one-millimeter throughout its circumference.

b. The flap is the only allowable attachment to the shaft and must meet these specifications:

i. Length beyond the end of the shaft a maximum of one inch.

ii. Width a minimum of 0.8 inch and a maximum of 1.6 inches.

iii. No reinforcements or additions beyond the end of the shaft.

iv. No binding within seven inches of the end of the shaft.

v. Shock absorbing characteristics similar to those the contact area of the shaft.

2. No bridle shall exceed two pounds.

3. A horse's tongue may be tied down with clean bandages, gauze or tongue strap.

~~4. No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards.~~

~~5. No licensee may change any equipment used on a horse its last race in this jurisdiction without approval of the paddock judge.~~

4.6. Permission for any change of reported equipment from that which a horse carried in its last previous race, can be obtained only from the Stewards and must be obtained before the closing of entries for the race in which the horse is to run with changed equipment.

5.7. Permission for a horse to add blinkers to its equipment or to discontinue the use of them must be approved by the Starter before being granted by the Stewards.

~~8. No shoes (racing plates) which have toe grabs with a height greater than two millimeters (0.08 inches) on the front hooves are allowed.~~

(b) Racing Numbers.

1. Each horse shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

2. In the case of a coupled entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall appear in the official program as 1 and 1A.

3. Each horse in the mutuel field shall carry a separate number or may carry the same number with a distinguishing letter following the number.

(c) Jockey Requirements.

1. Jockeys shall report to the jockeys' quarters at the time designated by the association. Jockeys shall report their engagements and any overweight to the clerk of scales. Jockeys shall not leave the jockeys' quarters, except to ride in scheduled races, until all of their riding engagements of the day have been fulfilled except as approved by the stewards.

2. A jockey who has not fulfilled all riding engagements, who desires to leave the jockeys' quarters, must first receive the permission of the stewards and must be accompanied by an association security guard.

3. While in the jockeys' quarters, jockeys shall have no contact or communication with any person outside the jockeys' quarters other than Commission personnel and officials, an owner or trainer for whom the jockey is riding or a representative of the regular news media, except with the permission of the stewards. Any communication permitted by the stewards may be conducted only in the presence of the clerk of scales or other person designated by the stewards.

4. The clerk of scales shall weigh out jockeys for their respective mounts not more than 30 minutes before post time for each race.

5. Only valets employed by the association shall assist jockeys in weighing out.

6. A jockey must wear a safety vest at all times when mounted. ~~when riding in any official race. The safety vest shall weigh no more than two pounds and shall be designed to provide shock~~

~~absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association (BETA), and be manufactured in accordance with current minimum standards established by the Jockeys' Guild.~~ The safety vest must comply with one of the following minimum standards or later revisions: British Equestrian Trade Association (BETA):2000 Level 1; Euro Norm (EN) 13158:2000 Level 1; American Society for Testing and Materials (ASTM) F2681-08 or F1937; Shoe and Allied Trade Research Association (SATRA) Jockey Vest DocM6 Issue 3; or Australian Racing Board (ARB) Standard 1.1998.

7. A jockey must wear a properly secured safety helmet at all times while mounted. The helmet must comply with one of the following minimum safety standards or later revisions: American Society for Testing and Materials (ASTM 1163); UK Standards (EN-1384 and PAS-015); Australian/New Zealand Standard (AS/NZ 3838).

8. A safety helmet or a safety vest shall not be altered in any manner nor shall the product marking be removed or defaced.

#### 9.7. Weighing out

(a) A jockey's weight shall include his or her clothing, boots, saddle and its attachments and any other equipment except the ~~riding crop, bridle, bit or reins, safety helmet, safety vest, blinkers, goggles, and number cloth,~~ and safety equipment including helmet, vest, over-girth, reins and breast collar.

(b) Upon Stewards approval, jockeys may be allowed up to three pounds more than published weights to account for inclement weather clothing and equipment.

~~10.8.~~ Seven pounds is the limit of overweight any horse is permitted to carry.

~~11.9.~~ Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be re-admitted to the jockeys' quarters until after the entire racing program for that day has been completed, except with permission of the stewards.

#### (d) Paddock to Post.

1. Each horse shall carry the full weight assigned for that race from the paddock to the starting post, and shall parade past the stewards' stand, unless excused by the stewards. If a horse is so excused from parading and is led to the post he or she must pass over the same route as that followed by the parade.

2. After the horses enter the track, no jockey may dismount nor entrust his or her horse to the care of an attendant unless, because of accident occurring to the jockey, the horse or the equipment, and with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and others may attend their horses. After the horses enter the track, only the jockey, an assistant starter, the official veterinarian, the racing veterinarian or an outrider or pony rider may touch the horse before the start of the race.



3. If a jockey is seriously injured on the way to the post, the horse shall may be returned to the paddock ~~and a replacement jockey obtained~~ or any other area designated by the stewards, re-saddled with the appropriate weight and remounted with a replacement jockey.

4. After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner unless otherwise directed by the stewards. Once at the post, the horses shall be started without unnecessary delay.

5. Horses shall arrive at the starting post in post position order.

6. In case of accident to a jockey or his or her mount or equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay, and may permit all jockeys to dismount and all horses to be attended to during the delay.

7. If a jockey is thrown on the way from the paddock to the post, the horse must be remounted, return to the point where the jockey was thrown and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

8. If a horse leaves the course while moving from paddock to post, the horse shall be returned to the course at the nearest practical point to that at which it left the course, and shall complete its parade to the post from the point at which it left the course unless ordered scratched by the stewards.

9. No person shall willfully delay the arrival of a horse at the post.

10. The starter shall load horses into the starting gate in any order deemed necessary to ensure a safe and fair start. Only the jockey, the racing veterinarian, the starter or an assistant starter shall handle a horse.

11. Every horse must be saddled in the paddock.

(e) Post to Finish.

1. The Start.

a. The starter is responsible for assuring that each participant receives a fair start.

b. If, when the starter dispatches the field, any door at the front of the starting gate stalls should not open properly due to a mechanical failure or malfunction or should any action by any starting personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a non-starter.

c. Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the starter dispatches the field, the stewards shall declare the horse a non-starter.

d. Should an accident or malfunction of the starting gate, or other unforeseeable event compromise the fairness of the race or the safety of race participants, the stewards may declare individual horses to be non-starters, exclude individual horses from one or more pari-mutuel pools or declare a no contest and refund all wagers except as otherwise provided in the rules involving multi-race wagers.

## 2. Interference, Jostling or Striking.

a. A jockey shall not ride carelessly or willfully so as to permit his or her mount to interfere with, impede or intimidate any other horse in the race.

b. No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment

c. No jockey shall unnecessarily cause his or her horse to shorten its stride so as to give the appearance of having suffered a foul.

## 3. Maintaining a Straight Course.

a. When the way is clear in a race, a horse may be ridden to any part of the course, but if any horse swerves, or is ridden to either side, so as to interfere with, impede or intimidate any other horse, it is a foul.

b. The offending horse may be disqualified, if in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful or the result of careless riding.

c. If the stewards determine the foul was intentional, or due to careless riding, they may fine or suspend the guilty jockey.

d. In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane in such a manner that it interferes with, impedes or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

## 4. Disqualification.

a. When the stewards determine that a horse shall be disqualified for interference, they may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last.

b. If a horse is disqualified for a foul, any horse or horses ~~with which it is coupled as an entry,~~ in the same race owned or trained by the same interests, whether coupled or uncoupled, may also be disqualified.

c. Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person authorized to handle or attend to a horse shall be prima facie evidence of a violation of 205 CMR 4.00 and is sufficient grounds for the stewards to scratch or disqualify the horse.

~~e. In determining the extent of disqualification, the stewards in their discretion may:~~

~~i. declare null and void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;~~

~~ii. affirm the placing judges' order of finish and suspend a jockey if, in the stewards' opinion, the foul riding did not affect the order of finish; or~~

~~iii. disqualify the offending horse and not suspend a jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.~~

d. e. The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and time trial qualification.

#### 5. Multiple Disqualifications.

Should the stewards determine that there is more than one incident of interference in a race where disqualification is warranted, the stewards shall deal with the incidents in the order in which the incident occurs during the race from start to finish; except in the case where the same horses are involved in multiple incidents. Once a horse has been disqualified, it should remain placed behind the horse with which it interfered. The stewards shall make a conscious effort to place and maintain as placed, every and all horses placed behind others for interference

~~6.5. Horses Shall be Ridden Out.~~ All horses shall be ridden out in every race. A jockey shall not ease up or coast to the finish, without adequate cause, even if the horse has no apparent chance to win prize money. **A jockey shall give a best effort during a race.**

#### 7.6. Use of Riding Crops.

a. Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

b. In all races where a jockey will ride without a riding crop, an announcement of such fact shall be ~~made over the public address system.~~ **printed in the official program.**

c. No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the ordinary riding crop approved, shall be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.

d. Riding crops shall not be used on two-year-old horses before April 1<sup>st</sup> of each year.

~~e. Indiscriminate use of the riding crop is prohibited including whipping a horse:~~

- ~~i. On the head, flanks or on any other part of its body other than the shoulders or hind quarters;~~
- ~~ii. during the post parade except when necessary to control the horse;~~
- ~~iii. excessively or brutally causing welts or breaks in the skin;~~
- ~~iv. when the horse is clearly out of the race or has obtained its maximum placing; or~~
- ~~v. persistently even though the horse is showing no response under the riding crop;~~
- ~~vi. striking another person or horse.~~

e.f. The riding crop shall only be used for safety, correction and encouragement.

f.g. All riders should comply with the following when using the riding crop:

- i. Showing the horse the riding crop and giving it time to respond before hitting it.
- ii. Having used the riding crop, giving the horse a chance to respond before using it again.
- iii. Using the riding crop in rhythm with the horses stride.

g. Prohibited uses of the riding crop include, but are not limited to, striking a horse:

- i. on the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;
- ii. during the post parade or after the finish of the race except when necessary to control the horse;
- iii. excessively or brutally causing welts or breaks in the skin;
- iv. when the horse is clearly out of the race or has obtained its maximum placing;
- v. persistently even though the horse is showing no response under the riding crop; or
- vi. striking another rider or horse.

h. After the race, horses will be subject to inspection by a racing or official veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.

i. The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions.

## 8. Order of Finish

a. The official order of finish shall be decided by the stewards with the aid the photo finish system, and in the absence of the photo finish film record, the video replay. The photo finish and video replay are only aids to the stewards' decision. The decision of the stewards shall be final in all cases.

b. The nose of the horse shall determine the placement of the horse in relationship to other horses in the race.

**9.7. Returning After the Finish.**

a. After a race has been run, the jockey shall ride promptly to the ~~finish line~~ **place designated by the stewards**, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

b. If a jockey is prevented from riding to the ~~finish line~~ **place designated by the stewards** because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales, or may be excused from weighing in by the stewards.

**10.8. Unsaddling.** ~~No person shall assist a jockey with unsaddling except with permission of the stewards and~~

a. **Only persons authorized by the stewards may assist the jockey with unsaddling the horse after the race.**

b. ~~No~~ **one shall place a covering over a horse before it is unsaddled.**

**11.9. Weighing In.**

a. A jockey shall weigh in at ~~the same weight at which he/she weighed out, and if under that weight by more than two pounds,~~ **no less than the same weight at which he or she weighed out, and if under that weight, and after consideration of mitigating circumstances by the board of stewards,** his or her mount shall be disqualified from any portion of the purse money.

b. In the event of such disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

~~c. If any jockey weighs in at more than two pounds over the proper or declared weight, the jockey shall be fined or suspended or ruled off by the stewards, having due regard for any excess weight caused by rain or mud. The case shall be reported to the Commission for such action, as it may deem proper.~~

c. **A jockey's weight shall include his or her clothing, boots, saddle and its attachments and any other equipment except the bridle, bit, blinkers, goggles, number cloth and safety equipment including helmet, vest, over-girth, reins and breast collar.**

d. **Upon approval of the stewards, the jockeys may be allowed up to three pounds more than published weights to account for inclement weather clothing and equipment.**

e. **The post-race weight of jockeys includes any sweat, dirt and mud that have accumulated on the jockey, jockey's clothing, jockey's safety equipment and over-girth. This accounts for additional weight, depending on specific equipment, as well as weather, track and racing conditions.**

## 12.10: Dead Heats.

~~a. When a race results in a dead heat, the dead heat shall not be run off, owners shall divide except where division would conflict with the conditions of the races.~~

~~a.b.~~ When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

~~b.e.~~ In a dead heat for first place, each horse involved shall be deemed a winner and liable to penalty for the amount it shall receive.

~~c.d.~~ When a dead heat is run for second place and an objection is made to the winner of the race, and sustained, the horses that ran a dead heat shall be deemed to have run a dead heat for first place.

~~d.e.~~ If the dividing owners cannot agree as to which of them is to have a cup or other prize that cannot be divided, the question shall be determined by lot by the stewards.

~~f. On a dead heat for a match, the match is off.~~

### (7) Protests, Objections and Inquiries

#### (a) Stewards to Inquire.

1. The stewards shall take cognizance of foul riding and, upon their own motion or that of any racing official or person empowered by 205 CMR 4.00 to object or complain, shall make diligent inquiry or investigation into such objection or complaint when properly received.

2. In determining the extent of disqualification, the stewards in their discretion may:

(a) declare null and void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(b) affirm the placing judges' order of finish and hold the jockey responsible if, in the stewards' opinion, the foul riding did not affect the order of finish; or

(c) disqualify the offending horse and hold the jockey blameless if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.

#### (b) Race Objections.

1. An objection to an incident alleged to have occurred during the running of a race shall be received only when lodged with the clerk of scales, the stewards or their designees, by the owner, the authorized agent of the owner, the trainer or the jockey of a horse engaged in the same race.

2. An objection following the running of any race must be filed before the race is declared official, whether all or some riders are required to weigh in, or the use of a fast official procedure is permitted.

3. The stewards shall make all findings of fact as to all matters occurring during and incident to the running of a race; shall determine all objections and inquiries, and shall determine the extent of disqualification, if any, of horses in the race. Such findings of fact and determinations shall be final.

4. In the case of disqualification the Stewards shall immediately make public the reason for the disqualification and the same shall be announced over the public address system.

(c) Prior Objections.

1. Objections to the participation of a horse entered in any race shall be made to the stewards in writing, signed by the objector, and filed not later than one hour prior to post time for the first race on the day which the questioned horse is entered. Any such objection shall set forth the specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter.

2. An objection to a horse which is entered in a race may be made on, but not limited to, the following grounds or reasons:

a. A misstatement, error or omission in the entry under which a horse is to run;

b. the horse that is entered to run is not the horse it is represented to be at the time of entry, or the age was erroneously given;

c. the horse is not qualified to enter under the conditions specified for the race, or the allowances are improperly claimed or not entitled the horse, or the weight to be carried is incorrect under the conditions of the race;

d. the horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in 205 CMR 4.00; or

e. the horse was entered without regard to a lien filed previously with the racing secretary.

3. The stewards may scratch from the race any horse that is the subject of an objection if they have reasonable cause to believe that the objection is valid.

(d) Protests.

1. A protest against any horse that has started in a race shall be made to the stewards in writing, signed by the protestor, within 72 hours of the race exclusive of non-racing days. If the incident upon which the protest is based occurs within the last two days of the meeting, such protest may

be filed with the Commission within 72 hours exclusive of Saturdays, Sundays or official holidays. Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for the protest.

2. A protest may be made on any of the following grounds:

a. any grounds for objection as set forth in this chapter;

b. the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers of the horses that started the race;

c. a jockey, trainer, owner or lessor was ineligible to participate in racing as provided in 205 CMR 4.00;

d. the weight carried by a horse was improper, by reason of fraud or willful misconduct; or

e. an unfair advantage was gained in violation of the rules.

3. Notwithstanding any other provision in this article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged provided that the stewards are satisfied that the allegations are bona fide and verifiable.

4. No person shall file any objection or protest knowing the same to be inaccurate, false, untruthful or frivolous.

5. The stewards may order any purse, award or prize for any race withheld from distribution pending the determination of any protest. In the event any purse, award or prize has been distributed to an owner or for a horse which by reason of a protest or other reason is disqualified or determined to be not entitled to such purse, award or prize, the stewards or the Commission may order such purse, award or prize returned and redistributed to the rightful owner or horse. Any person who fails to comply with an order to return any purse, award or prize erroneously distributed shall be subject to fines and suspension.

#### **4.12: Forfeitures and Suspensions**

(1) No racing official other than the Stewards ~~and the Starter~~ shall have the right to impose a forfeiture or suspension.

(2) The Stewards may not rescind a forfeiture, except with the approval of the Commission.

(3) A racing official imposing a forfeiture or suspension shall report it promptly to the Gaming Commission in writing.

(4) All forfeitures shall be paid to the Massachusetts Gaming Commission within 48 hours after imposition.



(5) Any official, owner, trainer or any person licensed by the Massachusetts Gaming Commission who shall obtain food, feed, shelter, drugs, transportation, services for horses, veterinary services or supplies for himself or herself or others whether they be licensed or not, and fails to pay the fair market value to the person or persons from whom said services or supplies are obtained may be guilty of conduct detrimental to the best interest of racing and may be suspended at the discretion of the Stewards or the Commission, however, neither the Association nor the Massachusetts Gaming Commission shall be obligated to collect debts from horsemen or other personnel licensed by the Commission.

(6) No entry in any race shall be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of such entry; except that, if the license of a jockey has been suspended for a routine riding offense, the stewards may waive this rule.

(7) Suspensions shall be for consecutive calendar days.

#### **4.13: General Rules**

(1) The definitions and interpretations of racing terms, heretofore set forth as well as the Foreword are to be considered in connection with 205 CMR 4.00 and as part of them.

(2) All owners and trainers of horses and their stable employees are subject to M.G.L. c.128A and 205 CMR 4.00 immediately upon acceptance and occupancy of stabling accommodations from or approved by an Association or upon making entry to run on its track.

(3) Owners, trainers and stable employees shall abide by M.G.L. c.128A and 205 CMR 4.00 and accept the decision of the Stewards on any and all questions to which their authority extends, subject to their right of appeal to the Commission.

(4) Every person participating in and every patron of a licensed Race Meeting shall abide by M.G.L. c.128A and 205 CMR 4.00, and accept the Stewards' decisions on any and all questions to which their authority extends, subject to the right of appeal to the Commission.

~~(5) During the running of any racing meeting licensed by this Commission all exercise riders while exercising horses, all pony riders in post parades and association out-riders shall wear a protective helmet and vest of a type approved by the Stewards.~~

#### **(5) Safety Equipment**

(a) Any person mounted on a horse or stable pony on association grounds must wear a properly secured safety helmet at all times. Additionally, all members of the starting gate crew must adhere to this regulation at all times while performing their duties or handling a horse. For the purpose of 205 CMR 4.13(5)(a), a member of the starting gate crew means any person licensed as an assistant starter or any person who handles a horse in the starting gate. The helmet must comply with one of the following minimum safety standards or later revisions: American Society for Testing and Materials (ASTM 1163); UK Standards (EN-1384 and PAS-015); or Australian/New Zealand Standard (AS/NZ 3838).

(b) Any person mounted on a horse or stable pony on the association grounds must wear a properly-secured safety vest at all times. Additionally, all members of the starting gate crew must also adhere to this regulation at all times while performing their duties or handling a horse. For the purpose of 205 CMR 4.13(5)(b), a member of the starting gate crew means any person licensed as an assistant starter or any person who handles a horse at the starting gate. The safety vest must comply with one of the following minimum standards or later revisions: British Equestrian Trade Association (BETA):2000 Level 1; Euro Norm (EN) 13158:2000 Level 1; American Society for Testing and Materials (ASTM) F2681-08 or F1937; Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or Australian Racing Board (ARB) Standard 1.1998.

(c) A safety helmet or a safety vest shall not be altered in any manner nor shall the product marking be removed or defaced.

(6) No person shall use improper, profane or indecent language to a racing official.

(7) No person shall in any manner, or at any time, disturb the peace or make himself or herself obnoxious on the grounds of an Association.

(8) No person shall make a handbook or a foreign book on the grounds of an Association.

(9) No person shall solicit for or bet from a handbook or foreign book on the grounds of an Association.

(10) No person shall make a bet with a handbook or foreign book on the grounds of an Association.

(11) Any person, who participates in an unrecognized meeting anywhere, either as a racing official or as an owner, trainer or jockey, may be adjudged guilty of conduct detrimental to racing.

(12) No person or horse ruled off, or under suspension by any recognized turf authority, trotting association included, shall be admitted to the grounds of any Association. (For exception *see* 205 CMR 4.15(212).)

(13) No person shall be allowed in the Steward's stand unless previous permission is obtained from the Stewards.

(14) Any person who has been convicted by any court anywhere for illegal possession, sale or giving away of narcotics may be ruled off.

(15) Any person who has been arrested and/or charged with a violation of the law may be suspended until such time as said charge has been adjudged.

(16) If any owner, trainer, jockey, stable employee, or other person solicits bets from the public by correspondence or other methods, to be made on any horse which is to run on a track in Massachusetts, such person or persons shall be ruled off.

(17) When a person is ruled off a course or suspended, every horse owned in whole or in part by him or her shall be ineligible to be entered or to start in any race until said horse has been reinstated either by the rescinding of his or her owner's penalty or his or her transfer through *bona fide* sale to an ownership acceptable to the Stewards.

(18) When a person is ruled off a course or suspended, any horse which is under his or her care, management, training or superintendence shall not be qualified to be entered or to start in any race until said horse has been reinstated by the rescinding of said person's penalty or by the placement of the horse in the hand of a licensed trainer and the approval of the transfer by the Stewards.

(19) When a person is ruled off a course or suspended, he or she shall not be qualified, whether acting as agent or otherwise to subscribe for or to enter or run any horse in any race either in his or her own name or in that of any other person until the rescinding of that person's penalty.

(20) Any horse that has been the subject of fraudulent practice may be disqualified.

(21) When a person is ruled off for a fraudulent practice in relation to a particular horse, wholly or partly belonging to him or her, he or she shall return all money or prizes that such horse has fraudulently won.

(22) Violators of any rule will be subject to ejection from the grounds, and/or to forfeiture, suspension or ruling off.

(23) No horse will be allowed at a track and no horse shall be entered or permitted to start unless a current, valid health certificate showing that said horse has been examined and found to be free from symptoms of any infections or communicable disease, is on file. ~~with the Racing Secretary. The health certificate is valid when it is made by an accredited veterinarian licensed by the State Authority that governs licensing veterinarians in the state where the examination and certificate were made. It is current if it is dated not more than ten days prior to the date the horse described in the certificate arrives at a Massachusetts race track for the first time in a calendar year and any time it is shipped thereafter. A horse requires a new health certificate each time that it is shipped. The certificate shall include the temperature of the horse at the time it was examined. The Association conducting the racing meeting is responsible for compliance with 205 CMR 4.13(23).~~

(24) The Stewards may suspend for no greater period than 180 days anyone whom they have authority to supervise, or they may impose a forfeiture, not exceeding \$3,000.00. All such suspensions and forfeitures must be reported to the Commission. If the punishment so imposed is not in the opinion of the Stewards sufficient, they shall so report to the Commission.

(25) Complaints against a racing official (other than a Steward) or his or her assistant shall be made to the Stewards in writing and be signed by the complainant. Complaints against a Steward shall be made in writing to the Commission and be signed by the complainant.

(26) When a hearing is to be held by the Board of Stewards, the person or persons involved must be properly notified and given the opportunity to hear all of the evidence presented against them. If any summoned or notified party shall fail to appear, an order or ruling may be made against them by default.

(27) Every racing Association, the Commission or the Stewards investigating for violations of M.G.L. c.128A or the 205 CMR 4.00 adopted by the Commission shall have the right to permit persons authorized by any of them to search the person, or enter and search the buildings, stables, rooms, vehicles or other places within the grounds of the association, or at other places where horses which are eligible to race are kept together with the personal property and effects contained therein. Every licensed person or person permitted to pursue his or her occupation or employment within the grounds of any association by accepting his or her license or such permission does thereby irrevocably consent to such search as aforesaid and waive and release all claims or possible actions for damages that he or she may have by virtue of any action taken under 205 CMR 4.00.

(28) No person shall make false or misleading statements to the Stewards.

(29) No licensee or other person under the jurisdiction of the Commission shall subject or permit any animal under his or her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

#### **4.14: Handicapper**

(1) The Handicapper, who may be the Racing Secretary, shall assign the weights to be carried by each horse in the handicap.

(2) The Handicapper shall append to the weights for every handicap the day and hour from which winners will be liable to weight penalty.

(3) If there are no penalties that fact shall be appended to the weights. No alteration of weights shall be made after publication.

(4) In case of omission, through error, of the name or weight of a horse duly entered, the Handicapper shall rectify the omission.

#### **4.15: Jockey**

##### **(1) Eligibility**

a. No person under 18 years of age shall be licensed by the Commission as a jockey, except persons who have been licensed by this or other recognized Commission prior to the date of adoption of this rule.

b. A jockey shall pass a physical examination given within the previous twelve months by a licensed physician affirming fitness to participate as a jockey. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

c. An applicant shall show competence by prior licensing and the demonstration of riding ability, which may include participation in up to five races with the prior approval of the stewards with the consideration of the recommendations from the starter, the head outrider, and the designated representatives of the jockeys and the horsemen at the track. The demonstration of riding ability is defined at a minimum of:

- i. Breaking with a horse in company from the starting gate;
- ii. Working a horse in company around the turn and down the stretch;
- iii. Switching the riding crop from one hand to the other while maintaining control of the horse in a stretch drive;
- iv. Causing a horse to switch leads coming out of the turn.

d. A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

e. A person whose weight exceeds 130 pounds at the time of application shall not be licensed as a jockey.

~~(1) Each jockey must obtain a license from the Commission.~~

~~(2) No person under 18 years of age will be licensed by the Commission as an Apprentice Jockey, or Jockey, save and except those Apprentice Jockeys or Jockeys, under 18 years of age, who have been licensed in another jurisdiction.~~

~~(3) No boy who has never ridden in a race shall be granted a license.~~

~~(4) No jockey shall be the owner of any racehorse.~~

~~(5) A jockey shall not ride or agree to ride in any race without the consent of the owner or trainer to whom he is under contract.~~

~~(6) Jockeys are required to present themselves to be weighed out at the time fixed by the Clerk of the Scales.~~

~~(2)(7) All jockeys shall faithfully fulfill all engagements in respect to racing.~~

~~(8) A jockey may not ride in any race against a starter of his contract employer unless his mount and his contract employer's starter are both in the hands of the same trainer.~~

~~(3)(9) In riding a race a jockey must be neat in appearance. All riders must wear a protective helmet and safety vest of a type in compliance with 205 CMR 4.11(6)(c)(6-8); jacket of silk, satin or waterproof, white or light colored breeches, and top boots.~~

~~(4)~~(10) A jockey must wear the colors of the owner or owners of the horse he or she is riding (except by special permission of the Stewards), ~~which permission shall be posted on the Bulletin Board together with notice of the colors the jockey shall wear), and a number of the saddle cloth corresponding to the number of the horse as exhibited~~ and a number on his or her right arm corresponding to the number of the horse in the official program. ~~after weighing out.~~

(5)(11) A jockey shall not be allowed to smoke in public while wearing racing colors.

~~(12) Every jockey riding a race shall wear a protective helmet of a type that shall be approved by the Commission. Weight of said protective helmet shall not be included in the jockey's weight.~~

~~(13) A jockey shall wear a number on his right arm and it and the saddle cloth number shall correspond to the number of the horse in the official program.~~

~~(14) Every jockey who is engaged to ride in a race shall report to the scale room on the day of the race at the time required by the officials. He shall then report his engagements and overweight, if any to the Clerk of the Scales, and thereafter shall not leave the jockey room, except to view the races from a point approved by the Stewards or to ride in a race, until all of his engagements of the day have been fulfilled.~~

~~(15) All jockeys must pass a physical examination once a year, before the commencement of a meeting, by a doctor approved by the Commission. The Stewards may require that any jockey be re-examined and may refuse to allow any jockey to ride until he successfully passes such examination.~~

~~(16) No jockey shall make a bet on any race nor accept the promise, or the token of any bet, with respect to the race in which he is riding, except through or from the owner or trainer of the horse he rides, and then only on that horse.~~

(6)(17) No jockey in racing attire shall enter the betting area.

(7) A jockey shall only be allowed to wager on a race in which he or she is riding. A jockey shall only be allowed to wager if:

- a. the owner or trainer of the horse which the jockey is riding makes the wager for the jockey;
- b. the jockey only wagers on his or her own mount to win or finish first in combination with other horses in multiple type wagers; and
- c. records of such wagers are kept and available for presentation upon request by the stewards.

(8) A jockey shall not compete in any race against a horse which is trained by the jockey's spouse.

~~(18) If an owner or trainer engages two or more jockeys for the same race he shall pay the losing amount fee for each engaged jockey not riding in the race, as well as the proper fee to the jockey who does ride.~~

(9) A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. In the event an owner or trainer elects to remove a jockey from his or her mount after naming a rider at the time of the draw, the stewards may require a double jockey fee to be paid. The fee to be paid is equal to that earned by the jockey who rode the horse. The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the stewards. All jockey protests must be filed prior to the race.

(10)~~(19)~~ In a dead heat the jockeys involved shall divide equally the sum total of the fees they would have received individually had one beaten the other or others. Likewise the owners of the horses involved shall pay their equal share.

~~(20) A jockey under suspension shall not be permitted to ride in a race for any one during the period of his suspension.~~

~~(21) The suspension of a jockey for an offense not involving fraud shall begin on the second day after the ruling, unless otherwise ordered by the Stewards. A suspension for fraud shall begin immediately after the ruling.~~

(11) A jockey who is serving a suspension of 10 days or less may be permitted to ride in a designated race during the suspension if the following apply:

- a. The race has been specified as a designated race by the racing secretary of the association before the beginning of the race meeting of the association.
- b. The race has been approved as a designated race by the board of stewards officiating at the race meeting.
- c. The jockey is named to ride in the designated race no later than at the time set for the close of entries for the race.
- d. The jockey agrees to serve an additional day of suspension in place of the day on which the jockey rides in a designated race.
- e. Reciprocity of this rule shall be at the stewards' sole discretion and shall apply only to those states which have also adopted the designated race rule or its equivalent.

(12)~~(22)~~ A jockey temporarily suspended may be permitted to exercise or gallop horses during the morning hours and to lodge on the grounds of the association at night. In the discretion of the Stewards his or her badge may be taken up and they may refuse him or her admission to the grounds during racing hours.

~~(13)~~(23) A forfeiture must be paid by the jockey himself or herself and any other person paying it shall be subject to punishment.

~~(14)~~(24) Every jockey may have one agent and no more. All engagements to ride, other than those for his or her contract employer, shall be made by himself or herself, his or her agent or his or her employer.

~~(25) No jockey shall have an attendant other than those provided by the association. Such attendants shall be paid from an assessment collected by the Association from the jockeys.~~

~~(26) Employers retaining the same jockeys have precedence according to priority of the retainers as specified in the contracts.~~

~~(5) A jockey shall not ride or agree to ride in any race without the consent of the owner or trainer to whom he is under contract.~~

~~(8) A jockey may not ride in any race against a starter of his contract employer unless his mount and his contract employer's starter are both in the hands of the same trainer.~~

~~(26) Employers retaining the same jockeys have precedence according to priority of the retainers as specified in the contracts.~~

#### **4.16: Jockey Agents**

(1) Each jockey agent must obtain a license from the Commission.

(2) Jockey Agents will pay only one license fee in any calendar year.

(3) The Stewards may permit an applicant to act pending decision of his or her application for a license.

(4) A jockey agent may represent up to two jockeys and one apprentice, providing the conditions justify and upon approval of the Stewards.

(5) No jockey agent shall make or assist in the making of any engagement for any rider other than those that he or she is licensed to represent.

(6) If, for good reasons, a jockey agent is short of his or her permissible quota of jockeys and wishes to take on the task of making engagements for a rider not named in his or her license, he or she must obtain permission from the Stewards and the Commission before making any such engagements.

(7) If any jockey agent gives up the making of engagements for any rider he or she shall immediately notify the Stewards, the Commission and the Racing Secretary; and he or she shall also turn over to the Stewards a list of any unfilled engagements he or she may have made for that rider.



(8) A jockey agent may charge a jockey or apprentice for each mount obtained by him or her, but shall receive no recompense for engagements made by the rider himself or herself or by his or her contract employer.

(9) Each jockey agent shall keep, on a form provided by the Association a record by races of all engagements made by him or her or by others, for the jockeys he or she is handling. Calls shall be numbered in the order of their priority whenever more than one is given for any rider in any race. This record must be kept up to date and held ready at all times for inspection by the Stewards or the Racing Secretary.

(11) No person other than a jockey agent in good standing shall make engagements for an apprentice jockey or jockey. However, a jockey not represented by an agent may make his or her own engagements.

(12) The Stewards in the light of the records submitted by the jockey agent will adjust all rival claims for the service of a rider and first call shall have priority.

(13) A jockey agent shall not give to anyone directly or indirectly, any information nor advice, or engage in the practice commonly known as "touting," for the purpose of influencing any person, or that would tend to do so, in the making of a wager on the result of any race.

(14) Any agent who falsifies his or her record shall be penalized by the revocation of his or her license and any agent penalized shall be ineligible for another license for a term of 12 months from the day of the revocation.

(15) Jockey agents will be called upon to explain rival claims for any mount or for any rider and inability to satisfy the Stewards that the rival claim arose through honest *bona fide* error shall be considered a falsification of records.

(16) Jockey agents shall not be allowed in the paddock at any time.

(17) Under no circumstances shall a jockey agent be permitted within the saddling enclosure during racing hours nor shall said agent have access to the jockey quarters at any time; nor said agent be allowed on the track proper at the conclusion of any race run; nor shall said agent communicate with any jockey during racing hours.

#### **4.17: Jockey Apprentices**

(1) Any person 18 years or older, who has never previously been licensed as a jockey in a country, and who has of his or her own free will and if under age, with the written consent to his or her parents or guardian, bound himself or herself to an owner or trainer for a term of not less than three nor more than five years (subject to written extension if made for less than five years) by written contract approved by and filed with the Massachusetts Gaming Commission, and after at least one year of service with a racing stable, may claim in all overnight races, except handicaps, the following allowances:

(a) An apprentice shall ride with a five-pound allowance beginning with his or her first mount. The apprentice shall continue to ride with this allowance for one full year from the date of his or her fifth winning mount. If after riding one full year from the date of his or her fifth winning mount, the apprentice has failed to ride a total of 40 winners from the date of his or her first winning mount, he or she shall continue to ride with a five-pound weight allowance for one more year from the date of his or her fifth winning mount or until he/she has ridden a total of 40 winners, whichever comes first.

(b) After the completion of conditions above, for one year the apprentice may claim three pounds when riding horses owned by his or her original contract employer provided the contract has not been permanently transferred or sold since he or she rode his or her first winner.

(2) Apprentice contracts entered into in Massachusetts must be made on forms supplied by the Commission and must be accompanied by birth certificate. An exact copy of the original contract shall be filed permanently with the Commission.

(3) No apprentice shall be permitted to acquire his or her own contract.

(4) If, by mutual consent between the contract holder and the apprentice and his or her parents or guardian, if under age, the contract is terminated before the expiration date, the contract is then null and void and cannot be transferred to another owner or trainer.

(5) If a person has been licensed he or she shall be allowed one contract only during his or her lifetime. However, this rule shall not prevent the transfer of the contract to another owner or trainer provided said transfer has the consent of the apprentice, and if under age, his or her parents or guardian, and the contract holder. All extensions of apprentice contracts shall be subject to the conditions of 205 CMR 4.17(6).

(6) Under exceptional circumstances, such as inability of an apprentice to ride because of service in the armed forces of the United States, personal injuries in the conduct of his or her duty, restrictions on racing, or other valid reasons which interfere with the allowance of one year from riding his or her fifth winner or the two year period in riding 40 winners, the Commission may extend the terms of the contract and the allowances provided by the 205 CMR 4.00. In order to qualify for an extension of the apprentice allowance an apprentice must have been rendered unable to ride for a period of not less than seven consecutive days during the period in which he/she was entitled to an apprentice allowance.

(7) The Massachusetts Gaming Commission will recognize an extension of time on an apprentice contract approved by another Gaming or Racing Commission.

(8) Allowances under 205 CMR 4.17 must be claimed at the time of entry and shall not be abandoned except by the consent of the Stewards.

(9) All apprentice contracts, whenever entered into must be registered with the Commission.

(10) If an apprentice contract is transferred it must be signed by the transferor and transferee, accepted by the apprentice and, if under age, by his or her parents or guardian, and must be registered with the Commission by both the transferor and transferee.

(11) The original apprentice jockey contract shall be kept in full force and effect throughout its contract period after said apprentice has accepted one or more mounts. Any and all amendments to said contract and all leases must be made a part of and either added to or attached to the copies in the possession of the parties and a like copy of said amendments and/or leases sent to the Commission where the original contract is filed.

(12) No owner or trainer shall be allowed to enter into a contract in Massachusetts with an apprentice jockey unless he or she is in control or possession of such a stable of horses as would, in the opinion of the Stewards, warrant the employment of an apprentice.

(13) No apprentice jockey will be licensed unless his or her contract employer is in control or possession of such a stable of horses as would, in the opinion of the Stewards, warrant his or her employment as an apprentice.

(14) An apprentice jockey shall not be permitted to ride for anyone other than his or her contract employer, without said employer's consent.

(15) An apprentice jockey may be granted an apprentice certificate issued by the Stewards, in lieu of a traditional apprentice contract. The apprentice certificate shall grant an apprentice all allowances and conditions that are granted to an apprentice that is under contract.

(16) A licensed apprentice who loses his or her apprentice allowance for any reason shall obtain a jockey license before being permitted to ride again.

#### **4.18: Jockey Contracts**

No contract employer shall have any interest in the earnings of a jockey.

#### **4.19: Jockey Room Custodian**

(1) It shall be the duty of the Jockey Room Custodian to see to it that order, decorum and cleanliness are maintained in the jockey and scale rooms.

(2) The custodian shall assist the Clerk of the Scales in any way that official requires.

(3) The Commission shall see to it that no person, other than jockeys who have engagements for the day, racing officials, the Commission and the necessary jockey room attendants, is admitted to the jockey room after 12:00 Noon on a race day without consent of the Stewards for each time of entry.

(4) The Custodian shall oversee the care and storage of all racing colors.

(5) The Custodian shall oversee the jockey attendants and arrange their rotation among jockeys in the matter of weighing out.

(6) The Custodian shall see to it that no jockey attendant not licensed by the Association is permitted to assist any jockey at any time.

(7) The Custodian shall report to the Stewards any irregularities that occur in his or her province.

(8) The Custodian shall see to it that jockeys are neat in appearance and attired in keeping with the Rules when they leave the rooms to ride in a race.

**4.20: Licensee's Duties, Obligations, etc.**

(1) Before entering upon the discharge of their duties the following officials employed by the Association shall be licensed by the Commission; ~~all~~ association stewards, racing secretaries, handicappers, starters, placing judges, timers/clockers, ~~examining veterinarians and track racing veterinarians~~, outriders, patrol judges, paddock judges, horse identifiers, clerks of scales, assistant starters, and such other persons as the Commission may designate from time to time because of their importance in the actual conduct of racing.

(2) No person under the age of 16 years shall be employed in or about the track of any association, except as may be permitted by the applicable laws of the Commonwealth of Massachusetts.

(3) It shall be the duty of each and every licensee of the Commission and the officers, officials, and employees of said licensee to observe and enforce 205 CMR 4.00 and the regulations from time to time adopted by said Commission. Any and all of 205 CMR 4.00 may be amended, altered, repealed or supplemented by new and additional rules and regulations, at the discretion of the Commission. Every license to hold a race meeting is granted upon the condition that the licensee therein named shall accept, observe and enforce 205 CMR 4.00, and any amendments or additions thereto.

~~(4) Each Association licensed by the Commission shall submit to the Commission a complete list of employees ten days after the first racing day. This must contain in addition to the names and addresses of employees, the position each one is to fill or the duties he or she is to perform. All additions made to or changes in the list of employees must be promptly reported to the Commission. (205 CMR 4.20(4) shall not apply at State or County Fairs.)~~

~~(5) The Commission shall require each Association to obtain from every person employed by them a sworn statement, on a form prescribed by the Commission, setting forth information regarding citizenship, place or places of residence during the past two years and answer to any other questions the Commission may prescribe.~~

(4)(6) Each Association shall provide and equip a first aid room within its enclosure.

(5)(7) Distance poles of all associations licensed by the Commission shall be standard color designations that are, namely:

1/4 Poles Red and White

1/8 Poles Green and White

1/16 Poles Black and White

(6)(8) Each Association running a racing meeting shall keep a separate bank account to be known as the "Horsemen's Account" with at all times sufficient funds in such account to cover all monies due horsemen in regard to purses, stakes, rewards, claims and deposits. Withdrawals from this account shall be only for such purposes and said account shall at all times are subject to audit by the Commission.

(7)(9) Members of the Commission and its representatives shall have the right to full and complete entry to any and all points of the grounds of the Association licensed to conduct horse racing in Massachusetts.

(8)(10) Each Association conducting racing shall before publishing submit to the Commission, the conditions for all races it proposes to hold, together with the stake, purse or reward, all of which shall be subject to the approval of the Commission.

(9)(11) Each Association shall install at the finish line at their track, and shall adequately maintain, two photo finish cameras, to be approved by the Commission, to automatically photograph the finish of races. The official photographer shall furnish promptly to the Commission a print of every photo finish.

~~(12) Each Association shall maintain in its files a copy of each badge issued. This file shall be open to the inspection of the Commission and designated representatives of the Commission.~~

(10)(13) Each Association shall provide that no person shall be admitted to the stable area and test area unless he or she is wearing an identification badge issued to him or her by the Commission. Each person whose duties or occupation requires their presence in the stable area and test area shall wear his or her identification badge affixed to the outer clothing or otherwise, readily visible in plain view at all times, while in the stable area and other restricted areas. The Commission will hold the Association to strict accountability for full compliance with the provisions of 205 CMR 4.20(13).

(11)(14) Any licensed person who allows another to use his or her license identification card or badge or any person who used the license identification card or badge of another person for the purpose of transferring any of the benefits pertaining thereto may be suspended, assessed a forfeiture, or both.

~~(15) No Association shall permit on its grounds any betting or other operations in contravention of any law of the Commonwealth of Massachusetts or of the United States.~~

~~(12)~~(16) No Association shall permit bets to be made on the grounds on any race run outside said grounds without permission of the Commission.

~~(13)~~(17) No gambling device, other than permitted by law, shall be permitted on the grounds. Petty games of chance are prohibited.

~~(14)~~(18) The Association shall choose the only attendants who will be permitted within the limits of 205 CMR 4.00, to:

(a) assist a jockey after weighing out and until he or she leaves the paddock; and

(b) assist a jockey in weighing in and until he or she arrives at the jockey room.

The Association shall pay such attendants for their services from an assessment collected from the jockeys. A system of rotation of attendants shall be maintained.

~~(15)~~(19) During the term of disqualification of any participant in racing, it shall be the duty of the Association to see to it that the privileges of his or her admission and identification badges are revoked, and that he or she is kept out of the grounds unless otherwise permitted to enter under certain conditions and at certain times as may be provided for elsewhere in 205 CMR 4.00.

~~(16)~~(20) Each Association licensed by the Commission shall police its grounds at all times in such a manner as to preclude the admission and confiscate the identification badge of any person in and around the stables not duly licensed or authorized by the Commission.

~~(17)~~(21) Each Association shall furnish to the Commission the names and addresses of all persons ejected by the Association from its grounds, together with the offense or offenses alleged against them, and any other material information relating thereto.

~~(18)~~(22) Any person ejected from the grounds of an Association, by said Association, shall be denied admission to said grounds until written permission for his or her re-entering has been obtained from the licensee association and written notification of such permission shall forthwith be filed with the Commission and approved by the Commission.

~~(19)~~(23) A person ejected from the grounds of an Association licensed by the Commission shall be refused admission to the grounds of all other licensed Associations in Massachusetts until he or she has been permitted to re-enter the track where he or she was originally ejected in accordance with the procedure as provided for in 205 CMR 4.20(22).

~~(20)~~(24) All portions of purse money shall be made available to the winners thereof 48 hours (Sunday excluded) following their winning.

~~(21)~~(25) No percentage of winnings shall be deducted by an Association for itself or for another person, club, or body, unless at the request of the person to whom such winnings are payable and except that an Association may withhold from winnings any money due it.

~~(22)~~(26) Each Association shall provide within its grounds an equipped office for the use and to be at the disposal of, the Commission and all its officials.

~~(23)~~(27) No Association licensed by the Commission shall assign stable accommodations or accept the entry of any horse five years or older which has been in competition during the immediately preceding two calendar years and has failed to finish first, second or third and which has started at least eight times during the said two calendar years period on a licensed horse racing track. **The Association may impose more stringent requirements.**

~~(24)~~(28) If the Pari-mutuel Manager is to be absent from the track for a complete racing program, the Association shall inform the Commission's **Chief Pari-Mutuel Officer** ~~Accountant~~ at the track at least ½ hour before post time of the first race of the name of the person who will perform the duties of the Pari-mutuel Manager during his or her absence.

#### **4.21: Licenses, Registrations and Fees for Participants in Racing**

(1) The following persons shall be required to take out a license from the Commission and pay the applicable annual fee: Authorized Agent, Jockey, Jockey Apprentice, Jockey Agent, Owner and Colors, Trainer, Stable Employee, Veterinarian, Blacksmith, Racing Officials, Valet, Vendor, Outriders, Stable Name, Partnership.

(2) The fee shall accompany each application for license or registration. They expire December 31st of the year of issue. ~~except stable employees' licenses that expire on March 31st.~~

~~(3) Licenses granted at mile tracks shall be valid at tracks of less than one mile as well.~~

~~(4) Licenses granted at tracks of less than one mile shall not be valid at mile tracks, however, additional fees shall not be required if a licensee from a half mile track is granted a license at a mile track.~~

~~(3)~~(5) All applications for licenses and registrations to participate in racing shall be made to the Commission on forms supplied by the Commission. Any person making any false, untrue or misleading statements on an application for license or registration may be denied such a license or registration or may be assessed a forfeiture, suspended or both.

~~(4)~~(6) **The Commission may designate categories of licenses which shall require stewards' prior approval or recommendation.** Such applications shall be submitted first to the Stewards. In considering each application for a license the Stewards may require the applicant, as well as the endorsers to appear before them and show that said applicant is qualified in every respect to receive the license requested. Ability as well as integrity must be clearly shown by the applicant in order to receive the Stewards' recommendation for the granting of the license. ~~The Stewards may issue temporary licenses, to jockeys or apprentice jockeys. If during the term of the temporary license, the Stewards make the determination that said jockey or apprentice jockey is not qualified as to the ability to receive a permanent license then the temporary license shall be revoked.~~

Temporary Owner Licenses may be issued to Trainers acting as agents for their owners or to authorized agents representing their owners. Temporary licenses will be valid for a period of 30 days from date of approval. Every Temporary Owner's License must be followed by an application from the owner received by the Racing Commission prior to the expiration of the 30-day Temporary Owner's License. Failure to do so will result in an imposition by the Stewards of a fine against the trainer or authorized agent. No horse will be allowed to race after the expiration of the Temporary Owner's License until a permanent owner's license is granted.

~~(5)(7)~~ Before recommending any application for a license it shall be the duty of the Stewards, individually and collectively, to ascertain if the applicant is qualified as to the ability, integrity and right to the license applied for. ~~And further, no application for a license shall be recommended by the Stewards if the applicant's previous conduct in Massachusetts or elsewhere is considered to have been objectionable, obnoxious or detrimental the best interest of racing.~~

**(6) Financial Responsibility.** Applicants for a license may be required to submit evidence of financial responsibility and shall maintain financial responsibility during the period for which the license is issued.



(7) License Refusal. The Commission or its designee may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

(8) License Denial. The Commission may formally deny an application in accordance with 205 CMR 4.00. An application denied shall be reported in writing to the applicant stating the reasons for denial, the date when a reapplication may be submitted, and shall be reported to or the Association of Racing Commissioners International, whereby other member racing jurisdictions shall be advised.

(9) Grounds for Refusal, Denial, Suspension or Revocation of License

a. The Commission or its designee may refuse to issue or may deny a license to an applicant, or may suspend or revoke a license issued, or may order disciplinary measures, if the applicant:

- i. has been convicted of a felony;
- ii. has been convicted of violating any law regarding gambling or a controlled dangerous substance;
- iii. has pending criminal charges; or
- iv. is unqualified to perform the duties required of the applicant;
- v. has failed to disclose or states falsely any information required in the application;
- vi. has been found in violation of statutes or rules governing racing in this state or other jurisdictions;
- vii. has racing disciplinary charges pending in this state or other jurisdictions;
- viii. has been or is currently excluded from association grounds by a recognized racing jurisdiction;
- ix. has had a license denied, suspended or revoked by any racing jurisdiction;
- x. is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting;
- xi. demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;

b. A license suspension or revocation shall be reported in writing to the applicant and the Association of Racing Commissioners International, whereby other member racing jurisdictions shall be advised.

(10)(8) No application for a license or registration shall be recommended by the Stewards and no license or registration will be issued by the Commission unless satisfactory evidence first is presented to the Stewards that the person so applying will participate in the meeting over which the Stewards have supervision.

~~All persons licensed and registered by the Massachusetts State Racing Commission and all others whose occupation requires access to secured stable areas or participating in horse racing in the Commonwealth of Massachusetts shall be photographed and finger printed under the~~

~~supervision of the Massachusetts State Racing Commission Police Unit and in accordance with the Massachusetts State Police Identification System.~~

~~(9) The Commission may refuse to license any applicant who has been refused a license by any other State Racing Commission or turf governing body.~~

~~(10) The Commission may refuse to license any applicant whose previous conduct in Massachusetts or elsewhere in connection with horse racing is considered by the Commission to have been objectionable, obnoxious or detrimental to the best interest of racing.~~

~~(11) The Commission may also revoke any license if the holder of the same has violated any rule or regulation of the Commission governing his conduct in connection with horse racing, or where such conduct is objectionable, obnoxious or detrimental to the best interest of racing.~~

(11) All persons licensed and registered by the Massachusetts Gaming Commission and all others whose occupation requires access to secured stable areas or participating in horse racing in the Commonwealth of Massachusetts may be photographed and finger-printed under the supervision of the Massachusetts Gaming Commission Police Unit and in accordance with the Massachusetts State Police Identification System.

(12) The Stewards may issue temporary licenses, to jockeys or apprentice jockeys. If during the term of the temporary license, the Stewards make the determination that said jockey or apprentice jockey is not qualified as to the ability to receive a permanent license then the temporary license shall be revoked.

(13) Temporary Owner Licenses may be issued to Trainers acting as agents for their owners or to authorized agents representing their owners. Temporary licenses will be valid for a period of 30 days from date of approval. Every Temporary Owner's License must be followed by an application from the owner received by the Gaming Commission prior to the expiration of the 30-day Temporary Owner's License. Failure to do so will result in an imposition by the Stewards of a fine against the trainer or authorized agent. No horse will be allowed to race after the expiration of the Temporary Owner's License until a permanent owner's license is granted.

~~(12) No owner, trainer or agent shall enter or start a horse unless all licenses and registrations required by 205 CMR 4.21(1) have been filed.~~

~~(13) No owner, trainer or agent shall enter or start a horse until he has ascertained that each license or registration filed as required by 205 CMR 4.21(1) has been approved.~~

~~(14) Violators of the provisions of 205 CMR 4.21(12) and or 4.21(13) may be denied the right of participation in racing until the aforesaid rules have been complied with and, in addition, may be subject to suspension or a forfeiture.~~

(14)(15) No application, except a license for ownership, will be considered for or granted to a person under 16 years of age. If younger than 18 years of age, an applicant for an owner's license shall submit a notarized affidavit from his or her parent or legal guardian stating that the parent

or legal guardian assumes responsibility for the applicant's financial, contractual and other obligations relating to the applicant's participation in racing within the Commonwealth of Massachusetts.

~~(15)~~(16) When an ownership is in the name of both husband and wife, both shall be licensed and no partnership shall be required.

~~(16)~~(17) Every Commission licensee exercising a horse shall upon request of an official timer, correctly identify the horse he or she is exercising and shall state the distance over which such horse is to be worked and the point on the race track where it is intended to start the workout.

~~(17)~~(18) Every person following the vocation of exercise ~~person~~boy, hot walker, groom or stable foreman shall be licensed by the Commission.

~~(19) Application shall be made on printed forms furnished by and filed with the Commission and shall be accompanied with the applicable annual fee.~~

~~(18)~~(20) Any applicant for licensing as a pony or exercise person, who is not registered as an employee of an existing licensee, may apply for such licensing provided that such applicant shall be approved by the Stewards and shall be required to be registered on a separate "Badge List" to be maintained by track security.

~~(19)~~(21) Before a Trainer's License is issued by the Commission, said trainer shall submit evidence, satisfactory to the Stewards, that he or she has fully complied with the provisions of Worker's Compensation Laws of the Commonwealth of Massachusetts and that he has secured compensation to employees in accordance with in accordance with M.G.L. c.152.

#### **4.22: Naming of Jockeys**

(1) Jockeys shall be named not later than scratch time of the day of the race.

(2) Any subsequent change of a jockey must be sanctioned by the Stewards and must be promptly and publicly posted and announced.

#### **4.23: Owner**

(1) Each owner holding a beneficial interest of 20% or more in a horse must obtain a license from the Commission. If the owners are husband and wife, and their total beneficial interest is 20% or more in a horse, then they must both obtain a license from the Commission.

(2) An owner shall not enter or start a horse that:

(a) is not in servicably sound racing condition;

(b) has been trachea tubed;

(c) has been nerved at or above the ankle;

(d) has been nerved or had cryosurgery performed on a nerve, except that horses that have had a neurectomy or cryosurgery performed on the posterior digital nerve below, and not at, the fetlock of one or more feet may be permitted to race;

(e) is blind or whose vision is seriously impaired in both eyes. A horse blind in one eye may start only if the other eye has normal vision; or

(f) does not comply with M.G.L. c.129 Section 44 and 330 CMR 16.05.

(3) A list of nerved horses approved by the Official Veterinarian for racing shall be conspicuously posted in the Racing Secretary's office.

(4) If an owner changes trainers, he or she must notify the Racing Secretary and cause the new trainer to sign his or her name on said owner's registration.

(5) No owner shall employ a jockey for the purpose of preventing him or her from riding in any race.

(6) No owner shall accept, directly or indirectly, any bribe, gift or gratuity in any form that might influence the result of any race, or tend to do so.

(7) No owner shall move or permit to be moved any of his or her horses from the grounds of an Association until the horse is properly signed out of the grounds at the stable gate and after the racing Secretary has been properly notified.

(8) An owner shall see to it that a report is made promptly to the Racing Secretary or to the Official Veterinarian of any and all known sickness of his or her horses.

(9) The owner of a horse which is prevented from starting in a race because of his or her failure to pay the jockey fee for that race, or arrears against him or her or his or her horse, shall be liable for the declaration fee, and he or she and his or her horse shall be suspended until same is paid.

(10) No stable may have in its employment in any capacity any employee under 16 years of age, except as may be permitted by the applicable laws of the Commonwealth of Massachusetts.

#### **4.24: Paddock Judge**

(1) It shall be the duty of the Paddock Judge to check all contestants for each and every race and to have all horses properly identified.

(2) The Paddock Judge shall keep a record of all equipment carried by all horses in all races under his or her jurisdiction, permitting no change in equipment not authorized by the Stewards.

(3) The Paddock Judge shall, in each race, require the Plater in attendance in the Paddock to see to that all horses are properly shod. ~~and shall forthwith cause to be posted on the electrical shoe board the type of shoes with which each horses in the race is shod and whether with or without caulks and on which feet, or is shoeless as to any of its feet.~~ The said Paddock Judge shall report immediately to the Stewards the findings of the Plater. ~~This rule shall not apply at the State and County Fairs.~~

(4) The Paddock Judge shall report any irregularities to the Stewards.

~~(5) The Paddock Judge may permit a horse to be excused from parading and be led to the post upon payment of \$10.00 to the Racing Secretary. (205 CMR 4.24(5) shall not apply at State or County Fairs. See Special Rules for State or County Fairs.)~~

#### 4.25: Paddock to Post: *(repealed)*

~~(1) Permission must be obtained from a Steward to exercise a horse between races unless the horse is being warmed up on the way to and just prior to entering the paddock for the next race to be run.~~

~~(2) When a horse is being so warmed up before entering the paddock, the rider must display his or her official program number.~~

~~(3) In a race each horse shall carry a conspicuous saddlecloth number and a head number on his or her off side, corresponding to his or her number on the official program. In the case of an entry each horse making up the Entry shall carry the same number (head and saddlecloth) with a distinguishing letter. For example, 1-1A, 1X. In the case of a Field the horses comprising the Field shall carry an individual number; i.e., 12, 13, 14, 15, and so on.~~

~~(4) Horses must be in the paddock at least 15 minutes before post time.~~

~~(5) All horses shall parade such a distance as is reasonable and proper in the opinion of the Stewards, unless excused by the Paddock Judge as provided in 205 CMR 4.24(5). If a horse is so excused from parading and is led to the post he or she must pass over the same route as that followed by the parade.~~

~~(6) All horses shall carry their respective weights from paddock to post.~~

~~(7) Parading horses shall pass the Stewards' Stand in the numerical order of their exhibited number. Only a horse being led by the parade leader, or excused from parading, may parade out of numerical order.~~

~~(8) In the discretion of the Stewards parading horses may be allowed to break out of numerical order after passing from in front of the stands, or may be required to maintain their order until arrival at the post.~~

~~(9) After the horses enter the track, no jockey shall dismount and no horse shall be entitled to the care of an attendant without consent of the Stewards or the Starter and the horse must be free of all hands other than those of the jockey or Assistant Starter before the Starter releases the barrier.~~

~~(10) After the horses enter the track and before the start, no jockey shall deliberately and without the consent of the Stewards or the Starter take his or her horse off the track. Violators of this rule shall be punished by a forfeiture of not less than \$50.00 for each offense and may be suspended or ruled off at the discretion of the Stewards.~~

~~(11) In case of accident to a jockey or to his or her mount or equipment, the Stewards or the Starter may permit the jockey to dismount and the horse to be cared for during the delay, and may permit all jockeys to dismount and all horses to be attended during the delay.~~

~~(12) If a jockey is thrown on the way from the paddock to the post, the horse must be remounted, return to the point where the jockey was thrown and then proceed over the route of the parade to the post.~~

~~(13) If the jockey is so injured on the way to the post as to require another jockey, the horse shall be taken to the paddock, another jockey obtained, and then ridden over any uncompleted portion of the exact route of the parade to the starting point.~~

~~(14) If a horse leaves the course while moving from paddock to post, it shall return to the course at the nearest practical point to that at which it left the course, and shall complete its parade to the post from the point at which he or she left the course.~~

~~(15) No person shall willfully delay the arrival of a horse at the post.~~

~~(16) No person other than the rider or Starter or Assistant Starter shall be permitted to strike a horse or attempt by shouting or otherwise to assist it in getting a start.~~

#### **4.26: Partnerships**

(1) Each and every partnership must be registered with the Commission. Every member of the partnership with a beneficial interest of 20% or more shall be licensed. Every member of the partnership with a beneficial interest of less than 20% shall not be licensed unless they establish a *bona fide* need for the license and the issuance of the license shall be approved by the stewards.

(2) Partnership papers shall, among other things, set forth the following:

(a) the name and address of each and every person having an interest in the horse or horses involved.

(b) the relative proportions of such interests.

(c) to whom the winnings are payable.

- (d) in whose name the horse or horses shall run.
  - (e) with whom the power of entry and declaration rests.
  - (f) the terms of any contingency, lease or any other arrangement.
- (3) All partnership papers must be signed by all of the parties or by their authorized agents.
- (4) In case of emergency, authority to sign declarations of partnership may be given to the Racing Secretary by a telegram promptly confirmed in writing.
- (5) The part owner of any horse cannot assign his or her share or any part of it, without the written consent of the other partners, the said consent to be lodged with the Gaming Commission.
- (6) An alteration in a recorded partnership registration to be effective must be reported in writing to the Commission and signed by all partners.
- (7) All the parties licensed in a partnership and each of them shall be jointly and severally liable for all stakes, forfeits and other obligations.
- (8) In case of multiple ownership, each and every owner shall be in good standing in racing. In a Limited Partnership and every other form of partnership, only the Managing General Partner, General Partners or a person designated to act on behalf of the partnership and partners whose percentage of ownership is 20% or more of the total partnership shall be licensed as owners. A partner whose percentage of ownership is less than 20% of the total partnership shall not be licensed as an owner unless they establish a *bona fide* need for the license and the issuance of the license shall be approved by the stewards. Those, not licensed, must provide full disclosure by the partnership of:
- (a) The limited partner's name, address, date of birth, social security number and criminal history if any;
  - (b) The percentage of total partnership interest owned by the limited partner. If limited partners are husband and wife, and their total ownership interest in the partnership represents 20% or more of the total partnership, then they shall both be licensed as owners.
  - (c) Said disclosure statement shall be made under oath and accompanied by a copy of the partnership agreement.

If a limited partner with less than 20% interest of the total partnership could not obtain a license for reasons outlined in 205 CMR 4.21, the Limited Partnership shall not be licensed. In the event that one of the persons listed in the Limited Partnership is suspended, all horses owned by the Limited Partnership may be suspended, at the discretion of the Stewards and or the Commission.

It shall be the responsibility of the General Partner or his or her licensed designee to notify the Stewards and Gaming Commission in writing of any change in the ownership or interest in the Limited Partnership.

Only the Managing General Partner or a licensed partner or a person designated to act on behalf of the partnership and is licensed can enter a horse in a race.

#### **4.27: Patrol Judges**

~~The Patrol Judges shall for each race take their stations at a place designated by the Stewards. They shall be subject to the orders of the Stewards, and they shall duly report to them all of their pertinent observations in each and every race and shall file reports on it in writing if so requested by the Stewards.~~

The patrol judge, when utilized, is responsible for observing the race and reporting information concerning the race to the stewards. If the track's video replay system is deemed adequate, use of patrol judges is optional.

#### **4.28: Placing Judges**

(1) ~~The Three~~ Placing Judges shall occupy the Placing Judges' Stand ~~at the time the horses pass the winning post in~~ during each and every race, and their duty shall be to place and record ~~five horses or as many more as they think proper~~ in the complete order of their finish in each race.

(2) The placing Judges shall properly display the numbers of the first four horses in each race in the order of their finish.

(3) When the Placing Judges differ in their placing the majority shall prevail.

(4) The Placing Judges shall make public their decision as promptly as possible.

(5) If it is considered advisable to consult a picture from the finish camera, the Placing Judges shall post, without waiting for a picture, such placements as are in their opinion unquestionable, and, after consulting the picture, make the other placements.

(6) The Judges may call for a picture from the photo-finish camera to aid them in arriving at a decision. However, in all cases the camera is merely an aid and the decision of the Judges shall be final.

(7) In determining the places of the horses at the finish of a race, the Placing Judges shall consider only the relative position of the respective noses of such horses.

(8) Upon receipt of such notice the Stewards shall promptly display the sign "official."

(9) There shall be no alteration of placement after the sign "official" has been purposely displayed, except as in outlined in 205 CMR 6.04(4)(Pari-mutuel Rules).



(10) The Placing Judges shall each day file with the Commission a copy of the official placement of the first six horses in each race of that day, and shall supply to other officials such information in respect to the racing as the Association may require.

#### **4.29: Postponement and Cancellation of Races**

- (1) If the whole or a part of a racing program is abandoned any purse race involved must be declared off.
- (2) If the whole or a part of a racing program is abandoned any stake race involved may be postponed or declared off.
- (3) If a stake race is declared off, all subscriptions and fees paid in connection with that race shall be refunded.
- (4) Public notice shall be given at the earliest practicable time if a published race is declared off.
- (5) No race that has closed with sufficient entries shall be declared off except by the Stewards.

#### **4.30: Racing Officials**

~~(1) Officials of a race meeting are as follows: Three Stewards; Three Placing Judges; Patrol Judges; Clerk of the Scales; Starter; Handicapper; Timer; Paddock Judge; the Racing Secretary; and the Clerk of the Course, who shall be the Racing Secretary of the Association holding the race meeting; or a person deputized by the Association.~~ **Officials at a race meeting include the following:**

- (a) stewards;
- (b) racing secretary;
- (c) horsemen's bookkeeper;
- (d) paddock judge;
- (e) horse identifier;
- (f) clerk of scales;
- (g) outrider;
- (h) starter;
- (i) timer/clocker;
- (j) patrol judge, absent video replay equipment;
- (k) placing judge
- (l) official veterinarian;
- (m) racing veterinarian;
- (n) any other person so designated by the Commission.

(2) The Commission shall appoint two of the Stewards. All other officials designated in 205 CMR 4.30(1) shall be appointed by the Association holding the meeting, all appointments being subject to the approval of the Commission, which reserves the right to demand a change of personnel for what it deems good and sufficient reasons. The successor to official so replaced to be subject to the approval of the Commission.

(3) No one interested in the result of a race, either because of ownership of any horse entered, or of his or her sire or dam, or because of bets or otherwise, shall act as a racing official in respect to that race.

(4) No such racing official or his or her assistants shall wager money or any other chattel of value on the result of any race at the meeting.

(5) No such racing official or his or her assistants shall accept, directly or indirectly, any gratuity reward or favor in connection with racing at the meeting.

(6) No such racing official or his or her assistants shall, at the meeting, directly or indirectly, buy or sell any contract upon any jockey or apprentice jockey for himself or herself or another.

(7) No such racing official or his or her assistants shall write or solicit horse insurance at the meeting.

(8) Each racing official and his or her assistants shall report to the Stewards all observed violations of 205 CMR 4.00.

(9) The Commission may, at its discretion, require an eye test of any Steward, Placing Judge or Patrol Judge, said test to be given by ~~an agreed-upon~~ licensed optometrist. The test to include particularly distance and color.

#### **4.31: Racing Secretary**

(1) The Racing Secretary or his or her deputy shall discharge all duties of his or her office expressed or implied, as required by 205 CMR 4.00.

(2) A list of nerved horses approved by the ~~Track~~ Official Veterinarian for racing shall be conspicuously posted in the Racing Secretary's office.

(3) The Racing Secretary shall compile an official program for each racing day, which shall state the time for the first race and give the names of the horses which are to be run in each of the races of the day.

(4) The program shall indicate the order in which each race is to be run; the purse, conditions and distance of each race; the owner, trainer and jockey of each horse; each owner's racing colors; the weight assigned to each horse; his or her name, number and post position, color, sex, age and breeding. The names of the members of the Commission, Commission officials and all racing officials shall be printed on the program. The program may show other pertinent data.

(5) The Racing Secretary shall keep a complete record of all races.

(6) The Racing Secretary shall receive all entries and declarations, and he, she, or any other person designated by the Association may receive all stakes, forfeits, entrance monies, fees (including jockey's fees) purchase money in claiming races and all other money that can properly come into possession as agent for the Association for which he or she is acting.

(7) The Racing Secretary shall pay over when due, all monies collected by him or her to such persons as may be entitled to receive it.

(8) The Racing Secretary shall, in the interest of racing, keep himself or herself thoroughly informed concerning such arrears as may be authoritatively listed or reported for recognized meetings, using such list as a means of eliminating undesirable people from racing. The lists shall be compiled and kept accessible at all times to other officials of the race meeting, as shall all other information in his or her possession that is required for the conduct of the meeting.

(9) The Racing Secretary shall have the right to inspect any trainer's or jockey's license, partnership papers, all papers and documents with respect to a contract between a jockey and his or her employer, or employers; and papers relating to the appointment of authorized agents; jockey agents, or to the adoption of colors or to stable names.

~~(10) In making his or her program, the Racing Secretary shall respect these essential conditions:~~

~~(a) No two-year-old shall compete in any race with older horses prior to September 1st of any year.~~

~~(b) No race for two year olds prior to May 1st, of any year, shall be at greater distance than four and one half furlongs; and no race for two year olds after September 15th of any year shall be at less distance than 5½ furlongs. Provided, however, this shall not apply to tracks at less distance than one mile.~~

#### **4.32: Urine, Other Tests and Examinations (repealed)**

#### **4.33: Starter**

(1) Only the Starter or a deputy approved by him or her and by the Stewards may start a race.

(2) The Starter shall give all orders and take all measures necessary to insure a fair start.

(3) The Starter's decision as to the validity of a start shall be final. Likewise his or her decision as to whether a horse was locked in the gate shall be final.

(4) The Starter may appoint his or her assistants subject to the approval of the Stewards.

(5) Horses are in the hands of the Starter from the moment they enter the track on the way from paddock to post. They remain in his or her hands until the start.

(6) In case the alignment of the horses at the post is delayed, the Starter may permit jockeys to dismount and their mounts to be attended.

(7) Horses shall take their positions in numerical order from the inside rail, that order to be determined by postposition. However, if the starter deems a horse unruly, said horse may take position out of order.

(8) All flat races shall be started out of a stall gate.

(9) In case of necessity, by permission of the Stewards, a gate may be used with the doors open.

(10) If the number of horses starting in a stake race does not exceed the capacity of the track, but does exceed the number of stalls in the gate, the surplus may be started from outside the gate.

(11) The Starter may place vicious and unruly horses on the outside and behind the line.

(12) The Starter shall report to the Stewards by whom or by what cause any delay was occasioned and any cases of misconduct by jockeys when under his or her orders.

(13) The Starter shall maintain and keep available to the Stewards a daily record of all horses handled at the gate.

(14) The Starter shall maintain a ~~schooling~~ Starter's list, and all horses shall be schooled to barrier or starting gate, if and when required under the personal supervision of himself or herself or his or her assistants.

(15) Only the Starter shall have the authority to designate the horses that shall constitute the ~~schooling~~ Starter's list.

(16) The Starter shall file a copy of the ~~schooling~~ Starter's list with the Racing Secretary.

(17) The Starter shall report to the Racing Secretary as soon as a horse on the list has been schooled sufficiently to be permitted to start.

(18) A horse will not be eligible to start until the starter orders the name stricken from the ~~schooling~~ Starter's list.

~~(19) The Starter may impose a forfeiture or suspend a jockey for disobedience of orders or for attempting an unfair advantage. Such forfeiture shall not exceed \$200. A suspension shall not take effect until after the last race of the next day, unless otherwise ordered by the Starter.~~

~~(20) The Starter shall report in writing to the Stewards and to the Racing Secretary all forfeitures and suspensions that he/she has imposed and no forfeitures or suspensions so reported shall be modified other than by the authority of the Stewards.~~

(19)(21) The concurrent statements of the Starter and his or her assistants as to incidents of the start are conclusive.

(20)(22) Neither the Starter nor his or her assistants shall mistreat or use abusive language to a jockey.

(21)(23) The Starter's approval of the starting ability of all two-year-olds must be obtained before the same are permitted to start. Likewise, his or her approval must be obtained for all older horses that have never started at a recognized meeting.

~~(24) A false start is void and the horses shall be started again as soon as practical. Any horse running the course from a false start may be excused from the true race by the Stewards.~~

(24)(25) If a horse is locked in the gate, the Starter shall immediately notify the Stewards who in turn shall immediately notify the manager of the Pari-mutuel Department.

(25)(26) No person shall give to any starter or assistant starter, nor shall any starter or assistant starter receive money, anything of value, or other compensation for such starter's or assistant starter's services in connection with the running of any race or races. No Starter or assistant starter, shall either directly or indirectly bet on any race, or engage in any betting transaction nor have any interest in any horse.

#### **4.34: Steeplechasing**

(1) Steeplechases shall be conducted in conformity with 205 CMR 4.00 established in so far as they can be consistently applied. To the extent that they cannot so be applied, modification thereto may be made by the Stewards in accordance with the Rules of the National Steeplechase Association, 400 Fair Hill Drive, Elkton, MD. [www.nationalsteeplechase.com](http://www.nationalsteeplechase.com)

(2) All horses engaged in Steeplechasing must be registered either at the Jockey Club, 40 East 52nd Street, New York, NY 10022 or with the National Steeplechase Association.

#### **4.35: Stewards**

(1) The Stewards shall have the power to interpret 205 CMR 4.00 and to decide all questions not specifically covered by them.

(2) In matters pertaining to racing, the orders of the Stewards supersede the orders of the Officers and Directors of the Association.

(3) The Stewards shall have general supervision over owners, trainers, jockeys, grooms and other persons attendant on horses, and also over all the other officials at the meeting.

(4) The Stewards shall have the authority to declare a race void and to order all wagers made thereon refunded if they shall determine that any occurrence before or during the running of such race calls for such action by them.

- (5) The Stewards shall have control over and free access to all stands, weighing rooms, enclosures, and other places in use for the purpose of racing.
- (6) All entries and declarations shall be under the supervision of the Stewards.
- (7) The Stewards shall have the power to determine all questions arising with reference to entries and racing.
- (8) All questions pertaining to which their authority extends shall be determined by a majority of the Stewards.
- (9) The Stewards shall have the power to punish for violation of 205 CMR 4.00 any person subject to their control and in their discretion to impose forfeitures or suspensions or both for infractions.
- (10) The Stewards may not impose a forfeiture in excess of \$3,000.00. If it is deemed necessary that a larger forfeiture should be imposed, the Stewards shall so recommend to the Commission.
- (11) The Stewards may suspend a person or disqualify a horse. The Stewards shall maintain a list of such disqualified horses and other horses that in the opinion of the Stewards are not competitive at that meeting or are dangerous to themselves, riders or other horses. Horses on said list may not enter until permission to do so is given by the Stewards in order to remove a horse from said list. No horse may be placed on said list unless prior thereto the Stewards state, in writing, the reason for placement of the horse thereon.
- (12) The Stewards shall have the powers to exclude or eject from the premises and enclosures of the Association:
- (a) any person who is disqualified for corrupt practices on the turf in any country;
  - (b) any person who is under suspension by the Stewards of a recognized meeting or ruled off by any other Commission; or
  - (c) any person who is under their supervision.
- (13) The Stewards may demand proof that a horse neither is disqualified in any particular; nor entered or owned, in whole or in part, by a disqualified person, or trained in whole or in part, by a disqualified person. In default of proof, satisfactorily to them, the Stewards may declare the horse disqualified.
- (14) The Stewards may postpone a race from race-day to race-day.
- (15) The Stewards shall have the power to examine or cause to be examined at any time any horse stabled on the Association grounds, or in stabling approved by the Association.

(16) The three Stewards must be on duty during race time, which shall mean from one hour before post time for the first race of the day until the last race of the day has been made official.

(17) At least one of the Stewards, or his or her deputy, must be on duty within call of the Racing Secretary from the time of opening of overnight entries each morning until after the drawing of postpositions.

(18) The Steward may appoint his or her own deputy at any time.

(19) If there is only one Steward present at race time, said Steward shall appoint two other qualified persons to act with him or her as Stewards pro-tem.

(20) If only two Stewards are present at race time, they shall by agreement appoint a deputy for the absent Steward; but if unable to reach an agreement, shall call upon the Racing Secretary to appoint said deputy.

(21) If none of the Stewards are present at race time, the Racing Secretary shall appoint three qualified persons, one of whom may be himself or herself, to act as Stewards pro-tem.

(22) When a vacancy occurs among the racing officials, other than the Stewards, prior to post time of the first race of the day, or when a vacancy occurs after the racing of the day has started, the Stewards shall immediately fill the vacancy. The appointment shall be effective only for the day, unless the Association fails to fill the vacancy on the following day and notifies the Stewards of its action not less than one hour before the post time of the first race of the day. Such appointment shall be reported immediately to the Commission.

(23) The Stewards shall take notice of any questionable conduct with or without complaint thereof.

(24) The Stewards may substitute a jockey of their selection on any horse.

(25) The Stewards may place any horse in the temporary charge of a trainer of their selection.

(26) In case of accident or casualty to a horse before a start, the Stewards may excuse said horse.

(27) The Stewards must investigate promptly, and render a decision in every objection and in every complaint properly made to them.

(28) The Stewards shall report all objections and complaints to the Commission as soon as received by them, and shall make prompt report to said Commission of their decision.

(29) The Stewards shall, not later than seven days after the end of each meeting, make a report to the Chairman of the Commission of all infractions of 205 CMR 4.00 and of all rulings of the Stewards upon matters coming before them during such meeting.

(30) Except in emergencies, no Steward shall grant permission for a change of horses' equipment after the close of entries for the race in which the changed equipment is to be carried.

(31) There shall be one or more timers. They shall determine the official time of each race.

(32) The time recorded for the first horse to cross the finish line shall be the official time of the race.

(33) In the event that a horse establishes a track record in a race and if it later develops that the chemical analysis of any sample taken indicates the presence of a narcotic, stimulant, depressant or local anesthetic, then such track record shall be null and void.

(34) When electric timing is used, the races shall also be timed otherwise.

(35) The time shall be announced and displayed.

(36) A written report of the time of each race shall be made to the Clerk of the Scales for the reports to the Racing Secretary.

(37) No person may refuse to testify before the Stewards at any formal hearing on any relevant matter within the authority of the Stewards, except in the proper exercise of a legal privilege or unless representation is requested by an attorney or their association.

#### **4.36: Trainers**

(1) Each trainer must obtain a license from the Commission.

(2) No trainer's license or assistant trainer's license shall be considered or approved for an applicant less than 18 years of age.

(3) No trainer shall practice his or her profession except under his or her own name.

(4) The Stewards may permit a trainer to act pending action on his or her application.

(5) A licensed trainer may represent the owner in the matter of his or her entries, declarations and the employment of jockeys.

(6) A trainer shall have his or her horse in the paddock at the time appointed.

(7) A trainer shall attend his or her horse in the paddock, and shall be present to supervise his or her saddling, unless he or she has obtained the permission of a Steward to send his or her assistant trainer or another licensed trainer as a substitute.

(8) When a trainer is to be absent from his or her stable or the grounds where his or her horses are racing for a period of more than two racing days, and his or her horses are entered or are to be entered, he or she must provide a licensed trainer to assume the complete responsibility of the



horses he or she is entering or running. Such licensed trainer shall sign in the presence of the Stewards a form furnished by the Commission accepting complete responsibility of the horse or horses being entered or running.

(9) The trainer shall be responsible for and be the absolute insurer of the condition of the horses he or she enters regardless of the acts of third parties.

(10) Each trainer shall register with the Racing Secretary all the horses in his or her charge, giving the name, color, sex, age, breeding and ownership of each.

(11) The personnel of every stable and changes thereof shall be registered, by the trainer, with the Security Department at the track where their horses are racing or stabled, and shall be available at all times to representatives of the Commission.

(12) A trainer shall not have in charge or under his or her supervision any horse owned, in whole or in part, by a disqualified person.

(13) A trainer shall not have in charge, or under his or her supervision any horse owned, in whole or in part, by a jockey.

(14) No trainer shall accept, directly or indirectly, any bribe, gift or gratuity in any form which might influence the result of any race or which would tend to do so.

(15) No trainer shall move or permit to be moved any horse or horses in his or her care from the grounds of an Association until the horse is properly signed out of the grounds at the stable gate and after the Racing Secretary has been properly notified.

(16) A trainer shall not enter or start a horse that:

(a) is not in serviceably sound racing condition;

(b) has been trachea-tubed;

(c) has been "nerved" at or above the ankle.

(d) has been nerved or had cryosurgery performed on a nerve; except that horses that have had a neurectomy or cryosurgery performed on the posterior digital nerve below, and not at, the fetlock of one or more feet may be permitted to race.

(e) is blind or whose vision is seriously impaired in both eyes. A horse blind in one eye may start only if the other eye has normal vision.

(f) does not comply with M.G.L. c.129 Section 44 and 330 CMR 16.05.

(17) A trainer shall report promptly, to the ~~track~~ Official Veterinarian, all horses in his or her care that have been nerved. A list of nerved horses approved by the ~~track~~ Official Veterinarian for racing shall be conspicuously posted in the Racing Secretary's Office.

(18) No trainer shall employ a jockey for the purpose of preventing him or her from riding in any race.

(19) A trainer is responsible for reporting the proper gender of his or her horse at the time of entry, and reporting the castration of any horse in his or her care to the Horse Identifier and Official Veterinarian.

~~(19) A trainer shall report promptly to the Racing Secretary or the track Veterinarian any and all sickness of his or her horses.~~

~~(20) Trainers of horses entered in the first and second races shall inspect the condition of their horse 1½ hours before post time of the first race of the day on which entered to race. If any horse is found, through accident or otherwise, to be unfit to race, the trainer shall report the fact to the Association Veterinarian at least one hour before post time of the first race of the day.~~

~~(21) It shall be the responsibility of the trainer of horses who have not started for a period of 60 days or longer, to have a recorded workout with the official clocker. Any horse entered that does not have a recorded workout with the official clocker, shall be scratched.~~

#### **4.37: Vendors of Horse Feed or Medicine**

Any vendor of horse feed or medicine of any kind or description shall file with the Commission a list of products which he or she proposes to sell or deliver within the enclosure of the race track, and shall further submit any new preparation to be offered for sale for approval of the Official Veterinarian, ~~and/or Chemist~~. Should such vendor offer any preparation not so approved by the Official Veterinarian, ~~and/or Chemist~~, or not so listed, he or she shall be denied the privileges of the stable area.

#### **4.38: Veterinarians** *(Repealed)*

#### **4.39: Walking Over**

(1) If, at the time for hoisting the numbers only one horse shall have weighed out, that horse shall be ridden past the Judges' Stand, go to the post, and then move over the course. He or she shall then be deemed the winner.

In case of a walkover, the horse walking over shall receive:

(a) In overnight races, ½ of the winner's rightful share of first money.

(b) In stake races, ½ of the winner's rightful share of the added money and all fees.

(2) In case of a walkover, any money or prize that by the condition of the race would have been awarded to a horse placed second, or lower in the race, shall, if contributed by the owners, be paid to the winner. If a donation from any other source, it shall not be awarded.

#### **4.40: Weighing In *(repealed)***

~~(1) After a race has been run and after he or she has pulled up the horse he or she has ridden, the jockey shall ride promptly to the unsaddling area and there dismount, and present himself or herself to the Clerk of the Scales to be weighed in.~~

~~(2) If a jockey is prevented from riding his or her mount to the unsaddling area because of an accident or of illness either to himself or herself or his or her horse, he or she may walk or be carried to the scales, or he or she may be excused by the Stewards from weighing in.~~

~~(3) Except by permission of the Stewards, every jockey must, upon returning to the unsaddling area, unsaddle the horse he/she has ridden, and no person shall touch said horse except by his/her bridle.~~

~~(4) No person shall assist a jockey in removing from his/her horse the equipment that is to be included in the jockey's weight, except by permission of the Stewards.~~

~~(5) No person shall throw any covering over any horse at the place of dismounting until the jockey has removed the equipment that is to be included in his/her weight.~~

~~(6) No jockey shall, before weighing in, willfully touch any person or thing, other than the equipment that is to be included in his/her weight.~~

~~(7) Each jockey shall, in weighing in, carry over to the scales all pieces of equipment with which he/she weighed out. Thereafter he/she may hand it to his/her attendant.~~

~~(8) Each jockey shall weigh in at the same weight as that at which he/she weighed out, and if short of it by more than two pounds his/her mount shall be disqualified.~~

~~(9) When a horse is disqualified under 205 CMR 4.40(8) and there is evidence of fraud or attempted fraud, any other horse in the race owned or controlled by the same interest or trained by the same trainer, also shall be disqualified.~~

~~(10) No jockey shall weigh in at more than two pounds over the weight at which he/she weighed out, except in so far as said weight may have been affected by the elements.~~

#### **4.41: Weighing Out *(repealed)***

~~(1) The specified jockeys shall be weighed out for their respective mounts in each race by the Clerk of the Scales not less than ten minutes before the time fixed for the race. In case of a substitution of rider after the original rider has been weighed out, the substitute rider shall be~~

~~weighed as promptly as possible and the name of the substitute and his/her weight publicly announced and posted.~~

~~(2) If a horse runs in hood, muzzle, martingale, breastplate, or blinkers, they must be included in the jockey's weight. His/her weight shall also include his/her clothing, boots, goggles, saddle and its attachments, number cloth, saddlecloth, etc.~~

~~(3) None of the following items shall be included in a jockey's weight: Protective helmet, as may be approved by the Commission; riding crop, head number, bridle, bit or reins.~~

~~(4) No bridle shall exceed two pounds in weight, and no riding crop (or substitute for a riding crop) shall exceed eight ounces in weight, unless approved by the Stewards.~~

~~(5) No jockey except when riding for his/her contract employer, shall be weighed out for any race unless there has been deposited for him or her or guaranteed to him or her, with the Racing Secretary, his or her fee for a losing mount in the race, and the failure to deposit or guarantee said fee for the engaged jockey may be cause for declaring the horse out of the race.~~

~~(6) The Association shall provide the only attendants who will be permitted to assist jockeys in weighing out.~~

#### **4.42: Winnings**

(1) The winnings of a horse in a stake race shall be computed on the value of the gross earnings.

(2) Winnings shall include all net monies won in all countries, up to the time appointed for the start, including walkovers and forfeits but not second and third money nor the value of a prize not in money.

(3) Winnings during a year shall be reckoned from January 1<sup>st</sup> of that year.

(4) Winner or non-winner of a specified sum means winner, or non-winner of a single race of that value to the winner, unless otherwise stated.

(5) In computing the value of a series of races in which an extra sum of money is won by the winning of two or more races of the series, the extra amount shall not be included in the horse's winnings until the series, or that part of it, is finished and hence the extra amount is definitely ascertainable. When ascertained it shall be added to the race which determined the extra amount.

(6) Foreign winnings shall be estimated on the basis of the normal rate of exchange prevailing on the day of the winner.

(7) The entrance money, starting and subscription fees, in every race, shall go to the winner unless otherwise provided in its conditions, but when from any cause a race is not run, all stakes or entrance money, if any paid, shall be returned.

#### **4.43: Special Rules for State or County Fairs**

M.G.L. c. 128A, § 9, second paragraph provides "The Commission shall have power to prescribe special rules, regulations and conditions applicable to horse and dog racing meetings held under licenses granted hereunder in connection with a state or county fair, or any exhibition for the encouragement of extension of agriculture."

#### **4.44: Declarations and Scratches for State and County Fairs**

In purse races and overnight handicaps with more than eight interests, owners shall have the right to declare out to that number before the time stipulated by the regulations of the Association, on the day of the race such right to be determined by lot when necessary. Declarations below eight interests may only be made by permission from the Stewards.

#### **4.45: General Rules for State and County Fairs**

(1) The Stewards at meetings held in connection with State or County Fairs shall have the power to suspend anyone whom they have authority to supervise for no greater period than ten days beyond the close of the fair racing season in Massachusetts. They may extend a suspension from one fair meeting to another within the fair racing season.

The Stewards at meetings held in connection with State or County Fairs may impose a forfeiture on anyone whom they have authority to supervise, not exceeding \$500.00.

(2) Each Association licensed by the Commission to conduct a racing meeting in connection with a State or County Fair shall submit to the Commission a complete list of employees three days after the first racing day. This must contain in addition to the name and addresses of employees, the position each one is to fill or the duties he or she is to perform. All additions made to or changes in the list of employees must be promptly reported to the Commission.

#### **4.46: Paddock Judge for State and County Fair**

The Paddock Judge may permit a horse to be excused from parading and be led to the post.

#### **4.47: Practicing Veterinarians**

##### **(1) Eligibility**

An applicant for a license as practicing veterinarian shall be qualified and licensed to practice veterinary medicine in this jurisdiction and be otherwise qualified to be issued a license to participate in racing. An application for a practicing veterinarian license from the Commission must be accompanied by a copy of the applicant's current license to practice veterinary medicine.

##### **(2) Responsibility**

- (a) All practicing veterinarians administering drugs, medications or other substances shall be responsible for ensuring that the drugs, medications or other substances and

the veterinary treatment of horses are administered in accordance with rules in 205 CMR 4.00.

- (b) All practicing veterinarians shall promptly notify the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge.
- (c) All veterinarians shall file individual remittance certificates with individual blood samples when testing for equine infectious anemia. Upon receipt from an approved testing laboratory, the certificates shall be returned to the trainer whose responsibility it shall be to safeguard said certificate and surrender same to a new owner and/ or trainer in cases of claims, sales or transfers. All veterinarians shall notify the State Veterinarian immediately upon receipt of a positive report.

(3) Restrictions

- (a) A practicing veterinarian shall not wager on the outcome of any race if the practicing veterinarian has treated a horse participating in that race within the past 30 days.
- (b) Veterinarians licensed by the Commission to practice their profession shall not be eligible to hold an owner or trainer license at tracks under the jurisdiction of the Commission.

**4.48: Official Veterinarian**

(1) General. The official veterinarian shall:

- (a) be employed by the Commission;
- (b) be a graduate veterinarian and be licensed to practice in this jurisdiction;
- (c) be qualified to objectively and competently provide the regulatory duties described herein;
- (d) refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in ~~this jurisdiction~~ the Commonwealth of Massachusetts while employed as the official veterinarian for the commission;
- (e) refrain from directly treating or prescribing for any horse under his or her jurisdiction except in cases of emergency, accident or injury;
- (f) have no employment history or business relationship prior to employment as the official veterinarian that could constitute a conflict of interest or impede in the performance of official duties.

(2) Responsibilities

The official veterinarian shall:

- (a) recommend to the stewards any horse deemed unsafe to be raced, or a horse that it would be inhumane to allow to race;
- (b) inspect any horse when there is a question as to the physical condition of such horse independent of the horse's entry status;

- (c) recommend to the stewards the scratching of any horse that is, in the opinion of the official veterinarian, injured, ill, or otherwise unable to compete due to a medical or health-related condition;
- (d) provide emergency medical care to horses injured racing and effect case transfer to the practicing veterinarian;
- (e) be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act; and
- (f) report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore;
- (g) maintain all required records of postmortem examinations performed on horses which have died within the jurisdiction of the Commission;
- (h) maintain the Veterinarian's List of horses ineligible to race;
- (i) supervise and control the Test Barn;
- (j) supervise the taking of all specimens for testing according to procedures approved by the Commission;
- (k) provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion, or contamination and assure sample integrity;
- (l) provide the stewards with a written statement regarding the nature and seriousness of all laboratory reports of prohibited substances in equine samples.
- (m) have jurisdiction over the practicing licensed veterinarians within the enclosure for the purpose of 205 CMR 4.00;
- (n) review and consult with the applicants and the stewards/Commission regarding Commission license applications of practicing veterinarians, veterinary technicians or assistants, vendors of medical supplies and equipment, non-veterinarian health care providers (massage therapists, nutritionists, physical therapists, etc.); ~~and~~
- (o) cooperate with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases.;
- (p) maintain the Furosemide list of horses permitted to receive raceday furosemide; and
- (q) review Medication Report Forms submitted by practicing veterinarians pursuant to 205 CMR 4.50(3).

#### **4.49: Racing Veterinarian**

- (1) The racing veterinarian(s) shall be employed by the Association.
- (2) The racing veterinarian shall:
  - (a) be directly responsible to the official veterinarian;
  - (b) be a graduate veterinarian and be licensed to practice in the jurisdiction;
  - (c) be available to the racing secretary and/or the stewards prior to scratch time each racing day, at a time designated by the stewards, to inspect any horses and report on their condition as may be requested by the stewards;

- (d) inspect any horse when there is a question as to the physical condition of such horse;
- (e) conduct soundness inspections on horses participating in races at the meeting;
- (f) recommend scratching a horse to the stewards if, in the opinion of the racing veterinarian, the horse is physically incapable of exerting its best effort to win;
- (g) be present in the paddock during saddling, on the racetrack during the post parade and at the starting gate until the horses are dispatched from the gate for the race;
- (h) inspect any horse which appears in physical distress during the race or at the finish of the race; and shall report such horse together with his or her opinion as to the cause of the distress to the stewards and to the official veterinarian;
- (i) provide emergency medical care to horses injured racing and effect case transfer to the practicing veterinarian;
- (j) be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act;
- (k) refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the racing veterinarian;
- (l) refrain from directly treating or prescribing for any horse scheduled to participate during his or her term of appointment at any recognized meeting except in cases of emergency, accident or injury; and
- (m) with approval of the official veterinarian, place horses on the Bleeder List.

#### **4.50: Veterinary Practices**

##### **(1) Veterinarians under Authority of Official Veterinarian**

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are under the authority of the official veterinarian and the stewards. The official veterinarian shall recommend to the stewards or the Commission the discipline that may be imposed upon a veterinarian who violates 205 CMR 4.00.

##### **(2) Treatment Restrictions**

(a) Only licensed trainers, licensed owners, or their designees shall be permitted to authorize veterinary medical treatment of horses under their care, custody and control at locations under the jurisdiction of the Commission.

(b) Except as otherwise provided by 205 CMR 4.50(2), no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, or chemical to a horse at any location under the jurisdiction of the Commission.

(c) 205 CMR 4.50(2) does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:



1. A recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;
2. A non-injectable substance on the direction or by prescription of a licensed veterinarian; or
3. A non-injectable non-prescription medication or substance.

(d) No person shall possess a hypodermic needle, syringe capable of accepting a needle or injectable of any kind on association grounds, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable syringe and needle, and shall dispose of both in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the stewards and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the stewards and/or the Commission.

(e) Practicing veterinarians shall not have contact with an entered horse within 24 hours before the scheduled post time of the race in which the horse is scheduled to compete except for the administration of furosemide under the guidelines set forth in 205 CMR 4.52(6), unless approved by the official veterinarian or his or her designee. Any unauthorized contact may result in the horse being scratched and may result in further disciplinary action by the stewards.

(f) Any horse entered for racing must be present on the grounds prior to the scheduled furosemide administration time, or one hour prior to first post time, whichever is earlier.

### (3) Veterinarians' Reports

(a) Every veterinarian who treats a racehorse at any location under the jurisdiction of the Commission shall, in writing on the Medication Report Form prescribed by the Commission, report to the official veterinarian or other commission designee at the racetrack where the horse is entered to run or as otherwise specified by the commission, the name of the horse treated, any medication, drug, substance, or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(b) The Medication Report Form shall be signed by the practicing veterinarian.

(c) The Medication Report Form must be filed by the treating veterinarian not later noon the day following treatment. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of 205 CMR 4.00 or in a proceeding before the stewards or the Commission, or to the trainer or owner of record at the time of treatment.

(d) A timely and accurate filing of a Medication Report Form that is consistent with the analytical results of a positive test may be used as a mitigating factor in determining the nature and extent, if any, of a rules violation.

#### **4.51: Prohibited Practices**

The following are considered prohibited practices:

(1) The possession or use of a drug, substance or medication on the premises of a facility under the jurisdiction of the Commission for which:

- (a) a recognized analytical method has not been developed to detect and confirm the administration of such substance; or
- (b) the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or
- (c) the use of which may adversely affect the integrity of racing; or,
- (d) no generally accepted use in equine care exists.

(2) The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the Commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in (human or animal) is forbidden without prior permission of the official veterinarian or his or her designee.

(3) The possession and/or use of the following substances or of blood doping agents, including but not limited to those listed in 205 CMR 4.51(3)(a) through (j), on the premises of a facility under the jurisdiction of the Commission is forbidden:

- (a) Aminoimidazole carboxamide ribonucleotide (AICAR)
- (b) Cobra venom or derivatives thereof
- (c) Darbepoetin
- (d) Equine Growth Hormone
- (e) Erythropoietin (EPO)
- (f) Hemopure®
- (g) *myo*-Inositol Triphosphate (ITPP)
- (h) Oxyglobin®
- (i) Snail venoms or derivatives thereof
- (j) Thymosin beta

(4) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:

- (a) Any treated horse shall not be permitted to race or breeze for a minimum of 10 days following treatment;
- (b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed to practice by the Commission using registered and approved machines;
- (c) Any Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines on the association grounds must be registered with and approved by the official veterinarian or his or her designee before use.

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments must be reported within one (1) day to the official veterinarian or his or her designee on the prescribed form. The horse shall be added to a list of ineligible horses.

(e) Any person participating in the use of ESWT and/or the possession of ESWT machines in violation of 205 CMR 4.51(4) shall be considered to have committed a Prohibited Practice and is subject to a Class A Penalty.

(5) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of the official veterinarian or his or her designee.

#### **4.52: Medications and Prohibited Substances**

##### **(1) Aggravating and Mitigating Factors**

Upon a finding of a violation of 205 CMR 4.50-4.53, inclusive, the stewards shall consider the classification level of the violation as listed at the time of the violation in the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and impose penalties and disciplinary measures consistent with the recommendations contained therein. The stewards may consult with the official veterinarian, laboratory director or other individuals to determine the seriousness or the laboratory finding or the medication violation. All medication and drug violations shall be investigated and reviewed on a case by case basis. Extenuating factors include, but are not limited to:

- (a) The past record of the trainer, veterinarian and owner in drug cases;
- (b) The potential of the drug(s) to influence a horse's racing performance;
- (c) The legal availability of the drug;
- (d) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug ;
- (e) The steps taken by the trainer to safeguard the horse;
- (f) The probability of environmental contamination or inadvertent exposure due to human drug use;
- (g) The purse of the race;
- (h) Whether the drug found was one for which the horse was receiving a treatment as determined by the Medication Report Form;
- (i) Whether there was any suspicious betting pattern in the race, and;
- (j) Whether the licensed trainer was acting under the advice of a licensed veterinarian.

As a result of the investigation, there may be mitigating circumstances for which a lesser or no penalty is appropriate for the licensee and aggravating factors, which may increase the penalty beyond the minimum.

##### **(2) Penalties**

- (a) In issuing penalties against individuals found guilty of medication and drug violations a regulatory distinction shall be made between the detection of therapeutic medications used

routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.

(b) If a licensed veterinarian is administering or prescribing a drug not listed in the RCI *Uniform Classification Guide lines for Foreign Substances*, the identity of the drug shall be forwarded to the official veterinarian to be forwarded to the Racing Medication and Testing Consortium for classification.

(3) Medication Restrictions

(a) A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

1. Drugs or medications for which no acceptable threshold concentration has been established;
2. Substances present in the horse in excess of concentrations at which such substances could occur naturally; and
3. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(b) Except as otherwise provided by 205 CMR 4.00, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to 205 CMR 4.00 during the 24-hour period before post time for the race in which the horse is entered.

(4) Medical Labeling

(a) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with 205 CMR 4.52(4).

(b) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

1. The name of the product;
2. The name, address and telephone number of the veterinarian prescribing or dispensing the product;
3. The name of each patient (horse) for whom the product is intended/prescribed;
4. The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and
5. The name of the person (trainer) to whom the product was dispensed.

(5) Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)

(a) The use of one of three approved NSAIDs shall be permitted under the following conditions:

1. Not to exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

- a. Phenylbutazone – 2 micrograms per milliliter;
- b. Flunixin – 20 nanograms per milliliter;
- c. Ketoprofen – 10 nanograms per milliliter.

2. These or any other NSAID are prohibited to be administered within the 24 hours before post time for the race in which the horse is entered.

3. The presence of more than one of the three approved NSAIDs, in the post-race serum or plasma sample is not permitted.

a. A finding of phenylbutazone below a concentration of one-half (.5) microgram per milliliter of blood serum or plasma shall not constitute a violation of 205 CMR 4.52(5).

(b. A finding of flunixin below a concentration of three (3) nanograms per milliliter of blood serum or plasma shall not constitute a violation of 205 CMR 4.52(5).

4. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(b) The presence of any unapproved NSAID in the post-race serum or plasma sample is not permitted.

(6) Furosemide

(a) In order for a horse to be placed on the Furosemide List the following process must be followed:

1. After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide the official veterinarian or his/her designee shall be notified using the prescribed form, that the horse is to be put on the Furosemide List.
2. The form must be received by the official veterinarian or his or her designee by the time of entry.
3. A horse placed on the official Furosemide List must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or his or her designee, on the proper form, no later than the time of entry.
4. After a horse has been removed from the Furosemide List, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.
5. Furosemide shall only be administered on association grounds.
6. Furosemide shall be the only authorized bleeder medication

(b) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized:

1. Furosemide shall be administered by single intravenous injection no less than four hours prior to post time for the race for which the horse is entered.
2. The furosemide dosage administered shall not exceed 500 mg. nor be less than 150 mg.
3. After treatment, the horse shall be required by the Commission to remain in the proximity of its stall in the care, custody and control of its trainer or the trainer's designated representative under general association and/or Commission security surveillance until called to the saddling paddock.

(c) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

1. The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010;
2. Quantitation of furosemide in serum or plasma may be performed. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(d) A horse which has been placed on a Furosemide List in another jurisdiction ~~pursuant to these rules~~ pursuant to rules similar to 205 CMR 4.52(6) shall be placed on a Furosemide List in this jurisdiction. A notation on the horse's foal papers of such shall suffice as evidence of being on a Furosemide List in another jurisdiction.

(7) Bleeder List

(a) The official veterinarian shall maintain a Bleeder List of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian.

(b) Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the following minimum time periods:

1. First incident – 14 days;
2. Second incident – 30 days;
3. Third incident – 180 days;
4. Fourth incident – barred for racing lifetime.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(d) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by 205 CMR 4.52(7).

(e) A horse which has been placed on a Bleeder List in another jurisdiction pursuant to rules similar to 205 CMR 4.52(7) shall be placed on a Bleeder List in this jurisdiction.

(8) Androgenic-Anabolic Steroids

(a) No AAS shall be permitted in test sample collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances boldenone and testosterone at concentrations less than the indicated thresholds.

(b) Concentrations of these AAS shall not exceed the following urine threshold concentrations for total (*i.e.*, free drug or metabolite and drug or metabolite liberated from its conjugates):

1. 16 $\beta$ -hydroxystanozolol (metabolite of stanozolol) – 1 ng/ml in urine for all horses regardless of sex;
2. Boldenone (Equipoise® is the undecylenate ester of boldenone) in male horses other than geldings – 15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses.
3. Nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester)
  - a. In geldings - 1 ng/ml in urine
  - b. In fillies and mares – 1 ng/ml in urine
4. Testosterone
  - a. In geldings – 20 ng/ml in urine
  - b. In fillies and mares – 55 ng/ml in urine

(c) Any other anabolic steroids are prohibited in racing horses.

(d) Post-race urine samples must have the sex of the horse identified to the laboratory.

#### **(9) Alkalinizing Substances**

The use of agents that elevate the horse's TCO<sub>2</sub> or Base excess level above those existing naturally in the untreated horse at normal physiological concentrations is prohibited. The following levels also apply to blood gas analysis:

- (a) The regulatory threshold for TCO<sub>2</sub> is 37.0 millimoles per liter of plasma/serum for horses not treated with furosemide and 39.0 millimoles per liter of plasma/serum for horses treated with furosemide and;
- (b) The decision level to be used for the regulation of TCO<sub>2</sub> is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample for horses not treated with furosemide and 39.0 millimoles per liter of plasma/serum for horses treated with furosemide plus the measurement uncertainty of the laboratory analyzing the sample for horses treated with furosemide.

#### **4.53: Out of Competition Testing for Blood and/or Gene Doping Agents**

- (1) Any horse on the grounds at a racetrack or training center under the jurisdiction of the commission; or under the care or control of trainer or owner licensed by the commission is subject to testing for blood and/or gene doping agents without advance notice.
- (2) Horses to be tested may be selected at random, with probable cause, or as determined by the commission;
- (3) The Official Veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time, take a urine, blood or hair sample from a horse for this purpose.
- (4) Prohibited substances, practices and procedures are defined as:
  - (a) Blood doping agents including, but not limited to Erythropoietin (EPO), Darbepoetin, Oxyglobin, Hemopure, Aranesp or any substance that abnormally enhances the oxygenation of body tissues.
  - (b) Gene doping agents or the non-therapeutic use of genes, genetic elements, and/or cells that have the capacity to enhance athletic performance or produce analgesia.
- (5) Cooperation with the Official Veterinarian, or his or her designee, includes assisting in the immediate location and identification of the horse selected and providing a stall or safe location to collect the samples.
- (6) Split samples for out of competition testing will be collected as per 205 CMR 4.55(C).

#### **4.54: Physical Inspection of Horses**

##### **(1) Assessment of Racing Condition**

- (a) Every horse entered to participate in an official race shall be subjected to a veterinary inspection prior to starting in the race for which it is entered.
- (b) The inspection shall be conducted by the official veterinarian or the racing veterinarian.
- (c) The agency or the association employing the examining veterinarian(s) should provide a staffing level of not less than 2 veterinarians.



(d) The trainer of each horse or a representative of the trainer must present the horse for inspection as required by the examining veterinarian. Horses presented for examination must have bandages removed; the legs must be clean. Prior to examination horses may not be placed in ice nor shall any device or substance be applied that impedes veterinary clinical assessment.

(e) The assessment of a horse's racing condition shall include:

1. Proper identification of each horse inspected;
2. Observation of each horse in motion;
3. Manual palpation and passive flexion of both forelimbs;
4. Visual inspection of the entire horse and assessment of overall condition;
5. Clinical observation in the paddock and saddling area, during the parade to post and at the starting gate, during the running of the race, and following the race until the horse has exited the race track; and,
6. Any other inspection deemed necessary by the official veterinarian and/or the racing veterinarian.

(f) The official veterinarian and/or the racing veterinarian shall maintain a permanent continuing health and racing soundness record of each horse inspected.

(g) The official veterinarian and/or the racing veterinarian are authorized access to any and all horses housed on association grounds regardless of entry status.

(h) If, prior to starting, a horse is determined to be unfit for competition, or if the veterinarian is unable to make a determination of racing soundness, the veterinarian will recommend to the Stewards the horse be scratched.

(i) Horses scratched upon the recommendation of the official veterinarian and/or the racing veterinarian are to be placed on the Veterinarian's List.

## (2) Veterinarian's List

(a) The official veterinarian shall maintain the Veterinarian's List of all horses which are determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity or any other medical condition. Horses so listed are ineligible to enter to race in any jurisdiction until released by an official veterinarian or racing veterinarian.

(b) A horse may be removed from the Veterinarian's List when, in the opinion of the official veterinarian, the condition which caused the horse to be placed on the veterinarian's List is resolved and the horse's status is returned to that of racing soundness.

(c) Horses working to be released from the Veterinarian's List are to be in compliance with 205 CMR 4.00 and are to be subjected to post-work biologic sample collection for laboratory confirmation or compliance. Violations may result in penalties consistent with 205 CMR 4.52(1).

(d) Horses may be released from the Veterinarian's List only by authorization of the official veterinarian.

(e) Horses having generated a “positive” post race test for an RCI Class I or II substance shall be required to generate a negative test at the expense of the current owner prior to being entered for the first start following the positive test.

#### **4.55: Testing**

##### **(1) Reporting to the Test Barn**

(a) The official winning horse and any other horse ordered by the Commission and/or the stewards shall be taken to the test barn to have blood and urine samples taken at the direction of the official veterinarian.

(b) Random or extra testing may be required by the stewards or the Commission at any time on any horse on association grounds.

(c) Unless otherwise directed by the stewards or the official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(d) A security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of 16-years-old, be currently licensed by the Commission, display their Commission identification badge and have a legitimate reason for being in the test barn area.

(e) The owner, trainer or his or her groom or other authorized representative shall be present in the testing enclosure when a saliva, urine, blood or other specimen is taken from his or her horse and shall remain until the sample tag is attached to the specimen container. Said tag shall be signed by the owner, trainer or their representative as witnesses to the taking of the specimen.

(f) Willful failure to be present at or a refusal to allow the taking of any such specimen or refusal to sign the specimen tag to the taking of a specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or person guilty thereof to immediate suspension by the Stewards of the meeting and the matter shall be referred to the Commission for such further penalty as in its discretion it may determine.

##### **(2) Testing of Claimed Horses**

(a) In the event a horse is claimed, and has been designated for a post race test said claimed horse shall be brought to the State Testing Area by the previous owner, trainer, or agent, and said owner, trainer or agent shall remain with this horse in the testing area until a urine specimen or other sample or test is received from the horse, and said previous owner, trainer or agent shall sign all necessary documents.

(b) Should the analysis of a post race blood, urine or saliva specimen taken from a claimed horse result in a post race positive test, the claimant's trainer shall be promptly notified by the Stewards and the claimant shall have the option to void said claim. An election to void a claim shall be submitted in writing to the Stewards by the claimant or his or her trainer.

##### **(3) Split Samples**

(a) Split samples shall be secured and made available for further testing in accordance with the following procedures:

1. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer/refrigerator at a secure location approved by the Commission.

2. A freezer/refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples. A log shall be maintained that shall be used each time a split sample freezer/refrigerator is opened to specify each person in attendance, the purpose for opening the freezer/refrigerator, identification of split samples deposited or removed, the date and time the freezer/refrigerator was opened, and the time the freezer/refrigerator was closed.

3. Any evidence of a malfunction of a split sample freezer/refrigerator or samples that are not in a frozen condition during storage shall be documented in the log and immediately reported to the official veterinarian or a designated Commission representative.

(b) A trainer or owner of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to 205 CMR 4.00 may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another [referee] laboratory approved by the Commission. The request must be made in writing and delivered to the stewards not later than three (3) business days after the trainer of the horse receives written notice of the findings of the primary laboratory. Any split sample so requested must be shipped within an additional 72 hours.

(c) The owner or trainer requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the official veterinarian shall constitute a waiver of all rights to split sample testing. Prior to shipment, the Commission shall confirm the referee laboratory's willingness to simultaneously provide the testing requested, the laboratory's willingness to send results to both the person requesting the testing and the Commission, and arrangements for payment satisfactory to the referee laboratory.

(d) Prior to opening the split sample freezer/refrigerator, the Commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and such other information as the official veterinarian may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample. The split sample chain of custody form requirements are:

1. The date and time the sample is removed from the split sample freezer/refrigerator;
2. The sample number;
3. The address where the split sample is to be sent;
4. The name of the carrier and the address where the sample is to be taken for shipment;
5. Verification of retrieval of the split sample from the freezer/refrigerator;
6. Verification of each specific step of the split sample packaging in accordance with the recommended procedure;
7. Verification of the address of the referee laboratory on the split sample package;

8. Verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and

9. The date and time custody of the sample is transferred to the carrier.

(e) A split sample shall be removed from the split sample freezer/refrigerator by a Commission representative in the presence of a representative of the horsemen's association.

(f) The owner, trainer or designee shall pack the split sample for shipment in the presence of the representative of the Commission, in accordance with the packaging procedures recommended by the Commission. A form shall be signed by both the horsemen's representative and the Commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

(g) The package containing the split sample shall be transported in a manner prescribed by the commission to the location where custody is transferred to the delivery carrier charged with delivery of the package to the Commission-approved laboratory selected by the owner or trainer.

(h) The owner, trainer or designee and the Commission representative shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(i) The split sample chain of custody verification form shall be completed and signed by the representatives of the Commission and the owner or trainer. A Commission representative shall keep the original and provide a copy for the owner or trainer.

(j) If the split sample does not arrive at the referee laboratory because of an act of God or other condition beyond the control of the Commission, the findings in the original sample shall serve as *prima facie* evidence of any medication violation.

#### (4) Frozen Samples

The commission has the authority to direct the official laboratory to retain and preserve by freezing samples for future analysis. The fact that purse money has been distributed prior to the issuance of a laboratory report from the future analysis of a frozen sample shall not be deemed a finding that no drug substance prohibited by 205 CMR 4.00 has been administered.

#### (5) Suspicious Substances

The representatives of the Commission may take for analysis samples of any medicine or other materials suspected of containing improper medication or drugs which could affect the racing conditions of a horse in a race, which may be found in the stable area or elsewhere on the track or in the possession of any person connected with racing on such tracks.

### **4.56: Postmortem Examinations**

(1) The Commission may require a postmortem examination of any horse that dies or is euthanized on association grounds.

(2) The Commission may require a postmortem examination of any horse that dies or is euthanized at recognized training facilities within this jurisdiction.

(3) If a postmortem examination is to be conducted, the Commission shall take possession of the horse upon death for postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse.

(4) If a postmortem examination is to be conducted, the Commission or its representative shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization. The Commission may submit blood, urine, bodily fluids, or other biologic specimens collected during a postmortem examination for analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation.

(5) All licensees shall be required to comply with postmortem examination requirements as a condition of licensure. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the owner or the owner's authorized agent to determine and address any insurance requirements.

#### **4.57: Horseshoers**

(1) An applicant for a license as horseshoer shall:

(a) be at least 18 years of age;

(b) be qualified, as determined by the stewards and horseshoer consultant, by reason of experience, background and knowledge of horseshoing. A horseshoer's license from another jurisdiction, having been issued within a prior period as determined by the Commission, may be accepted as evidence of experience and qualifications.

(c) Evidence of qualifications may require passing one or more of the following:

1. a written examination;

2. an interview or oral examination; and

3. a demonstration of practical skills in horseshoing.

(d) Applicants not previously licensed as a horseshoer shall be required to pass a written/oral examination, demonstrate practical skills and submit at least two written statements as to the character and qualifications of the applicant.

(2) No person shall be eligible for an owner or trainer license if, during the term of such license, that person would practice as a farrier with horses racing under the jurisdiction of the Commission; provided, however, that a duly licensed owner may personally shoe a horse owned by him or her upon applying for and receiving a certificate of fitness therefore from the Commission.

***Proposed Changes to 205 CMR 6.00  
Pari-mutuel rules for thoroughbred racing,  
harness racing, and greyhound racing.***

***Massachusetts Gaming Commission,  
Racing Division  
March 28, 2013***

**205 CMR 6.00: Pari-mutuel rules for thoroughbred racing, harness racing, and greyhound racing.**

Section

- 6.01: General Rules
- 6.02: Records
- 6.03: Pari mutuel Tickets
- 6.04: Pari mutuel Ticket Sales
- 6.05: Advance Performance Wagering
- 6.06: Claims for Payment from Pari mutuel Pool
- 6.07: Payment for Errors
- 6.08: Betting Explanation
- 6.09: Display of Betting Information
- 6.10: Canceled Contests
- 6.11: Refunds
- 6.12: Coupled Entries and Mutuel Fields
- 6.13A: Pools Dependent Upon Betting Interests; Thoroughbreds
- 6.13B: Pools Dependent Upon Betting Interests; Harness
- 6.13C: Pools Dependent Upon Betting Interests; Greyhound
- 6.14: Prior Approval Required For Betting Pools
- 6.15: Closing of Wagering in a Contest
- 6.16: Complaints Pertaining to Pari mutuel Operations
- 6.17: Licensed Employees
- 6.18: Unrestricted Access
- 6.19: Emergency Situations
- 6.20: General Account Wagering
- 6.21: Account Opening
- 6.22: Refusals
- 6.23: Patron Information
- 6.24: Deposits
- 6.25: Sufficient Account Balance
- 6.26: Account Credits
- 6.27: Account Operation
- 6.28: Account Closure
- 6.29: General Calculation of Payoffs and Distribution of Pools
- 6.30: Win Pools
- 6.31: Place Pools
- 6.32: Show Pools
- 6.33: Double Pools
- 6.34: Pick Three Pools
- 6.35: Pick (n) Pools
- 6.36: Place Pick (n) Pools
- 6.37: Quinella Pools
- 6.38: Quinella Double Pools
- 6.39: Exacta Pools
- 6.40: Trifecta Pools

- 6.41: Superfecta Pools
- 6.42: Twin Quinella Pools
- 6.43: Twin Trifecta Pools
- 6.44: Tri Superfecta Pools
- 6.45: Twin Superfecta Pools

**6.01: General Rules**

(1) No minor shall be allowed to wager. No jockey in racing attire and no driver in colors shall enter the betting area.

(2) Each association shall conduct wagering in accordance with applicable laws and 205 CMR 6.00. Such wagering shall employ a pari-mutuel system approved by the Commission. The totalisator shall be tested prior to and during the meeting as required by the Commission. ~~(ARCI e. 9 g.p. § A)~~

(3) In horse and harness horse racing, in the event of a foul being claimed, the word "inquiry" shall be flashed forthwith on the result and mutuel board and announcement thereof made on the public address system.

(4) Whenever there is a difference in any pool or pools, i.e., a difference between the sum total of the wagers on the individual horses or dogs as compared with the grand total as shown by the Tote Board; the larger amount shall be used as the basis for computing the payoff.

(5) In horse racing, if a jockey's ~~weighs in short of weight by more than two pounds, and his mount is disqualified in consequence of short weight~~ pursuant to 205 CMR 4.11(6)(e)(11), all monies wagered on said horse shall be deducted from the pool and be refunded, unless the race has been declared official.

**6.29: General Calculation of Payoffs and Distribution of Pools**

(1) The commission deducted by the association from pari-mutuel pools shall not exceed the percentage set by M.G.L. c. 128A and that said percentage of the gross amount of money handled plus any additional amount required by law and the odd cents over any multiple of ten cents winning per dollar wagered. All associations licensed by the Commission to conduct racing under the pari-mutuel or certificate system of wagering must in all cases of a minus pool pay of \$1.4005 on each dollar wagered. The entire loss resulting from a minus pool shall be borne by the Association.



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UMass Amherst

**MGC Research Agenda  
Social & Economic Impacts of  
Gambling in Massachusetts**

Rachel A. Volberg, PhD  
Daniel Hodge, MA/MPP

**March 28, 2013**



DEPARTMENT OF PUBLIC HEALTH

# Features of our Proposal

- Creation of a first-of-its-kind **gambling monitoring system** that will
  - Provide all of the stakeholders in MA with a neutral database for strategic analysis & decision-making
  - Generate early warning signs of changes in social & economic impacts of new & existing forms of gambling in MA
  - Promote responsible gambling & mitigate problem gambling through refinement of services
- An **experienced, multidisciplinary, scientifically rigorous, Massachusetts-based team**
- A 'state of the art' **analytic framework** for socioeconomic impact studies and a **multiple methods research strategy**
  - Employs primary & secondary data collection/analysis
  - Quantitative & qualitative research methods
- A **comprehensive approach** that establishes the impacts of casino gambling:
  - At a Massachusetts-wide level
  - At a regional level (Greater Boston, Western MA, Southeastern MA)
  - At a local level

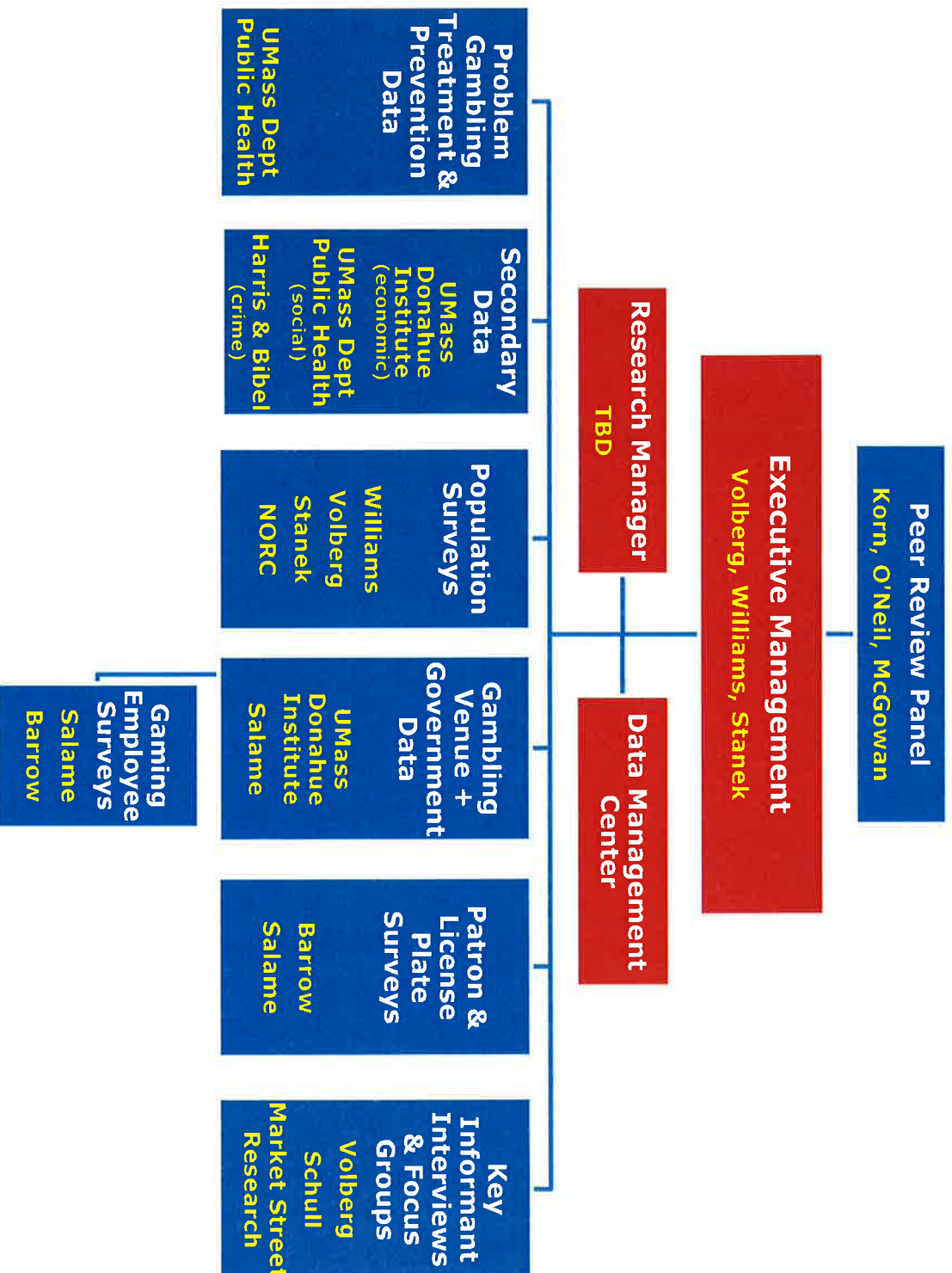


# Study Design

	Focus Groups	Key Informant Interviews	Patron Survey & License Plate Survey	Gaming Employee Survey	Gaming Venue & Government Data	Targeted Population Survey	General Population Survey	Treatment & Prevention	Secondary Data Collection & Analysis
Prior to 2012									
2012									
2013									
2014									
2015									
2016									
2017									
2018									
	Operational: Post-Opening	Operational: Construction			Baseline				



# Team Organization



# Comparing Baseline Survey Approaches

	<b>SEIGMA</b>	<b>M-GAME</b>
Sample Size	10,000 gen pop 5,000 online 4,000 targeted	6,000 gen pop --- ---
Sampling Frame	ABS	ABS
Survey Modalities	Web	Web
	SAQ	IVR
	Telephone	Telephone
Recruitment	Face-to-face	Face-to-face
	Invitation w/\$ incentive 2-week FU	Invitation w/\$ incentive 2-week FU
	Reverse matching Random selection w/in HH ---	Reverse matching Random selection w/in HH \$50 if Web/IVR



# Net Economic and Fiscal Impacts

- Primarily depends on net new economic activity
  - Gambling/nongambling revenue
    - How much revenue?
    - Mix of recapture, out-of-state, in-state redistribution?
  - Expenditures on suppliers/vendors in MA
  - Employees at facilities – within MA, in-migration, previously unemployed
  - Infrastructure investment
  - Property values
  - Urban versus suburban versus rural locations
- Compare to baseline and isolate impacts of casinos
  - \$900M currently being gambled out-of-state
  - Careful accounting of wealth/spending redistribution between different regions and economic sectors
  - Mixed methods to estimate impacts – econometric modeling, statistical testing with range of metrics
  - Proposed use of REMI PI+ model combined with measurement of actual impacts from primary and secondary data (jobs, wages, business start-ups, etc.)



# Economic Research: Comparing Approaches

## SEIGMA

## M-GAME

## Adjustment?

Emphasis on both actual and estimated impacts – track metrics over time	Emphasis on modeled/estimated impacts via REMI model	No change
Use of REMI PI+ for economic modeling (160 sector, 4 region)	Use of REMI PI+ for economic modeling (model configuration not known)	No change anticipated – discuss # of regions and industry sectors
Emphasis on accounting of economic, fiscal and non-monetary effects	Combined economic, fiscal, amenity effects	No change
Fiscal impacts from primary data and government sources	REMI-customized fiscal spreadsheets	Ensure sufficient fiscal modeling and how additional state revenue could generate economic impacts
Employee/population locations from surveys, UMDI Census Pop Estimates	Use of IRS data to track migration patterns	Will investigate possible use of IRS data to check pop migration



*Thank you*

**For additional information**

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