

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.

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.*

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

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

~~(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.

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.

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.

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

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.