



NOTICE OF MEETING AND AGENDA

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, and Chapter 107 of the Session Acts of 2022, notice is hereby given of a public meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

Wednesday | January 18, 2023 | 9:00 a.m.
VIA REMOTE ACCESS: 1-646-741-5292
MEETING ID/ PARTICIPANT CODE: 112 933 1271
All meetings are streamed live at www.massgaming.com.

Please note that the Commission will conduct this public meeting remotely utilizing collaboration technology. Use of this technology is intended to ensure an adequate, alternative means of public access to the Commission’s deliberations for any interested member of the public. If there is any technical problem with the Commission’s remote connection, an alternative conference line will be noticed immediately on www.massgaming.com.

All documents and presentations related to this agenda will be available for your review on the morning of the meeting date by visiting our website and clicking on the News header, under the Meeting Archives drop-down.

PUBLIC MEETING - #424

1. Call to Order – Cathy Judd-Stein, Chair

2. Review of Meeting Minutes
 - a. October 6, 2022 **VOTE**

3. Administrative Update – Karen Wells, Executive Director

4. Legal – Todd Grossman, General Counsel; Carrie Torrisi, Deputy General Counsel; Caitlin Monahan, Deputy General Counsel
 - a. Sports Wagering Regulations:
 - i. 205 CMR 212.00: *Additional Information and Cooperation* – Regulation and Amended Small Business Impact Statement for review and approval to finalize the promulgation process. **VOTE**
 - ii. 205 CMR 214.00: *Sports Wagering Application Fees* - Regulation and Amended Small Business Impact Statement for review and approval to finalize the promulgation process. **VOTE**
 - iii. 205 CMR 215.00: *Applicant and Qualifier Suitability Determination, Standards, and Procedures* – Regulation and Amended Small Business Impact Statement for review and approval to finalize the promulgation process. **VOTE**



Massachusetts Gaming Commission

- iv. 205 CMR 218.00: *General Sports Wagering Application Requirements, Standards, and Procedures* – Regulation and Amended Small Business Impact Statement for review and approval to finalize the promulgation process. **VOTE**
- v. 205 CMR 219.00: *Temporary Licensing Procedures* – Regulation and Amended Small Business Impact Statement for review and approval to finalize the promulgation process. **VOTE**
- vi. 205 CMR 220.00: *License Conditions*– Regulation and Amended Small Business Impact Statement for review and approval to finalize the promulgation process. **VOTE**
- vii. 205 CMR 221.00: *Sports Wagering License Fees* - Regulation and Amended Small Business Impact Statement for review and approval to finalize the promulgation process. **VOTE**
- viii. 205 CMR 233.00: *Sports Wagering Voluntary Self-Exclusion* - Regulation and Amended Small Business Impact Statement for review and approval to finalize the promulgation process. **VOTE**

5. Commissioner Updates

6. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that this Notice was posted as “Massachusetts Gaming Commission Meeting” at www.massgaming.com and emailed to regs@sec.state.ma.us. Posted to Website: January 12, 2023 | 8:30 a.m. EST

January 11, 2023

Cathy Judd-Stein

Cathy Judd-Stein, Chair

If there are any questions pertaining to accessibility and/or further assistance is needed, please email crystal.beauchemin@massgaming.gov.



Massachusetts Gaming Commission

Massachusetts Gaming Commission

Meeting Minutes



Date/Time: October 6, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 810 4737

The Commission conducted this public meeting remotely utilizing collaboration technology. Use of this technology was intended to ensure an adequate, alternative means of public access to the Commission’s deliberations for any interested member of the public.

Commissioners Present:

- Chair Cathy Judd-Stein
- Commissioner Eileen O’Brien
- Commissioner Bradford Hill
- Commissioner Nakisha Skinner
- Commissioner Jordan Maynard

1. [Call to Order](#) (00:07)

Chair Judd-Stein called to order the 396th Public Meeting of the Massachusetts Gaming Commission (“Commission”). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Approval of Meeting Minutes](#) (00:36)

The *public meeting minutes* were included in the Commissioner’s Packet on pages 4 through 11.

Commissioner Hill moved that the Commission approve the minutes from the June 9, 2022, public meeting that are included in the Commissioner’s Packet, subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner O’Brien.

Roll call vote:
Commissioner O’Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Abstain.

Chair Judd-Stein: Aye.
 The motion passed unanimously, 4-0 with one abstention.

3. [Legal Division](#) (1:24)

a. Racing Application Update

Deputy General Counsel Caitlin Monahan provided a brief update on the status of horse racing applications received prior to the October 1, 2022, deadline. She stated that Plainridge Park Casino had filed a renewal license application for harness horse racing located in Plainville. She stated that the Commission had also received an application for a new thoroughbred racetrack from the Commonwealth Equine and Agricultural Center LLC for a proposed track in Hardwick. She stated that the Commission would need several hearing dates scheduled for this process, in addition to public hearing dates in the host communities so that the public can provide input on the applications.

b. [Tentative Hearings and Meetings Schedule](#) (2:48)

Crystal Beauchemin, Chief Administrative Officer to the Chair and Special Projects Manager, stated that holds had been placed for October 17, October 18, October 28, October 31, November 1, and November 3. She stated that due to the process the hearing should occur prior to 30 days, but she still needed to confirm the locations and times.

The *Racing Application Proposed Hearing Schedule* was included in the Commissioner’s packet on page 12.

4. [Finance and Legal Divisions](#) (3:46)

a. Daily Fantasy Sports Tax Deduction related to Amended MGL c. 12 § 11M ½; MGL c. 23N § 3 and §14(a)(iii)

Chief Financial and Accounting Officer (“CFAO”) Derek Lennon explained that the proposed regulation 205 CMR 240 was for taxing daily fantasy sports and sports wagering. He explained that the tax rate for in-person sports wagering was 15% of the adjusted gross receipts, 20% of the adjusted gross receipts for mobile sports wagering, and 15% of the adjusted gross receipts for daily fantasy sports wagering.

CFAO Lennon stated that fantasy sports wagering was still regulated by the Attorney General’s office, but provisions in G.L. Chapter 23N designated the Commission as the tax collecting entity for both fantasy sports wagering and sports wagering. He noted that the legislation was silent as to the taxation of promotional play. The *draft regulation and small business impact statement* was included in the Commissioner’s Packet on pages 13 through 19.

CFAO Lennon explained that the adjusted gross receipts calculation subtracted federal excise tax and payouts to patrons from the total gross. He stated that the statute required operators to close out adjusted sports wagering receipts daily, and to file with the Commission prior to the 15th of

each month. Chair Judd-Stein asked if this was a new tax collection. CFAO Lennon stated that the taxation of fantasy sports wagering is new, and that the Commission staff will have to work with the Attorney General's Office regarding enforcement.

Commissioner O'Brien noted that the legislation required any person offering fantasy sports contests to register with the Commission and asked if the form for registering had been created. CFAO Lennon stated that the form had not been generated yet, but it will be a simple form to ascertain understanding of who the operators are.

Commissioner O'Brien inquired as to whether the obligation to pay tax was effective upon the effectuation of the statute or the implementation of the regulation. General Counsel Todd Grossman explained that the Commission could collect taxes retroactively dating back to August 10, 2022, as the sports wagering act was put into place by emergency preamble and effective immediately upon enactment. He stated that the regulation timeline does not affect the obligations of registrants to pay taxes. Chair Judd-Stein asked if the fantasy sports wagering registration form could be brought before the Commission on October 13, 2022. CFAO Lennon replied that it was possible to have the form for that date.

CFAO Lennon stated that if the 15th calendar day of a month fell on a weekend or holiday the sports wagering taxes would have to be filed prior to the 15th. He stated that the registrants and operators would have to file through Electronic Funds Transfers, and would likely be doing wire transfers. He stated that the Commission would have to set up wire transfers with the fantasy sports wagering entities and sports wagering operators.

Commissioner O'Brien sought clarification related to the provision excluding credit extended or collected by the operator for purposes other than sports wagering and requested an example. CFAO Lennon explained that the provision was used to limit the tax collections to sports wagering and fantasy sports wagering. Commissioner O'Brien asked if the Commission should incorporate a cross-reference to the regulations that currently exist related to fantasy sports. Deputy General Counsel Monahan stated that the regulatory language could be incorporated into the section discussing statutory authority.

Commissioner Skinner expressed an interest in the solicitation of public comment on the regulations. General Counsel Grossman stated that if the regulation was enacted by emergency promulgation, the regulation would be enacted and then undergo the ordinary promulgation process including a public hearing in approximately four-to-six weeks.

Commissioner O'Brien stated that public comments are a concern in requests for emergency promulgation of regulations, and that an access point for the public should be institutionalized. She suggested a separate link be added to the Commission website to link the regulations being considered for the purpose of transparency and public input. Commissioner Maynard agreed, but stated he liked the flexibility of the emergency regulations.

Chair Judd-Stein asked if the suggestion would allow for public input to be incorporated prior to the public hearing. Commissioner Skinner stated that if there is a hearing with significant comment to respond to, the Commission should have a process in place. Chair Judd-Stein stated

that if there was strong negative feedback, the Commission could reconvene to address it prior to the hearing.

Commissioner Maynard asked if the exclusion of merchandise or value awarded from the definition of cash prized was standard. CFAO Lennon stated that the statute mirrored the language of the gaming statute in that provision. Chair Judd-Stein stated that promotional play was a problem the Commission would need to address.

- b. [Draft 205 CMR 240: Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts Tax Remittance and Reporting, and Small Business Impact Statement](#) (30:22)

The *draft regulation and small business impact statement* included in Commissioner’s Packet on pages 13 through 19.

Commissioner O’Brien moved that the Commission approve the small business impact statement and the draft of 205 CMR 240 as included in the Commissioner’s Packet and discussed and amended here today. The motion was seconded by Commissioner Skinner.

Commissioner O’Brien noted that she bifurcated the motion to separate a discussion of whether staff be authorized to use the emergency promulgation process. Commissioner Maynard sought clarification on the bifurcation. Commissioner O’Brien stated that bifurcating the motion allowed the Commission to discuss the emergency process without specifically addressing the language of the regulation.

Roll call vote:

<i>Commissioner O’Brien:</i>	<i>Aye.</i>
<i>Commissioner Hill:</i>	<i>Aye.</i>
<i>Commissioner Skinner:</i>	<i>Aye.</i>
<i>Commissioner Maynard:</i>	<i>Aye.</i>
<i>Chair Judd-Stein:</i>	<i>Aye.</i>

The motion passed unanimously, 5-0.

Chair Judd Stein introduced Lon Povich from Anderson and Krieger to explain the emergency promulgation process. Mr. Povich stated that emergency regulations were permissible under the Commonwealth’s regulatory scheme, and that General Law Chapter 23N stated the Commission might choose to utilize emergency regulations. He explained that the standard for emergency promulgation was to protect public health, public safety and general welfare. He stated that there was an imperative in the legislation to move quickly on sports wagering, and that it seemed appropriate to use emergency regulations to protect the public interest. He stated that the decision was the Commission’s, but it should be decided on a case-by-case basis.

Chair Judd-Stein asked if there was a significance that the emergency preamble was used by the legislature to enact the act immediately upon signing. Mr. Povich stated that there were three places the legislatures urgency was highlighted: first, that it was enacted as emergency

legislation; second, the inclusion of a somewhat unique provision that called for emergency regulations; and third, the inclusion of temporary licensing language.

Commissioner O'Brien stated that emergency regulations should be used on a case-by-case basis to allow the Commission the opportunity to discuss the regulations in public view. She stated that she had little concerns about this regulation as it mimics other statutory language. Commissioner Skinner inquired if this regulation should be promulgated on an emergency basis as the Commission had been advised their authority to collect taxes was retroactive to August 10, 2022. Chair Judd-Stein stated it was dependent upon how fast the Commonwealth wanted the money in a public deposit.

Commissioner Hill stated that from his past experience in the legislature that they would prefer the collection to be expedited. General Counsel Grossman stated that there is no legal requirement to enact the regulation by emergency, but there was a policy question of how quickly the Commission wanted to begin the process of collecting taxes.

Commissioner Maynard asked if the caselaw had language related to the emergency promulgation process. Mr. Povich stated that it did not, but different forms of flexibility existed, and it should be decided on a case-by-case basis in order to identify tools to allow the process to more efficiently

Commissioner Skinner inquired as to whether this regulation should be passed on an emergency basis. Chair Judd-Stein asked for Commissioner Skinner's opinion on the matter. Commissioner Skinner stated that she did not believe the regulation needed to be done through emergency promulgation as the Commission's ability to collect taxes was retroactive. She stated as the tax forms and registration forms would not be presented until the following week, she was unsure this regulation had to be enacted on an emergency basis. General Counsel Grossman stated that the emergency language was included in the draft motion to frame the issue for the Commission and that it was not intended to be a recommendation.

Commissioner O'Brien asked if the fantasy sports wagering funds had been dedicated to certain funds or if they were dedicated to the general fund. CFAO Lennon stated that the fantasy sports wagering taxes were to be disbursed between several funds including the general fund, public health trust fund, competitive work force trust fund and other funds set up by the legislature. Commissioner Skinner noted that 45% of the fantasy sports wagering funds would go to the general fund.

CFAO Lennon stated that the funds were remitted monthly, but if the money was not there the Treasurer's Office could do short-term borrowing, until those tax funds are received, to cover for the revenue. Commissioner Skinner inquired as to whether the tax collection for fantasy sports should begin prior to the tax process for sports wagering kicking in on the launch date. CFAO Lennon stated that there were potential issues in identifying the registrants for daily fantasy sports wagering.

Commissioner Maynard asked if registrants would benefit from the regulation being enacted by ordinary process rather than emergency promulgation and asked if it was a detriment to the

Commonwealth that there had not been a discussion with the registrants. CFAO Lennon explained that smaller operators may not be accruing tax funds or understanding their tax liability, and that notice has to be made to the registrants. He stated that larger operators are likely already aware of their tax liability.

Commissioner Hill stated that he was concerned about smaller companies not being aware of their tax liability, and that it could be a financial hit if they are not prepared for retroactive collection. He stated that he did not foresee controversy with this regulation and was willing to implement it through the emergency construct.

Commissioner O'Brien raised the issue that the regulation was silent as to the consequences for failure to comply and asked if that should be addressed in the regulation. CFAO Lennon stated that the Attorney General's Office requested the regulation refer to their investigation regulations. General Counsel Grossman stated that criminal enforcement is under the purview of the Attorney General, but the Commission could impose civil penalties.

Commissioner O'Brien asked if the Commission or Attorney General could revoke a registrant's license if they did not pay their tax obligation. General Counsel Grossman stated that the fantasy sports wagering operators were not licensed, and that the only options available were a fine or criminal penalty. Commissioner O'Brien asked if the motion language was sufficient to incorporate the discussion following the vote. Commissioner Hill stated he felt more comfortable with voting again.

Commissioner O'Brien moved that the Commission approve the small business impact statement as well as the draft of 205 CMR 240 as included in the packet and as further discussed and amended here today. The motion was seconded by Commissioner Hill.

Roll call vote:

- Commissioner O'Brien: Aye.*
- Commissioner Hill: Aye.*
- Commissioner Skinner: Aye.*
- Commissioner Maynard: Aye.*
- Chair Judd-Stein: Aye.*

The motion passed unanimously, 5-0.

Commissioner O'Brien moved that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter to begin the regulation promulgation process and further moved that staff be authorized to modify chapter or section numbers or titles to file additional regulation sections as reserved or to make any other administrative changes as necessary to execute the regulation promulgation process. The motion was seconded by Commissioner Hill.

Commissioner Skinner stated that her vote in favor was with the understanding that the finance team would have adequate timing to prepare for the implementation of the regulation.

Roll call vote:

Commissioner O'Brien: Aye.
 Commissioner Hill: Aye.
 Commissioner Skinner: Aye.
 Commissioner Maynard: Aye.
 Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

5. [Sports Wagering Application](#) (59:50)

Executive Director Karen Wells stated that there would be three components related to the sports wagering application, which would include presentation of the regulation, presentation of the draft application, and discussion of the sports wagering process.

[a. DRAFT 205 CMR 211: Category 1, Category 2, and Category 3 Sports Wagering Operator License Applications, and Small Business Impact Statement](#) (1:01:13)

Deputy General Counsel Carrie Torrisi presented a draft of 205 CMR 211 related to sports wagering applications. Deputy General Counsel Torrisi explained that the regulation outlined the process to submit an application for a sports wagering operator license, including information from the applicant and required fees. She stated that the language in the regulation incorporated language from the Commission’s gaming regulations and similar sports wagering regulations from Indiana. The *draft regulation and small business impact statement* were included in the Commissioner’s Packet on pages 22 through 26.

Chair Judd Stein sought clarification related to the scoping survey. Director of the Investigations and Enforcement Bureau (“IEB”) Loretta Lillios stated that the survey, which was included in the Commissioner’s Packet on page 20, assisted in identifying qualifiers at the entity and individual level for each applicant. She explained that the statutory factors defining qualifiers were ownership and control of the applicant entity. She stated that the scoping survey asked applicants to provide information about potential qualifiers, and that the IEB reviews the materials and designates entities and individuals that are required to submit to the background review process.

Commissioner Skinner asked if the survey was required to be completed prior to the application for an operator’s license. Director Lillios stated that the scoping survey was a prerequisite to the application. Chair Judd-Stein asked if it had to be completed prior to the application, or if it could be submitted concurrently. Director Lillios clarified that it was the step prior to the application submission process. Executive Director Wells stated that for the purposes of the regulation the scoping survey is considered part of the application, as the Commission can’t tell applicants which entities and individuals should be submitted as qualifiers until after the scoping survey is performed.

Commissioner Skinner sought clarification as to the language stating that failure to complete the scoping survey would deem the application administratively closed, as the application would not have been submitted when the scoping survey was performed. Deputy General Counsel Torrisi

stated that the scoping survey is part of the larger application being reviewed. Director Lillios noted that closing of an application could be cured by providing the survey and expressed an interest in assigning a deadline for the scoping survey to assist in processing anticipated timelines.

Commissioner Skinner asked how non-completion of the scoping survey could close the application if it is the step prior to filing the application. Executive Director Wells clarified that the survey was the threshold requirement for completing the application. Deputy General Counsel Torrisi suggested language to clarify this issue. Commissioner O'Brien inquired whether the confusion was due to not clearly delineating that there were multiple components to the application, and suggested the legal division should add language to address the applicant's right to cure the issue prior to the deadline.

Director Lillios stated that the Commission can't begin to take applications without undergoing the scoping survey first. Commissioner O'Brien suggested the breakdown of steps to apply should be included in the regulation. Chair Judd-Stein asked if there were any concerns about requiring the scoping survey be due prior to the application. The Commission had a consensus that there were no concerns. Deputy General Counsel Torrisi stated she would amend the regulation to include language identifying the required forms.

Commissioner O'Brien asked if there was a delineation between negligent misrepresentation or omission and intentional misrepresentation under the regulation. Mina Makarious from Anderson and Krieger explained that it would be beneficial to the Commission to have discretion afforded to them in the regulation, and that as written the regulation would not limit the Commission's disciplinary discretion.

Commissioner O'Brien sought clarification regarding the definition of extraordinary circumstances in the regulation. Deputy General Counsel Torrisi stated she would check to see if the language originally came from Massachusetts' gaming regulations or Indiana's sports wagering regulations. Mr. Makarious clarified that the language left room for discretion from the Commission.

Commissioner Hill asked if the scoping survey asked about the applicant's potential fines or penalties in other jurisdictions. Deputy General Counsel Torrisi explained the information related to penalties in other jurisdictions was included in the application itself. Director Lillios stated that IEB would summarize any self-disclosures from the Business Entity Disclosure ("BED"), and that compliance history and license history would be a part of that information. Commissioner Maynard stated the decision was made to remove that question from the application to make the application more navigable, and that the question was included in supplemental forms.

Commissioner O'Brien suggested the inclusion of a question related to whether an operator had submitted an application in another jurisdiction and been denied, but that she did not want to overburden the applicants. Executive Director Wells explained that the big issues are with licensing in other jurisdictions and compliance history, and that those will be concerns considered during the truncated suitability review process.

Commissioner Skinner stated that she did not recall a Commission discussion related to the truncated suitability criteria, and that four options had been presented to choose from, and was uncertain how this process would work with temporary licensing. Chair Judd-Stein stated that those questions could be saved for after the discussion of what to include in the application rather than the associated forms.

Commissioner Hill stated it would be acceptable to have the staff provide this information to the Commission, and it did not have to be included in the application. Commissioner Maynard stated a preference for allowing the IEB to use the forms presented for their investigation. Director Lillios stated the IEB would need authority for the BED and other supplemental forms.

Chair Judd-Stein explained her understanding that the scoping survey would be considered within the four corners of the application and asked if the other pieces of the application would have a deadline for submission. Executive Director Wells expressed that it may not be reasonable in the shorter timeframe, and they may be due at a later point. She stated that individual qualifiers could be reviewed for truncated suitability after the Commission had lowered the number of applicants down to seven finalists.

Commissioner Hill suggested that the Commission should wait on voting on this matter until edits were presented, and that he wanted to see the changes discussed made prior to voting. Commissioner O'Brien expressed an interest in putting out the regulation for public comment quickly.

Commissioner Skinner stated that she felt the agenda items put forth were based upon an arbitrary, pre-determined timeline that had yet to be discussed. Chair Judd-Stein stated the timeline was later in the agenda and there will be time for Commission input. Commissioner O'Brien agreed with Commissioner Skinner as the agenda items are so intertwined.

b. [Presentation of Sports Wagering Operator Draft Application Form](#) (1:55:32)

Executive Director Wells, General Counsel Grossman, Director Lillios, and Director of Research and Responsible Gaming Mark Vander Linden presented the sports wagering application. Topics included instructions, responsible gaming, technology, suitability, attestation, and waiver of liability, processing fees, public records requests, and compliance. General Counsel Grossman noted that highlighted sections would be edited to include information that was to be determined. The *draft application* was included in the Commissioner's Packet on pages 27 through 48.

Commissioner Skinner asked if the scoring criteria, to be discussed later in the agenda, would be incorporated into the application once it had been decided. Executive Director Wells stated that all potential applicants who filed notices of intent could be emailed information regarding the scoring criteria. Commissioner Skinner expressed an interest in that process as a matter of transparency. Commissioner O'Brien suggested language to the application to clarify that there would be no attempts to contact the commissioners during the application process.

Chair Judd-Stein asked what the means of payment for the nonrefundable processing fee would be. CFAO Lennon stated the applicants would contact the revenue office directly, as there had been issues in the past with wiring instructions and bank accounts being public. Chair Judd-Stein asked what the processing fee funds would be used for. CFAO Lennon stated that the fees would offset the cost of investigation and be used for background suitability and the competitive application process.

Executive Director Wells stated that staff recommended keeping the application electronic and submitting files through the Commission's secure file transfer site. She stated that Commission staff would work with the applicants related to any issues regarding electronic notarization. Commissioner O'Brien suggested edits to clarify section numbers.

Commissioner O'Brien stated that the casino licensing process was successful in notifying the applicants of which forms submitted may not be exempt from public records requests. Commissioner Maynard asked why a section giving legal advice to the entities would be included in the application. General Counsel Grossman stated that there was an option to direct the entities to the Attorney General's policy on public records, but it could lead to a lack of uniform understanding regarding the Commission's discretion as keeper of records to apply the law as interpreted.

Chair Judd-Stein sought clarification about the discretion and stated that the Commission has the obligation to abide by public records laws. General Counsel Grossman stated that whether a submission is a trade secret or detrimental to the entity is not always clear. Chair Judd-Stein stated some licensees may have confusion about the notion of confidentiality, and she was uncertain if the Commission should open up discretion. Commissioner O'Brien noted it would be helpful information to the applicants to inform them what the Commission did not consider to be trade secrets.

Commissioner Maynard stated concerns that the information given may not necessarily comply with the Secretary of the Commonwealth's findings. Commissioner O'Brien stated that notice regarding which categories would not be exempted from the public records law should be provided. Chair Judd Stein stated that the applicants should be on notice that they are subject to disclosure. General Counsel Grossman explained this section was based on the success of similar sections in the RFA-2 process for casino gambling, and applicants could identify which documents they believed were exempt.

Chair Judd-Stein noted that even if the Commission presumes items are exempt, that presumption could be rebutted by the requestor. Chair Judd-Stein asked if the Commission had lost any of their presumptions related to exemptions of public records requests. General Counsel Grossman stated that the Commission had never been challenged regarding the dissemination of information under the RFA-2 process.

Commissioner O'Brien suggested flagging documents the Commission did not believe to be part of the statutory exemption. Commissioner Skinner agreed with Commissioner O'Brien, and Commissioner Hill stated approval in including the language in the application. Commissioner Hill stated that some of the applicants might not be from Massachusetts and have limited

understanding of Massachusetts' unique public records law. Commissioner Maynard expressed an interest in educating applicants on this issue, but asked that the Secretary of the Commonwealth review the information in the application. Commissioner Skinner asked if the Secretary of the Commonwealth provided advisory opinions. Mr. Povich stated that he was unfamiliar with that office providing formal opinions, but it doesn't hurt to ask. Executive Director Wells stated that public records requests would be returned to later.

Commissioner O'Brien suggested edits to clarify the entity's identifying information in the case of potential foreign applicants. Director Lillios noted that applicants are typically US based entities even if qualifiers are foreign, but that inclusive language could be used.

Commissioner Skinner sought edits to clarify the language related to information regarding the number of bets placed. CFAO Lennon explained the information may be duplicative with other portions of the application. Chair Judd-Stein stated some of the language would be duplicative, but compliance was core to the decision and the Commission wanted straightforward answers to the question.

Commissioner Skinner asked if the staff anticipated sharing operator applications with the Commission for the Commission to review all attachments. Director Lillios stated that dependent upon the timeline IEB may have to bifurcate entity qualifier investigation from individual qualifier investigation. She stated any applications received would be available to the Commission for the competitive process and suitability analysis.

Commissioner O'Brien suggested including a question to ensure horseracing operators would provide additional information about their plans to prevent underage patrons from placing sports wagers. Commissioner O'Brien noted that there was not a question about diversity equity in the ownership and corporate structure of entities, and suggested language to include that.

Commissioner O'Brien suggested a question tailored to understanding the applicants' Massachusetts spending. Commissioner Maynard stated that question might fit better in the community engagement section. CFAO Lennon stated that community engagement was typically with chambers of commerce and Massachusetts marketing partnerships to promote Massachusetts businesses, but the language could be more clear.

Commissioner Hill stated that requesting estimated marketing budget would risk the entity's disclosing confidential information. Chair Judd-Stein asked whether advertising as a percentage of overall budget would be preferable. Director Vander Linden stated that operators may prefer a percentage of their budget rather than a precise number. CFAO Lennon stated that the percentage of overall budget would not give a precise perspective as it scaled based upon the size of the operator. Commissioner O'Brien suggested the application note that the Commission raised concerns and ask applicants how they plan to mitigate concerns.

Commissioner Hill suggested that instead of asking for the applicants' marketing budget, the application could require portions of their marketing budget to be utilized for responsible gaming policies. Chair Judd-Stein stated that there were concerns over the intensity and frequency of sports wagering advertisements, and that the Commission should know the applicant's plans for

mitigation. She expressed she was unsure she could parse the percentage information to understand if it matched Commission goals, and suggested the language be open-ended. Commissioner O'Brien suggested a question related to whether the operator had received responsible gaming recognition or awards.

Commissioner O'Brien asked if there was merit in including a question about whether the applicant had been sanctioned in other jurisdictions for technological defects, as she had heard about an issue in another jurisdiction where operators had been sanctioned for accepting credit cards when it was prohibited. Regulatory Compliance Manager Sterl Carpenter noted the jurisdiction mentioned was in Iowa. Executive Director Wells stated that this concern is addressed in the general information section.

Commissioner Skinner asked if the vendor contracted to assist in drafting regulations could review the technology section of the application. Executive Director Wells replied that the contract was not yet in place, so staff would have to wait to do that. CFAO Lennon stated that new platforms might not have as much information available to submit until the applicant submitted their testing information. Executive Director Wells suggested additional language in the regulation to allow the Commission to ask for supplemental information

Commissioner O'Brien suggested the question related to diverse ownership should be moved to the diversity and inclusion provision rather than the financial stability section, and Commissioner Maynard agreed. Commissioner O'Brien asked how long the application would be posted for public comment. Chair Judd-Stein stated that the public comment period was dependent upon the timeline, and as the timeline keeps coming up as a factor that topic should be moved up in the agenda.

6. [Sports Wagering Implementation Timeline Discussion](#) (4:24:34)

a. Potential launch dates

Executive Director Wells presented a draft timeline for commencement of sports wagering and stated that the proposed timeline was not definitive and should be used to guide the conversation. Commissioner Skinner asked for the rationale behind the compressed timeline. Chair Judd-Stein stated that the truncated timeline did not necessarily mean the timeline was unreasonable or presented more risks.

Executive Director Wells stated that one issue is the uncertainty of the number of applicants for untethered category three licenses, as it was unclear how many of the entities which filed notices of intent would file applications. She explained that staff expected approximately twelve to fifteen applications for this category, but it may be more. She explained that significant numbers of applications and qualifiers would slow the suitability process. She explained the second issue with the speed of this process was the emergency regulation promulgation process, and in order to hit the proposed February launch date most regulations would have to be promulgated as an emergency.

Chair Judd-Stein asked if an assumption was being made about truncated suitability. Executive Director Wells stated that the sports wagering law, General Law Chapter 23N, distinguished itself from the casino gaming law, which required full suitability prior to licensure, and pushed for temporary licensing of sports wagering operators.

Executive Director Wells stated that the timeline was more efficient than other jurisdictions. Commissioner Skinner asked why this aggressive timeline was being offered over other timelines. Executive Director Wells stated that the proposed timeline was the earliest possible launch of sports wagering. Chair Judd-Stein asked if there were concerns about compromising integrity. Executive Director Wells replied that the timeline was consistent with the law and noted that many of the applicants had completed suitability in other jurisdictions, which may help alleviate concerns.

Chair Judd-Stein asked if qualifiers would be reviewed in the truncated temporary licensing review process. Executive Director Wells stated that qualifiers would be investigated after the applicant field was narrowed to seven following the competitive process. CFAO Lennon stated that GLI had seen similar processes in other jurisdiction and have knowledge related to addressing concerns and mitigation factors.

Director Lillios stated that this process is the inverse of the suitability investigation for gaming casinos, and that due the timeline most of the review would be on self-disclosed attested information rather than independently validated information. Chair Judd-Stein asked how long the process would be if individual qualifiers were not reviewed until later. Director Lillios stated that it would take a team a couple of weeks to perform truncated suitability, and full suitability would be performed after the issuance of a license.

Commissioner Maynard stated that if full suitability was required prior to launch it would be 2024 before a wager could be placed, and that the timeline presented was patron-centered. Commissioner O'Brien agreed it was patron-oriented, but as a regulator she wanted the process to be done in a manner maximizing benefit and minimizing harm. She stated that truncated suitability seemed to have been decided for the purpose of the timeline without a commission consensus and expressed frustration over the lack of conversation on this issue. She expressed concern that there may be more applicants than expected, which would extend the proposed timeline.

Executive Director Wells stated that the scoping survey would be returned prior to the application due date so that the IEB could begin the scoping process while awaiting applications. Chair Judd-Stein sought clarification as to whether scoping would include individual qualifiers. Executive Director Wells stated that scoping at this phase was limited to entity qualifiers. Executive Director Wells said ideally the scoping survey would be returned within five to seven days, and that the application and BED for entity qualifiers would be submitted within thirty days.

Executive Director Wells stated that in order for the structure to work, the assumption is made that qualifier entities would have recently filled out a BED for another jurisdiction, and that an entity not in another jurisdiction may struggle to complete the form on time. Chair Judd-Stein

asked if the entities may compete the BED prior to hearing back from the IEB. Executive Director Wells stated that scoping standard and the applicants should have an idea that it will need to be submitted. She stated that the advantage to this timeline is that the structure gets moving quickly, but stated that a disadvantage is applicants being deterred by an aggressive timeline.

Chair Judd-Stein stated that the timeline assumed 30-days between posting the application and the application deadline. Commissioner O'Brien stated that 30-days may be enough for category one applicants, but category two applicants had indicated they might not be postured for that period. She suggested a 60-day application window for category three licensees as they are not as situated currently. She expressed concern that a shorter timeline would limit smaller entities' ability to apply, and that staggering categories one and two would alleviate pressure on the timeline.

Commissioner Skinner agreed with Commissioner O'Brien and stated that a shorter timeline could create disadvantages to those newer to the sports wagering industry. Commissioner Skinner inquired whether the Commission should delay voting to finalize the timeline until they had a clearer understanding of how many applicants there were for category three.

Commissioner O'Brien expressed she did not believe it to be responsible to release the application without a period of public comment. Commissioner Maynard stated that concerns over smaller entities could be addressed by holding the awarding of some of the seven licenses for applicants who were not as immediately situated. He stated that none of the companies at the operator roundtable expressed concerns about completing the application on time. Commissioner Skinner noted that the operator roundtable focused on specific questions, and she did not expect them to comment on that issue. Commissioner O'Brien stated that the Commission could query interested parties to see if 30 days was too short or 60 days was too long.

Commissioner Hill asked how long the public comment period on the application would be, expressed an interest in the first bets to be placed by the Superbowl, and suggested a 45-day application window as a compromise. Chair Judd-Stein noted that the proposed timeline accommodated for a category one launch date prior to the Superbowl. Commissioner Hill stated that he wanted to launch category three operators for the beginning of March Madness NCAA finals. Commissioner O'Brien stated that she envisioned a two-week public comment period due to the upcoming holiday shortening the following week.

Commissioner O'Brien suggested posting the application for two weeks for public comment, returning to the Commission on October 27, 2022. Commissioner Maynard agreed with Commissioner Hill's goal of launch prior to the Superbowl and expressed an interest in compressing some of the public comment days.

Commissioner Skinner raised concerns that the timeline may not be consistent with best practices or without risk. Chair Judd-Stein stated that the timeline was a product of the Executive Director and staff input. Commissioner Skinner clarified that she had concerns related to advancing the Superbowl as a deadline prior to the timeline being discussed. Commissioner Maynard stated that he wanted the timeline to be more aggressive and patron-centered. Executive

Director Wells stated that the starting point for the proposed timeline was the minimum amount of time required to launch sports wagering. She stated that policy implications would have to be discussed but adding to the timeline would delay the launch date.

Executive Director Wells noted that category two applicants were not included in the timeline as more information related to their plans and partners was needed. Commissioner O'Brien echoed Commissioner Skinner and asked what the best practice would be if the proposed timeline was the minimum time required to launch.

Chair Judd-Stein asked what the industry standard is for timelines and expressed concern that a March launch may not be viable. Executive Director Wells stated that the timeline was dependent upon a number of factors, such as public comment period, and that extra days could cause the Commission to miss the Superbowl deadline. Commissioner O'Brien stated that the launch date of the Superbowl was found by establishing a launch date and working back and asked realistically how long it would take to process the applications.

Chair Judd-Stein suggested a compromise of a one-week public comment period. Executive Director Wells put a placeholder deadline for the application for 45 days. CFAO Lennon stated that the 30-day application deadline was the bare minimum for completion of the application, and if the bare minimum is used the staff should advise the Commission of the unique risks. He stated that a shorter application period would negatively impact smaller entities, effect the timeline, and limit the best applications coming forward. He stated that if the Commission could accept those risks a 30-day application deadline is acceptable but suggested at least 45 days if the Commission is not willing to accept those risks.

Commissioner O'Brien expressed concerns over not doing an open-source public record search for individual qualifiers during the truncated review process. Executive Director Wells stated that individual suitability analysis would occur later in the timeline. Commissioner O'Brien stated that she was not comfortable with that risk and asked how the timeline would be affected by moving some initial individual qualifier investigations to the frontend of the process. Director Lillios stated that the multijurisdictional personal history disclosure form would be challenging for the applicants to complete in the timeframe allotted.

Chair Judd-Stein asked if the proposed review of individuals would be for each of the applicants or the seven finalists after the competitive process. Commissioner O'Brien expressed an interest in an open-source search for all applicants. Director Lillios stated it would be difficult to consider how the timeline would be affected until the number of applicants was known.

Executive Director Wells suggested the use of self-scoping with identification of potential individual qualifiers. Director Lillios stated that the process could work with 45 days and the self-identification of individual qualifiers.

Chair Judd-Stein asked if the regulation process in the timeline seemed reasonable to the legal division. David Mackey from Anderson and Krieger stated that his firm was confident in being able to draft the regulations for whatever timeframe the Commission envisioned. Deputy General Counsel Monahan stated that extra time would be beneficial for the legal division for the

regulation review process. She suggested an additional week between each regulation for time to consult with stakeholders and Commission review. Executive Director Wells stated that the proposed timeline prioritized regulations for category one operators, and that there is concern that extended review time might delay the retail sports wagering launch.

Deputy General Counsel Monahan stated that there was a lot of overlap between the regulations for categories one and three. Chair Judd-Stein stated that prioritizing category one's launch may delay category three's launch should the Commission vote on a staggered launch. Commissioner O'Brien noted that the Commission only had thirty days to review the applications in the proposed timeline, in addition to the other processes required for launch.

Chair Judd-Stein stated that thirty days to review and score applicants was an aggressive timeline, but it is where she would start in order to launch category one operators on time. Commissioner Maynard stated that the scoping survey and application should be released as soon as possible to learn how large the field of interest in the application is. Director Lillios suggested the applicants have seven days to complete the scoping survey. Commissioner Maynard suggested that the scoping survey be due the following Monday due to a shortened holiday week. Commissioner Skinner noted that in order to release the survey, the regulation would have to be promulgated as an emergency and expressed concern over public comment. Executive Director Wells stated that the emergency promulgation process allowed for public comment after the survey had been posted.

Executive Director Wells stated that the advantage of retail sports wagering was that the operators had already been identified and were working with gaming agents. Commissioner Skinner stated that the regulations required for category one also overlapped with regulations required for category three, and expressed concern that the regulation timeline would not give staff enough time to comply with the compressed timeline.

Commissioner Skinner inquired what issues would arise if retail sports wagering was not launched by the Superbowl. Commissioner Maynard stated that the legislation expected quick procedure, and similar emergency regulations had been implemented in Iowa, Indiana, and Connecticut. He expressed concerns that Massachusetts residents would place wagers with illegal operators, which was a concern for public safety.

Commissioner Skinner stated that while these were valid reasons, she did not want to compromise the process and wanted the public to have the opportunity to weigh in. Commissioner O'Brien agreed and stated that speed is not the sole measure of performance. She expressed reservations on a date-determinative outline when compared to best practices. Chair Judd-Stein asked what date Commissioners Skinner and O'Brien would be comfortable with. Commissioner O'Brien expressed a preference for whatever time the staff reasonably needed, as the legal division stated they would prefer more time.

Executive Director Wells stated that the legal division may need more time than envisioned to complete the regulation promulgation process for the category one launch. General Counsel Grossman stated that the timeline was possible, but the legal division might need more opportunity for review of the regulations, and that developing a timeline for the regulations

would be difficult currently. Chair Judd-Stein stated that the Commission could pivot to accommodate teams but expressed concern about delaying the timeline.

Director Lillios expressed confidence in the IEBs ability to review the category one operators and vendors prior to the proposed launch date.

Chair Judd-Stein asked if the Commission was comfortable voting on a staggered retail launch date in January. Commissioner Skinner raised concerns in the legal division being able to complete their duties by January. General Counsel Grossman stated that the legal division could be ready for a January launch.

Commissioner Maynard stated a staggered launch is acceptable, but he was worried about a lull in preparations between the launch of category one and category three. Commissioner Hill expressed an interest in one vote for staggered launch dates and another vote for the timeline of category one launching before the Superbowl. Chair Judd-Stein stated that category one applicants and category three applicants should both receive a timeline, and one should not be voted on without the other.

Commissioner O'Brien noted that the Superbowl is on February 12, 2023. Executive Director Wells stated that there is some flexibility for launch dates prior to the Superbowl. Commissioner O'Brien addressed concerns about a launch date for category three as there was an unknown number of applicants.

CFAO Lennon clarified that staff was asked what was required to open prior to the Superbowl and expressed areas of concerns they had. He stated that it was not the case that staff couldn't meet the deadline, but that it was a matter of how much risk the Commission was willing to take.

Chair Judd-Stein sought clarification of the potential risks. Executive Director Wells identified the risks as the risk to applicants related to the deadline of the application; the risk of a shorter timeline being too burdensome on the staff and applicants; the risk of having less time to review the regulation drafts; the competitive process and evaluation criteria; and less time for public comment periods.

Chair Judd-Stein noted that 200 regulations had been identified as necessary, and only two had been approved currently. She expressed concern about communicating timelines and milestones to the operator. Commissioner O'Brien stated that the Commission had reached consensus on releasing the amended application for comment, had asked the legal division to create a regulation authorizing the application, and that there had been a general consensus as to the category one operator's launch date.

b. [Continued Review of 205 CMR 211](#) (7:17:21)

Deputy General Counsel Torrisi presented the edits made to the draft of 205 CMR 211 pursuant to the discussions earlier in this meeting.

Chair Judd-Stein sought clarification as to whether failure to complete the scoping survey by the deadline was a disqualifier. Commissioner O'Brien stated that the shorter deadline on the scoping survey was because it was a prerequisite and missing the survey deadline could be cured by providing both the survey and application by the application deadline. Deputy General Counsel Torrissi stated that the language related to curing the survey was taken from the gaming regulations. Commissioner O'Brien stated that extending the application deadline should only be for extraordinary circumstances. Commissioner O'Brien suggested edits to clarify the Commission's discretion in authorization of extension of the scoping survey deadline.

Commissioner O'Brien asked when the scoping survey would be posted. Executive Director Wells stated it would be posted the following morning and due the following Friday. Commissioner O'Brien suggested the deadline be changed to allow the applicants a full week due to the upcoming holiday. Commissioner Skinner asked if the scoping survey and regulation would be distributed to those who filed notices of intent. Executive Director Wells stated that the information would be sent out shortly. Deputy General Counsel Torrissi stated that the regulation would be posted to receive comment once it had been voted on.

Commissioner O'Brien moved that the Commission approve the operator and vendor scope of licensure initial survey and that the due date be set by close of business on October 17, 2022.

Chair Judd-Stein offered an amendment to clarify it is the initial scoping survey. Commissioner O'Brien accepted the amendment. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Deputy General Counsel Torrissi finished presenting the changes to the draft version of 205 CMR 211. Chair Judd-Stein asked if any commissioner objected to promulgating 205 CMR 211 on an emergency basis. The Commission had no objections.

Commissioner O'Brien moved that the Commission approve the small business impact statement and the amended draft 205 CMR 211 as discussed and edited here today and as included in the Commissioner's Packet and further the staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter to begin the regulation promulgation process, and further moved staff be authorized to modify chapter or section numbers or titles to file additional regulation sections as reserved or make any other administrative changes necessary to execute the regulation promulgation process. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Chair Judd-Stein noted that the Commission had yet to discuss the application scoring process and would need a regulation on the application review process. She inquired whether it was permissible to approve the regulation on the application and post the application prior to having the scoring process in place. General Counsel Grossman stated he did not believe there was a risk associated with posting the application for public comment. He explained that the statute supported an application and that regulations were designed to clarify the statute’s points and ensure potential applicants were put on notice of the application’s contents.

Commissioner O’Brien moved that the Commission approve the sports wagering operator application form as included in the Commissioner’s Packet and discussed and edited here today and further that it be posted for public comment consistent with the Commission’s discussions today. The motion was seconded by Commissioner Hill.

Roll call vote:
Commissioner O’Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

7. [Discussion of Simultaneous vs. Staggered Launch Dates](#) (7:37:44)

Chair Judd-Stein noted that a staggered launch date for retail and mobile operators had been utilized successfully in other jurisdictions. She reiterated that some of the entities at the operator roundtable were opposed to staggering these two launch dates due to equity concerns. She stated that she had concerns over equity the longer category three operators have to wait for a launch and asked when the mobile launch should occur after the February retail launch.

Commissioner Skinner stated she understood the Chair’s concerns and suggested waiting to vote on the retail and mobile timelines at the same time to prevent inequity. Commissioner Maynard echoed the concerns about equity, but stated he was willing to take a vote on expeditiously launching category three operations. Commissioner Skinner cautioned that putting pressure on an expeditious timeline may also put undue pressure on staff. Commissioner Hill expressed an interest in a timeframe, if not a date, for the staggered launch. He suggested a March 14, 2023, launch for category three operators, which would be before the NCAA March Madness finals.

Commissioner O’Brien stated she was comfortable with a staggered launch for retail and mobile, and setting the timeline for category one to be launched prior to the Superbowl. She stated that

she wanted to move quickly with category three's launch for March, but there was a caveat that the number of applicants was unknown.

Chair Judd-Stein stated that the March Madness date might be a compromise with the aggressive timeline, with the understanding that the launch date may need to be moved if there were a large number of applicants. Commissioner O'Brien stated she was uncomfortable with giving an exact date with the uncertainty of the number of applicants. Commissioner Skinner stated that she was only comfortable voting on a launch date for category one operators. Commissioners Maynard and Hill stated that they were okay with the March date.

Executive Director Wells stated that February 10, 2023, would be the latest launch date to have wagering available for the Superbowl. Commissioner Maynard stated that the March launch date for category three operators should be classified as a goal, but he did not want to vote on one category's launch date without the other.

Commissioner O'Brien suggested separating the votes on staggered launches for category one and three from the vote for specific launch dates. Executive Director Wells suggested a recess until the following day due to time constraints. General Counsel Grossman stated a recess could be used instead of reposting the meeting as an emergency.

Chair Judd-Stein stated that she was not comfortable taking a motion for staggered timelines without a motion clarifying dates. Commissioner Maynard stated the vote should be held the following day.

Commissioner O'Brien moved that the Commission vote to approve staff to proceed with a staggered retail and mobile launch process. The motion was not seconded.

Chair Judd-Stein stated that the meeting would enter a recess and reconvene at 12:00 PM on the following day, October 7, 2022.

[Meeting Reconvenes](#) (4:31)

Commissioner Skinner asked when the due date was for public comment for the application that had been approved. Deputy General Counsel Torrasi stated that public comment would be due by October 17, 2022.

Chair Judd-Stein asked Chief Mills for an update from the Communications Division. Chief Mills stated that some regulations were on the Commission's website for public comment, and that the scoping survey would be posted as a component of the sports wagering operator application. Commissioner Skinner asked if the scoping survey was also being sent directly to entities that submitted a notice of intent. Commissioner O'Brien suggested the survey be communicated to all entities who participated in the operator's roundtable, and not limited to those that filed notices of intent.

Deputy General Counsel Torrasi noted that both regulations voted on the prior date were promulgated through the emergency process. Executive Director Wells stated that one option

would be to notify entities who filed notices of intent during the public comment period, so they can begin the process earlier. Chair Judd-Stein suggested language be included in the application to put potential applicants on notice that the Commission might decide to change a question on the application.

Executive Director Wells noted that the due date was 45-days past posting. Commissioner Hill sought clarification that the timeline with retail launch for the Superbowl was possible with a 45-day application window. Executive Director Wells stated that a launch prior to the Superbowl was still possible. Commissioner O'Brien clarified that the 45-day application window was a compromise between the minimum time needed to launch and the 60-day application window she had requested.

Chair Judd-Stein asked Executive Director Wells for her proposed timeline. Commissioner Skinner asked Executive Director Wells to also list the risks involved with the speed of the timeline.

Executive Director Wells stated that the proposed timeline from the previous day allowed for a mid-December category one launch date, but she suggested pushing the retail launch date to late January to allow the legal team extra time to review regulations. She stated that there were less risks for category one operators as the operators had been identified, unlike the category three operators. She stated the staff could make the deadline, but there might not be as thorough an internal review. She stated that she was comfortable with a late January launch for category one operators and suggested an early March launch for category three.

Commissioner Skinner asked if the due date for the application had been identified. Executive Director Wells stated that it would be due on November 21, 2022. Executive Director Wells noted that suitability for category one operators would not take as much time as suitability for category three operators as category one applicants were known to the Commission as gaming licensees.

Commissioner Skinner sought clarification as to whether the Commission's 30-day internal review was to occur during the 30-day public process. Executive Director Wells clarified that they would be separate processes. Commissioner Skinner sought clarification regarding the truncated suitability process for category one. Executive Director Wells stated it was not comparable to initial suitability as category one operators did not need to submit BEDs.

Commissioner Skinner asked if the truncated review was also going to occur for vendor licensing. Executive Director Wells stated that the category one retail operators had submitted fifteen vendors. Director Lillios stated that there would be an abbreviated process designed to address time concerns.

Commissioner Skinner noted that the attestation process for identifying vendors for licensure had not been voted on and asked what preliminary work was done to identify the vendors. Director Lillios stated that the three casinos had self-identified the potential vendors.

Commissioner Skinner raised the issue that the timeline was directed towards launching for a sporting event. Chair Judd-Stein stated the proposed timeline was a launching point for discussion and asked if Commissioner Skinner had any suggestions. Commissioner Skinner suggested a timeline that would not be taxing to the Commission staff and not centered around sporting events. Chair Judd-Stein asked what date Commissioner Skinner would be comfortable with. Commissioner Skinner stated she was not offering a timeline but was deferring to staff. She stated that it was her understanding that the timeline was doable but concerned that it was built around a sporting event.

Commissioner O'Brien stated that she shared Commissioner Skinner's position regarding the presupposition about the launch date and would have preferred an open-ended discussion to discuss potential dates. She stated that she was focused on compromise, but that she was uncomfortable setting a category three launch date without knowing how many applicants will apply. She stated she was not confident a release date for March was realistic.

Commissioner O'Brien stated all presented timelines assumed the Commission would assume maximum risk in each category, and asked to discuss the levels of scoping, identity, and self-disclosure for vendor licensing as it affects the timeline. Chair Judd-Stein asked if Commissioner O'Brien would perform the licensing any differently. Commissioner O'Brien stated that the request was for a deeper conversation related to vendor licensing regulation.

Commissioner Hill suggested that a motion with a proposed date should have language that if an issue was identified by staff or through public comment that might delay the launch date, the Commission would meet to discuss and take further action. He stated this would allow the Commission to address issues as they arose. Chair Judd-Stein stated that language could be built in because delays would need to be explained to the applicants and the industry.

Commissioner Maynard stated that risks had been outlined and asked if there were risks of not implementing launch dates given the unregulated market's operations. Executive Director Wells stated that illegal, unregulated sports wagering was occurring and that it risked loss of revenue, not having responsible gaming initiatives, and the unregulated sports wagering connected to organized crime.

Chair Judd-Stein asked for a vote on the timeline. Commissioner O'Brien requested a discussion for vendor licensing first, as it was prior to the timeline on the original agenda and relevant to her comfort level with the proposed dates.

8. [Vendor Licensing Process](#) (54:14)

a. DRAFT 205 CMR 234: Sports Wagering Vendors, and Small Business Impact Statement

The *draft regulation and small business impact statement* was included in the Commissioner's Packet on pages 199 through 219.

Director Lillios stated that G.L. Chapter 23N did not provide explicit guidance on how to address vendors but gave the Commission broad authority to license entities other than operators. She stated that it was widespread practice in the industry to license vendors, and that the Commission may prioritize certain vendors to ensure adequate background reviews of vendors.

Director Lillios explained that the proposed regulation 205 CMR 234 distinguished itself from the gaming equivalent, 205 CMR 134, as it only had two vendor tiers. She explained that sports wagering vendors were those directly or routinely involved in the sports wagering operation, and under the proposed regulations would be required to be licensed by the Commission. She explained that non-sports wagering vendors were vendors to the operators who were not involved in the sports wagering operations. She stated that non-sports wagering vendors would be reported by the operator to the IEB, who would make a determination as to whether the vendor needed to go through a registration process, and that certain vendors were exempt from licensing.

Director Lillios stated that there were two options for the temporary licensure of vendors which allowed for a balance of operational needs, accelerated pace, and integrity.

Director Lillios explained that Option A mirrored the gaming regulations and would require the IEB to perform a preliminary review of the licensee including the application, entity qualifiers, and individual qualifiers with independent verification of key markers. She explained that Option B was the attestation process where the applicant entity certified to certain items under the pains and penalties of perjury. She stated that under Option B the operators utilizing the vendor must state to the best of their knowledge that the vendor is qualified to Commission standards.

Director Lillios stated that a full suitability review would occur at the backend as part of the full licensure process. Commissioner O'Brien asked how the two options fit into the proposed timelines being discussed. Director Lillios replied that Option A required full scoping of vendors and application intake of all identified qualifiers, which would be difficult but not impossible with the January timeline as only fifteen vendors had been identified by the casinos. Commissioner O'Brien sought clarification of the term key markers. Director Lillios stated that key markers included litigation checks, a review in law enforcement databases, and an independent evaluation of sports wagering licensure status in other jurisdictions.

Commissioner Skinner asked what the risks were of not using Option A, as that process was successfully used in casino gaming. Director Lillios stated that risks for vendors were lower than those of operator platforms as many products provided by vendors can be sourced from another vendor. She stated that most vendors are licensed in other jurisdictions, and vendor investigations were less intrusive.

Commissioner Skinner asked if there was less risk in not conducting a full suitability review for sports wagering vendors when compared to gaming vendors. Director Lillios stated the risks were the same, but the statutes were different as G.L. Chapter 23N did not have a provision on vendor suitability. Commissioner Skinner stated that if the risk is the same the same rules should be applied for sports wagering vendor licensure.

Chair Judd-Stein asked how many vendors were identified. Director Lillios stated that the casinos identified fifteen vendors. Chair Judd-Stein stated that there may be overlap in vendors between the retail and mobile operators and asked if the IEB had begun work. Director Lillios stated that she spoke to the vendors regarding their product line but a regulation was needed to begin investigation.

Director Lillios stated that G.L. 23N was silent regarding vendor licensure and allowed flexibility in process for licensing vendors. Chair Judd-Stein asked if these practices were used in other jurisdictions. Director Lillios replied that most jurisdictions license vendors for sports wagering and have different levels of vendors specified.

Commissioner O'Brien expressed hesitation in licensing vendors as she wanted third-party marketers to be under the control of the licensing process. She stated that there were different levels of how integral a vendor was, and that she was less comfortable with Option B for geofencing vendors. She suggested a tweaked Option B that required affirmative proof of licensing in another jurisdiction and a release to run CORI and background checks on qualifiers. She inquired whether the vendors could be further tiered for the prioritization of vetting.

Executive Director Wells stated that she discussed this with Kevin Mullaly, the Vice President of Government Affairs and General Counsel for GLI, and he indicated that there was low risk on suitability of vendors as the vendors are likely licensed in multiple jurisdictions. She suggested it may make the Commission more comfortable to ask the vendors to identify the jurisdiction they were most recently licensed. Commissioner O'Brien asked if the vendor could submit their license from another jurisdiction as part of the temporary licensing process. Executive Director Wells stated questions could be added in Option B to require vendors to attest to where they were licensed.

Commissioner O'Brien stated she wanted an affirmative production of documents rather than an attestation. Executive Director Wells stated that jurisdictions are constantly cross-communicating on license status, and it may be possible to do quick checks with bigger jurisdictions such as New Jersey or Pennsylvania. Director Lillios stated that the prioritization of certain vendors would not be addressed during the initial investigation for the issuance of temporary licenses, but they could be prioritized during the full licensure investigation.

Commissioner O'Brien expressed an interest in information related to the types of vendors to prioritize. She stated that a vendor that stood out to her was third party marketers, and she had concerns that the licensing exemption for television, radio, newspaper, and similar media in 205 CMR 234 §3(a)(2) would encompass third part marketers. Director Lillios stated that the exemption quoted covered media outlets and not marketing affiliates, and that third-party marketing affiliates would likely be on the registrant level. Commissioner O'Brien stated she was not comfortable with third-party marketing affiliates as registrants and believed they should be licensed.

Chair Judd-Stein asked if this issue could have been captured elsewhere. Director Lillios stated that marketing affiliates were not explicitly identified in the proposed regulation. Chair Judd-Stein suggested language to distinguish similar media from marketing affiliates.

Director Lillios explained that G.L. Chapter 23N did not specifically address the initiator for civil administrative penalties for vendors. She stated that the casino gaming language could be used, substituting Commission in place of the IEB as the body that issues fines, and allowing the provision to be returned to for edits in the future. Chair Judd-Stein asked to remove this provision in 205 CMR 234.11 due to an underlying legal concern Anderson and Krieger wanted to review. Director Lillios raised concern about eliminating a provision, even if temporarily. Mr. Povich stated that the issue could be handled by adjusting the language or deferring to a later point. Commissioner O'Brien stated that she was comfortable replacing IEB in the regulation with Commission.

Commissioner Skinner sought clarification about the requirement for licensure required for a person owning more than 15% of the applicant. Director Lillios explained that the language was so that those who own over 15% could not waive their investigation and were considered an entity qualifier. General Counsel Grossman stated that under language in G.L. Chapter 23K qualifiers were considered to be licensed, but a further license was not required.

Chair Judd-Stein stated that the timelines presented assumed Option B was used for vendor licensing. Executive Director Wells stated that Option B was sufficient. Commissioner Skinner stated she had trouble that there were different rules for sports wagering vendors and gaming vendors despite the same risks. She stated that she hoped to revisit the regulation to impose a more stringent suitability review for the temporary licensing process. Commissioner O'Brien expressed she had similar concerns to Commissioner Skinner, and suggested a sunset period for Option B that would default back to Option A.

Commissioner Maynard asked if the legal division was comfortable with the required attestation sections in Option B, as someone might look for a loophole. Director Lillios stated that self-disclosure would likely be truthful because repercussion to the applicants affect not only their Massachusetts licensing but their licensing in other jurisdictions. She stated that the Commission would be the arbiter to evaluate if something attested to was a misstatement. She stated that reliance on attestation appeared in other jurisdictions and was not unique to Massachusetts.

Commissioners Hill, Skinner, and Maynard supported the suggestion of a sunset provision. Chair Judd-Stein raised concerns if Option B was sufficient, that a sunset provision might make the IEB require additional testing for those not ready to launch by the launch date. She suggested revisiting the vendor licensing process later rather than sunset.

Commissioner Maynard sought clarification as to whether all gaming vendors underwent Option A. Director Lillios confirmed that they did. Chair Judd-Stein noted that gaming required full suitability prior to launch, and that sports wagering was under a different structure. Director Lillios stated that it would take a team of investigators two to three weeks to perform the investigation.

Commissioner O'Brien stated she was not comfortable with Chair Judd-Stein's suggestion as she did not want to promulgate the regulation knowing it will be changed later. She stated that her comfort level with Option B was to have GLI identify vendors that required a more robust review for temporary licensure and to put the onus on the vendor to produce documentation of licensure in another jurisdiction. She stated that absent that she preferred Option A or a sunset provision.

Chair Judd-Stein stated that as G.L. Chapter 23N was silent as to vendor licensure, the Commission would have to vote on whether vendors should be licensed prior to deciding on Option A or Option B.

Commissioner O'Brien moved that the Commission determined to license vendors under G.L. Chapter 23N and direct staff to draft and promulgate a regulatory scheme to implement vendor licensing under G.L. Chapter 23N. The motion was seconded by Commissioner Skinner.

Roll call vote:

Commissioner O'Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Chair Judd-Stein asked if there was a consensus between Option A or B and stated that a timeframe would be needed if the Commission chose to utilize a sunset provision. Commissioner O'Brien stated that a sunset provision would be tied to the launch but had concerns as she heard at the operator roundtable that category two operators might not be able to launch until April. Executive Director stated that a timeline for category two would be made once more information was made available by the licensee.

Commissioner O'Brien stated that assuming there is a category three launch in March she would want the sunset provision to revert to Option A no later than April 30, and asked if that was sufficient. Director Lillios stated that timeframe might not be available to category two to utilize, and suggested language designating a certain number of months after the initial launch of each category. Commissioner O'Brien suggested using the fiscal year which ended on June 30, 2023. Commissioner Hill stated that he had envisioned the sunset provision to be through the end of the calendar year to ensure every operator was up and running.

Commissioner Skinner asked how long the full suitability process would take instead of the temporary suitability process. Director Lillios stated that full suitability balanced with IEB's other workload can take over a year.

Commissioner Maynard raised concerns that the sunset provision would negatively impact smaller or more diverse vendors who would join the market later. He suggested revisiting the regulation rather than sunseting it. Chair Judd-Stein stated she agreed with coming back to

review the licensing in a later session but understood Commissioner O'Brien's stance that Option A was preferred.

Commissioner O'Brien raised concern over Commissioner Maynard's suggestion as there was risk of the future discussion not coming to a solution. She suggested a compromise of September instead of the full calendar year, defaulting to option A after the sunset provision date.

Chair Judd-Stein sought clarification of what information would make Commissioner O'Brien comfortable with Option B. Commissioner O'Brien stated that the Commission should talk to GLI and insert language to Option B that would identify vendors that required additional vetting.

Commissioner O'Brien moved that the Commission vote to approve Option B as included in the Commissioner's Packet today, under a sunset provision that any application for temporary license received after September 1, 2023, would then be subject to what is described as Option A, in the proposed regulation 205 CMR 234.07. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Chair Judd-Stein stated that the regulation also needed a vote and that she assumed the emergency promulgation process would be used. Deputy General Counsel Monahan stated that if the regulation was promulgated through the emergency process the legal division was authorized to file it with the Secretary of the Commonwealth prior to the public comment period ending. Commissioner O'Brien stated that ideally emergency regulations should be posted for comment the week prior to voting on them, to allow the Commission to amend the regulation by emergency. Deputy General Counsel Monahan stated regulations could be put out for public comment when the Commissioner's Packet is released.

Commissioner Skinner echoed Deputy General Counsel Monahan's idea of posting regulations on the website when the materials in the Commissioner's Packet are released prior to the meeting as it would allow the Commission to incorporate public feedback into the meeting. The Commission reached a consensus for publicly posting regulations the day they are made available in the Commissioner's Packet.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft of 205 CMR 234 as included in the Commissioner's Packet and discussed here today and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter to begin the regulation promulgation process, and further move that staff should be authorized to modify chapter or section numbers or titles to file additional regulation sections as reserved or to make any other

administrative changes as necessary to execute the regulation promulgation process. The motion was seconded by Commissioner Maynard.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

b. [DRAFT 205 CMR 202: Sports Wagering Authority and Definitions](#) (2:44:58)

Deputy General Counsel Monahan explained that the proposed regulation 205 CMR 202 set out the Commission’s authority to promulgate regulations and the initial set of definitions to be used in the regulation process. She stated that it would likely need to be amended later in the regulation promulgation process to incorporate more definitions that arise during the process.

Chair Judd-Stein asked Commissioner O’Brien if she wanted to affirmatively include third-party marketers in the language related to sports wagering vendors. Commissioner O’Brien stated that would be the safer way to do it and suggested edits accordingly.

Director Lillios stated that marketing affiliates should fall under the sports wagering vendor definition. Commissioner Skinner asked if marketing affiliates would also encompass some forms of promotional play. Commissioner O’Brien explained that marketing affiliates were marketing teams used to attract customers to the applications, and most were paid a portion of play or per customer.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft of 205 CMR 202 as included in the packet and discussed here today and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter to begin the regulation promulgation process, and further move that staff shall be authorized to modify chapter or section numbers or titles to file additional regulation sections as reserved or make any other administrative changes as necessary to execute the regulation promulgation process . The motion was seconded by Commissioner Maynard.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

9. [Timeline Discussion Continued](#) (2:51:58)

Executive Director Wells recommended a retail launch for late January for category one operators. Commissioner O'Brien suggested going two weeks back from the Superbowl. Executive Director Wells stated the Superbowl was on February 12, 2023, and two weeks prior to that would be January 29.

Regulatory Compliance Manager Carpenter stated that there was typically a two-week betting period prior to the sporting event, and that casinos were worried about being overrun by the crowd size of bettors if betting opened only a few days before the event. He stated it would be preferable for the operators to start on a non-busy night two weeks prior to the event.

Commissioner Hill stated that January 18, 2023, would have been preferable as that's when the playoffs start. Commissioner Skinner noted that launch date conflicted with the original proposed timeline. Commissioner Maynard asked Executive Director Wells if the 29th would fulfill her late January timeline; she confirmed that it would.

Commissioner Hill asked if the other commissioners would be willing to compromise for January 22. Executive Director Wells stated that staff would need as much time as possible to enact regulations prior to launch. Commissioners O'Brien and Skinner stated they had already compromised for the January 29 date.

Executive Director Wells stated she had been notified that January 29, 2023, is the date of the NFL Conference Championships. Regulatory Compliance Manager Carpenter stated that opening that day could be volatile unless it was an end of day launch. Commissioner Skinner stated that the date that mattered was Executive Director Wells recommended, and the Commission should focus on staff needs rather than the date of the sporting event.

Chair Judd-Stein stated that the potential issues that arise at the casinos are also a concern for public safety. Commissioner Skinner stated that she would like to see a timeline that maximizes protection to the public and suitability reviews to ensure the launch is effective, expeditious, and without compromising standards.

Executive Director Wells stated that the launch date could be finalized after casino input. Chair Judd-Stein stated the exact date could be returned to, but concerns about public safety factors needed to be considered. Commissioner O'Brien suggested a launch date of the Monday after the Conference Championships, as it would avoid the safety concern of patrons rushing to the sportsbook and still allow two weeks for wagering.

Commissioner Maynard stated that the first date proposed by Executive Director Wells was January 26, but he would defer to Executive Director Wells about what is best for the team. Executive Director Wells stated that GLI is scheduled to come on board, and that they could help with the timeline due to their experience. Chair Judd-Stein asked for the GLI information to be submitted for the following week.

Commissioner O'Brien asked if the Commission was comfortable releasing a range for launch rather than a date. Chair Judd-Stein stated that the range for category one was in late January and

asked what the recommendation was for category three. Executive Director Wells stated that the tethered and untethered category three operators would have a universal launch date, with the caveat that some operators may not be prepared by the launch date. She stated that there was uncertainty due to the unknown factor of how many applicants there would be, and that additional time would be needed if there were more applicants than expected.

Executive Director Wells stated that the timeline gave 30 days for the public review for the Commissioners to evaluate the applicants and 45 days for the certificate of operations process and individual qualifier review. She stated that there could be flexibility in the 75 days available.

Commissioner O'Brien stated that the assumption of fifteen applicants may be low, and it would not be realistic to review a greater number of applicants in a 30-day public period. Commissioner O'Brien stated that other Commission obligations might impact the schedule.

Chair Judd-Stein stated that the two milestones seemed to be a late January launch for category one operators and an early March launch for category three operators. Commissioner O'Brien stated that she agreed regarding category one but believed the launch date for category three was overly aggressive and unrealistic based upon the time it takes for hearings, adjudicative processes, and deliberations. Chair Judd-Stein asked if Commissioner O'Brien had any suggestions. Commissioner O'Brien stated that a timeline could not be informed until the Commission was aware of how many applicants there were, and that the March Madness date may not be reached if there were a significant number of applicants.

Commissioner Hill asked if there would be separate motions for the launch dates for category one and three. Chair Judd-Stein expressed concern that separating the motion might cause an equity issue. Commissioner O'Brien stated she would prefer the motions be bifurcated as the timelines presents ignored category two, and therefore there would still be an equity concern. She stated that she was comfortable with the category one launch timeline but was not comfortable with category three due to the unknown number of applicants and asked to separate the votes.

Chair Judd-Stein clarified that category two operators would be able to launch retail at the same time as category one in theory. Executive Director Wells stated that the casinos already had sportsbooks carriers and that category two would need to catch up, and that they may not have the same timetable. She stated that both category two licensees required more time to gather information prior to the development of the timeline for category two.

Commissioner Hill moved that the Commission identified late January as the launch date for category one sports wagering operators in the Commonwealth of Massachusetts on the condition that the Commission may reconsider these dates should there be staff, extraordinary circumstances, or public comment brought up that would not allow for launch on these dates.

Commissioner Maynard suggested amendment language barring any unforeseen circumstances affecting the public health safety and welfare of the citizens of Massachusetts, that the Commission identified early March as the launch date for category three sports wagering operators in the Commonwealth of Massachusetts. Commissioner Hill accepted the amendment.

Commissioner O'Brien offered further amendment that the recommended timeline for category three also be subject to the same criteria listed by Commissioner Hill for category one in addition to the fact that the Commission may need to reconsider the date based upon the number of applicants received pursuant to the application process for category three. Commissioner Hill accepted the amendment. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Abstain.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 4-0 with one abstention.

10. [Presentation of Sports Wagering Scoring Process](#) (3:27:34)

Executive Director Wells stated that the scoring criteria for the evaluation process was expected to be in a regulation, and that the Commission should give criteria to guide the legal division in drafting the regulation. She stated that scoring criteria should be available prior to the application deadline. She stated that Chief Mills stated that the information would be sent to those who filed notices of intent and would be posted publicly.

Executive Director Wells outlined the seven sections of the application including financial stability, economic impact, diversity and inclusion, information technology, platform, prior experience and background, and responsible gaming. She stated that the Commission had broad discretion in the process and some procedures to consider might be scorecards, developing a weight for each category, options for the scoring system such as points. She stated that the Commission could use the initial period of the evaluation to narrow down the top candidates which could be presented to the Commission.

CFAO Lennon stated that commissioners may have different opinions on different sections and recommended a consensus scoring. He suggested bringing in a consultant as an impartial party. He stated that some categories would have assistance from IEB analysis, but it might not work if there were more applicants than expected.

Mr. Povich stated that the criteria was dependent upon the volume of applicants and agreed with Executive Director Wells' recommendation for two rounds of evaluation if there were more than the expected number of applicants. He suggested the use of a number scoring system.

Commissioner O'Brien sought clarification about weighting as one commissioner may value a category over another. Mr. Povich stated that weighting of categories was not required. Chair Judd-Stein asked if the Commission had an obligation to include information related to the assessment process when posting the application. CFAO Lennon stated that there is no requirement to post anything other than the areas being reviewed and that that the seven criteria mentioned earlier could act as that guidance.

General Counsel Grossman stated that the goal was to ensure decision-making was not arbitrary or capricious, and to ensure the process performed was reflected in the regulations. He stated that the process described in the regulation stating what activities the Commission may engage in was to give notice to applicants of the process being used.

Chair Judd-Stein asked if the Commission could decide late to do interviews or have the operators present oral presentations at a meeting. General Counsel Grossman stated that it would be helpful to develop a consensus if scoring would be part of the process so that the legal division could include it in a draft regulation, but that those options could wait until the time comes to vote on the process.

Commissioner O'Brien asked if scoring was part of the process for the RFA-1 and RFA-2 processes for casino gaming. General Counsel Grossman stated that there was no scoring in the RFA-1 process, but RFA-2 reviewed suitability. He explained that there was not numerical scoring, but five categories and related subcategories were reviewed and the Commission had the flexibility through a wholistic review of the quality of the applications.

Chair Judd-Stein sought clarification of the multi-round processes to address concerns with the volume of applicants. General Counsel Grossman stated that one option was to numerically score the batch of applicants and draw a bright line to identify top applicants, then use a wholistic review based on metrics to select the application in the best interest of the Commonwealth. He stated it would be a bifurcated process and could be reserved as an option by regulation.

CFAO Lennon clarified that top tiers would filter applicants, and scores could be revised based on later answers. Mr. Povich stated that Anderson and Krieger's perspective was skeptical of numeric scoring, but the Commission should remain flexible until the number of applicants is known.

Commissioner Skinner asked if the Commission would have the opportunity to get a more comprehensive presentation on their options. Chair Judd-Stein stated that more understanding would be needed to understand the risk involved, and that this agenda item was to set the stage for discussion.

Executive Director Wells stated that the additional time in the application window would allow for more room to consider the tools utilized and criteria evaluated. Chair Judd-Stein suggested a regulation be drafted encompassing best practices for the evaluation process. Commissioner O'Brien suggested looking for a similar regulation from casino gaming.

General Counsel Grossman stated that he considered proposing this process after the RFA-2 process with some tweaks. Commissioner O'Brien noted that mobile operators would not have a physical location unlike casinos. General Counsel Grossman stated that the legal division could produce an open-ended draft for the Commission to help visualize what the process looks like and other available options.

Commissioner O'Brien asked that the legal division only needed pull the RFA-2 regulations as they already had a lot on their plates. General Counsel Grossman stated that it would be helpful to get everyone on the same page for one approach for the review process. General Counsel Grossman stated that he had a video of a similar competitive review process performed by the Commission for Region A, and that the Commission weighed a variety of factors based off certain criteria. He stated he would review caselaw for components determined not to be arbitrary or capricious.

Chair Judd-Stein asked if other jurisdictions who had gone through the competitive process could be considered. Regulatory Compliance Manager Carpenter stated research would be required, but Illinois is the most similar to the process considered here.

CFAO Lennon stated that jurisdictions such as New York utilized a point system, but other states such as Illinois and Virginia used a more general system. Commissioner O'Brien asked if Maryland had used a competitive process. Regulatory Compliance Manager Carpenter stated that Maryland's process was competitive, but their limitation on operators was too high and the review process took the committee sixteen months. Mr. Povich stated that the Massachusetts Supreme Judicial Court might be able to inform about criteria.

Chair Judd-Stein asked if the Commission had a consensus to empower CFAO Lennon to procure a consultant on this matter. CFAO Lennon stated he would procure a management consultant from the statewide contract. He stated that the casino regulation would give the consultant a good idea of what the Commission wanted to capture. Commissioner O'Brien asked if a commissioner could take part in the selection process rather than it being only staff. CFAO Lennon agreed. Commissioners O'Brien and Hill expressed an interest in volunteering for the selection process. Chair Judd-Stein stated that a vote would not be held on that issue as it would create a subcommittee.

Commissioner Skinner asked if the management consultant could potentially act as the neutral third party in the evaluation process. CFAO Lennon stated that the consultant could and could keep track of discussions and comments. Chair Judd-Stein asked if the legal division would be delayed without a vote. General Counsel Grossman stated it was not a concern and the issue could be advanced to next Thursday's meeting.

10. [Other Business](#) (4:07:14)

Commissioner Hill asked if the application addressed the Secretary of the Commonwealth's concern related to the preservation of the lottery. Chair Judd-Stein stated she did not think of the lottery concerns for the application, but it could be included. Commissioner Skinner stated she believe the sustainability of the lottery was more of a matter for house rules or internal controls.

General Counsel Grossman stated that the Secretary of the Commonwealth's abandoned property concerns were addressed in the regulatory framework, but it did not include a commitment to protect the lottery. He stated that it could be included as an attestation as part of the application process, a condition to the operator's license, or through other approaches.

Chair Judd-Stein asked if the application had been posted yet; Chief Mills confirmed that it had. Chair Judd-Stein sought clarification as to whether the attestations were included in the application. Chief Mills stated that the ones discussed yesterday were included, and an attestation relevant to the lottery could be drafted and added.

Commissioner Maynard asked if the Secretary of the Commonwealth sought provisions that mirrored the regulations governing the existing gaming licenses. He suggested that prior to receiving a license the operators should present a plan to mitigate the impacts to the lottery and require licensees to partner with the lottery.

Commissioner Maynard moved to add a question to the sports wagering application in line with the Secretary of the Commonwealth's requests. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Hearing no other business, Chair Judd-Stein requested a motion to adjourn.

Commissioner O'Brien moved to adjourn. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated October 3, 2022
2. [Commissioners' Packet](#) from the October 6, 2022, meeting (posted on massgaming.com)



Legal Division

TO: Cathy Judd-Stein, Chair
 Eileen O’Brien, Commissioner
 Brad Hill, Commissioner
 Nakisha Skinner, Commissioner
 Jordan Maynard, Commissioner

FROM: Carrie Torrisi, Deputy General Counsel
 Mina S. Makarious, Anderson & Krieger LLP
 Paul Kominers, Anderson & Krieger, LLP

DATE: January 11, 2023

RE: Final Adoption of 205 CMR 212, 214, 215, 219, 220 and 221 re Sports Wagering Operator Licensing

On November 10, 2022, the Commission voted to approve the below regulations related to the Sports Wagering licensing process to both file by emergency and to begin the formal promulgation process. These regulations are currently in effect by emergency, and we are now seeking a vote for final adoption of the regulations at the conclusion of the promulgation process.

These regulations supplement 205 CMR 218, which governed the form, submittal, and review of Sports Wagering applications. As with other regulations approved by the Commission, this set of regulations is largely based on the Commission’s existing gaming regulations (205 CMR 112, 114, 115, 116, 117, 120 and 121). However, because the Commission is proceeding with a one-phase application process for Sports Wagering, as opposed to the two-phase gaming licensing process, the regulations are organized and titled somewhat differently. Also, there is no direct analogue in G.L. c. 23K for temporary licensing pursuant to G.L. c. 23N, § 6(c), which is addressed here in 205 CMR 219.

Each of the regulations is described briefly below.

205 CMR 212: ADDITIONAL INFORMATION AND COOPERATION

This regulation, which tracks 205 CMR 112, requires all applicants for Sports Wagering licenses (as well as applicants for related licenses such as vendor licenses or occupational licenses) to cooperate with the Commission and its staff during license review, and after licensure. Applicants and licensees are required to submit information requested by the Commission or its staff and to provide updates to the Commission regarding changed circumstances affecting



Massachusetts Gaming Commission

suitability. Like 205 CMR 112 and consistent with G.L. c. 23N, 205 CMR 212 also provides that the Commission can discipline applicants and licensees that fail to meet these obligations.

205 CMR 214: SPORTS WAGERING APPLICATION FEES

This regulation describes the applications fee required under G.L. c. 23N, § 7(a). It also requires applicants to cover the Commission's full costs to review an application as provided under 205 CMR 114. Rather than establish a new schedule of investigative fees, 205 CMR 214 adopts the fees established pursuant to 205 CMR 114.04(3).

205 CMR 215: APPLICANT AND QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

This provision mirrors the RFA-1 suitability process under 205 CMR 115 to 117, with one important exception: like the vendor regulations approved at 205 CMR 234, the regulation contemplates a "preliminary finding of suitability" that (in combination with 205 CMR 218.07) permits an Applicant to seek a temporary license from the Commission in accordance with G.L. c. 23N, § 6(c). Such a preliminary finding can be made based on applicant and qualifier certifications made under the pains and penalties of perjury that the applicant and its qualifiers meet the suitability criteria for a license.

205 CMR 115 also provides the suitability criteria for licensure, including criteria and evidence that may be taken into consideration under 215.01(3) and mandatory bases for denial under 215.01(4).

A description of persons and entities required to be qualified, and the Bureau's and Commission's process for identifying and reviewing qualifiers, is laid out in 215.02. This section largely tracks 205 CMR 116, but was included in this section for simplicity. Reviews of qualification decisions made by the Bureau under 205 CMR 115.02 may be requested from the Commission.

205 CMR 219: TEMPORARY LICENSING PROCEDURES

This regulation establishes a procedure to issue temporary licenses that function as provisional licenses. It permits applicants already deemed suitable under 205 CMR 215 (either after a full review, or based on attestations) to request a temporary license from the Commission. Temporary license requestors must pay the \$1,000,000 temporary license fee and have their request reviewed by the Executive Director or their designee. The Executive Director then makes a recommendation to the Commission regarding the eligibility of the requestor for temporary licensing. The Commission will then deliberate on the temporary licensee's request at an open meeting.

Allowing applicants deemed suitable based on a full review to request temporary licenses gives the Commission the option (but does not require the Commission) to simplify certain operating requirements, such as occupational licensing, for temporary licensees.

205 CMR 220: SPORTS WAGERING LICENSE CONDITIONS

205 CMR 220 provides a set of high-level categories of conditions that may be placed on a licensee, including that the Sports Wagering Operator:

- comply with G.L. c. 23N and all applicable rules and regulations of the Commission;
- pay all amounts due to the Commission;
- maintain its suitability; and
- comply with its approved system of internal controls and house rules.

205 CMR 220.01(2) also permits the Commission to impose any other conditions it determines appropriate to secure the objectives of G.L. c. 23N and 205 CMR.

205 CMR 220.01(3) and (4) also provide for the physical form of the License issued by the Commission.

205 CMR 221: SPORTS WAGERING LICENSE FEES

This provision outlines the licensing fees paid by licensees pursuant to G.L. c. 23N, including:

- The \$1,000,000 initial licensing fee for temporary licensees, pursuant to G.L. c. 23N, § 6(c);
- The \$5,000,000 license fee for operator licenses (subject to a credit of \$1,000,000 for entities that paid the initial licensing fee for a temporary license);
- Annual assessments pursuant to M.G.L. c. 23N, § 15(c), to be determined by the Commission to cover costs of the Commission necessary to maintain control over Sports Wagering; and
- A \$1,000, 000 annual fee for licensees other than Category 1 Licensees (who are exempt from payment pursuant to G.L. c. 23N, § 15(e).

The remainder of this regulation provides the method for payment of fees and the Commission’s establishment of a budget and reconciliation process for sports wagering.

205 CMR 212: ADDITIONAL INFORMATION AND COOPERATION

212.01 Additional Information and Cooperation

212.01 Additional Information and Cooperation

- (1) The Commission, the Bureau or their agents and employees may request additional information and documents from an Applicant including all qualifiers, employee license, vendor license or registration, or any other license or registration required in accordance with M.G.L. c. 23N or 205 CMR throughout the application review process. 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 for denial of the application.
- (2) All Applicants, licensees, registrants and qualifiers under M.G.L. c. 23N and 205 CMR shall comply with all requests of the Commission, the Bureau and their agents and employees for information and documents as authorized by M.G.L. c. 23N and 205 CMR.
- (3) 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 212.01(1) and 212.01(2) to said information request.
- (4) All Applicants, licensees, registrants and qualifiers under M.G.L. c. 23N 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. 23N.
- (5) Once issued a positive determination of suitability, all Sports Wagering Operators and qualifiers shall have a continuing duty to maintain suitability in accordance with 205 CMR 215.00. The Sports Wagering Operator and each qualifier shall have a continuing duty to notify and update the Bureau, in writing, within ten days of the occurrence, unless an alternative filing time is authorized by the executive director, or where applicable, gaining knowledge of the following:
 - (a) Any denial, suspension or revocation by a Governmental Authority in any jurisdiction of a Sports Wagering related license, registration, certification, permit or approval held by or applied for by the Sports Wagering Operator or qualifier;
 - (b) Any discipline, including a fine or warning, related to Sports Wagering imposed upon the Sports Wagering Operator or qualifier by any Governmental Authority in any jurisdiction;

- (c) Any fine related to Sports Wagering assessed on any Sports Wagering entity owned or operated by the parent to the Sports Wagering Operator by any Governmental Authority in any jurisdiction.
- (d) Any arrest, indictment, charge or criminal conviction of any qualifier in any jurisdiction;
- (e) Any complaints, allegations, or notice of investigation thereof made or known to be contemplated by a Governmental Authority against the Sports Wagering Operator, qualifier, or any Sports Wagering entity owned or operated by the parent to the Sports Wagering Operator, of which the Sports Wagering Operator or qualifier is or should reasonably be aware, involving conduct that if substantiated could reasonably lead to potential revocation or suspension of the license or approval held by the Sports Wagering Operator, qualifier, or Sports Wagering entity owned or operated by the parent to the Sports Wagering Operator, in that jurisdiction and/or imposition of a fine of \$50,000 or greater;
- (f) Any reports, complaints, allegations, or material legal proceedings made, commenced, or known to be contemplated by a Governmental Authority against the Sports Wagering Operator or qualifier, of which the Sports Wagering Operator or qualifier is or should reasonably be aware, involving conduct that if substantiated could reasonably lead to potential criminal charges including, but not limited to, allegations of theft or embezzlement;
- (g) Any information known or that should reasonably be known to the Sports Wagering Operator or qualifier, including by way of receipt of a subpoena, that the Sports Wagering Operator or qualifier is or may be the subject of a criminal investigation by a law enforcement or regulatory agency;
- (h) Any exclusion or barring of a qualifier from any casino, gaming establishment, or gambling/gaming related entity, or Sports Wagering or Sports Wagering facility in any jurisdiction;
- (i) The termination, suspension from employment, or other discipline of any qualifier or Sports Wagering employee licensed in accordance with 205 CMR;
- (j) Any material pending legal proceedings required to be reported in accordance with 17 CFR 229.103 - (Item 103) Legal proceedings: For purposes of 205 CMR 212.01(5)(j) the registrant referred to in 17 CFR 229.103 - (Item 103) shall be both the Sports Wagering Operator and the parent company of the Sports Wagering Operator as determined by the Bureau. Additionally, the Sports Wagering Operator and each qualifier shall provide notice of any pending legal proceeding which includes any allegation of fraudulent conduct by the Sports Wagering Operator or a

qualifier, that may reasonably threaten the economic viability of the Sports Wagering Operator or a qualifier, or that alleges a pattern of improper conduct by the Sports Wagering Operator or a qualifier over a sustained period of time;

- (k) Any significant financial event related to a Sports Wagering Operator or entity qualifier. For purposes of 205 CMR 212.01(5)(k), a significant financial event means a merger, acquisition, consolidation, debt restructuring, material change in debt rating by major credit rating agencies (US/International), legal entity change, material ownership change, the assessment of a fine or penalty of \$250,000 or greater by the SEC or international equivalent, restatement of previously issued financial statement(s), late filing of financial statement(s) with the SEC or international equivalent, US or international equivalent bankruptcy petition, default of financial debt covenants and receivership, disposal of a material business segment or asset, or adverse action(s) taken by the IRS;
 - (l) Issuance of an “Adverse” or “Qualified” audit opinion, or the international equivalent, by an independent accountant to the Sports Wagering Operator or qualifier;
 - (m) A change in accounting firm engaged to perform attestation and/or assurance services for the Sports Wagering Operator or qualifier; and
 - (n) Issuance of a delisting notice from a United States or international stock exchange relative to the Sports Wagering Operator or qualifier.
- (6) 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, knowingly provided materially false or misleading information to the Commission, the 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.

Public Comments Pertaining to 205 CMR 212: Additional Information and Cooperation

Subsection	Comment	Commenter	Entity
<p>212.01 Additional Information and Cooperation</p>	<p><u>"212.01(2)</u> Proposing to change “(2) All Applicants, licensees, registrants and qualifiers under M.G.L. c. 23N and 205 CMR shall comply with all requests of the Commission, the Bureau and their agents and employees for information and documents as authorized by M.G.L. c. 23N and 205 CMR.” to “(2) All Applicants, licensees, registrants and qualifiers under M.G.L. c. 23N and 205 CMR shall comply with all reasonable requests of the Commission, the Bureau and their agents and employees for information and documents as authorized by M.G.L. c. 23N and 205 CMR.” BetMGM Comment: This should be subject to a reasonableness standard.</p> <p><u>212.01(4)</u> Proposing to change: “(4) All Applicants, licensees, registrants and qualifiers under M.G.L. c. 23N 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. 23N.” to “(4) All Applicants, licensees, registrants and qualifiers under M.G.L. c. 23N shall have a continuing duty to provide all information and documents reasonably requested by the Commission, Bureau,</p>	<p>Jess Panora Jess.panora@betmgm.com</p>	<p>BetMGM</p>

	<p>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. 23N.” BetMGM Comment: This should be subject to a reasonableness standard.</p> <p><u>212.01(5)(b)</u> Proposing to change “(b) Any discipline, including a fine, related to Sports Wagering imposed upon the Sports Wagering Operator or qualifier by any Governmental Authority in any jurisdiction;” to ““(b) Any discipline, including a fine or warning , related to Sports Wagering imposed upon the Sports Wagering Operator or qualifier by any Governmental Authority in any jurisdiction;” BetMGM Comment: Warnings are not sufficiently material to warrant a notification requirement.</p> <p><u>212.01(5)(g)</u> Proposing to remove “or that should reasonably be known” BetMGM Comment: The “should reasonably be known” standard is too speculative to warrant a notice requirement. This should be limited to actual knowledge.”</p>		
<p>212.01(5)(h)</p>	<p>In this subsection the Commission requires notification, within 10 days, by the Sports Wagering Operator of “any exclusion or barring of a qualifier from any casino, gaming establishment, or gambling/gaming related entity, or Sports Wagering or Sports Wagering facility in any jurisdiction.” While we understand</p>	<p>Andrew Winchell andrew.winchell@fanduel.com</p>	<p>FanDuel</p>

	<p>the Commission’s interest in knowing if a qualifier has been excluded or barred from a gaming establishment due to their behavior, this subsection appears to inadvertently capture situations where qualifiers are excluded or barred from taking part in gambling activity due to statutes or regulations that bar sports betting participation due to the nature of the position they hold. For example, G.L. c. 23N § 11(a) prohibits “the operator, directors, officers, owners and employees of the operator and any relative living in the same household as any such person from placing bets with the operator.” It is unnecessary and burdensome for operators to report to the Commission all properties in every jurisdiction where each qualifier is prohibited from engaging in gaming activity solely on the basis of statutory or regulatory prohibitions related to the position or interest they hold in the operator. To address this concern, we suggest a clarifying edit which exempts these types of prohibitions from having to be included.</p> <p>Suggested edit(s):</p> <p>After “jurisdiction” add the following “. However, this shall not include exclusions or barring of a qualifier which stem solely from the interest in, or position they hold with, the Sports Wagering Operator.”</p>		
<p>212.01 Additional Information and</p>	<p>This requirement is overly broad. Propose adding a materiality threshold as revised below.</p>	<p>Robyn Bowers</p>	<p>BetMGM</p>

<p>Cooperation (b)</p>	<p>(b) Any material disciplinary events , including a fines or warnings, related to Sports Wagering imposed upon the Sports Wagering Operator or qualifier by any Governmental Authority in any jurisdiction;</p>	<p>robyn.bowers @betmgm.co m</p>	
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AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 212: Additional Information and Cooperation**, for which a public hearing was held on January 17, 2023, at 9:15am EST.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 212.00 applies to potential sports wagering operators, as well as applicants for related licenses, such as vendors or affiliates, and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

While it is unknown at this time if a potential sports wagering operator, or vendor subject to this regulation would identify as a small business, the Commission feels that are no less stringent compliance or reporting requirements for small businesses at this time.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

This regulation requires applicants for sports wagering licenses, vendors and applicants for related licenses to cooperate with the Commission during the review and evaluation period, as well as after licensure. The regulation establishes that licensees must submit information requested by the Commission or provide updates to the Commission, but there are no less stringent schedules or reporting deadlines for small businesses.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

This amendment does not impose any reporting requirements upon small businesses.



Massachusetts Gaming Commission

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

Performance based standards are set forth in this regulation.

5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

The proposed regulation is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

At this time, it does not appear that 205 CMR 212.00 creates any adverse impact on small businesses.

Massachusetts Gaming Commission
By:

/s/ Judith A. Young
Associate General Counsel
Legal Division

Dated: January 11th 2023



Massachusetts Gaming Commission

205 CMR 214: SPORTS WAGERING APPLICATION FEES

- 214.01 Application Fees
- 214.02 Additional Fees for Investigations

214.01 Application Fees

- (1) Pursuant to M.G.L. c. 23N, § 7(a), each Applicant for a Sports Wagering Operator License shall pay to the Commission a nonrefundable application fee of \$200,000 to defray the costs associated with the processing of the application and investigation of the Applicant; provided, however, that if the costs of the investigation exceed the initial application fee, the Applicant shall pay the additional amount to the Commission within 30 days after notification of insufficient fees or the application shall be rejected.
- (2) The Applicant shall pay the initial non-refundable application fee of \$200,000 by certified check or secure electronic funds transfer made payable to the “Massachusetts Gaming Commission.” The Applicant shall submit this initial non-refundable application fee with or before its initial application.
- (3) All required application fees and community disbursements pursuant to 205 CMR 214.00 shall be non-refundable, due and payable notwithstanding the withdrawal or abandonment of any application.
- (4) In connection with an application for a Sports Wagering Operator License, the Applicant and its Affiliates shall be jointly and severally liable for any amounts chargeable to the Applicant pursuant to 205 CMR 214.00.
- (5) All fees in this section 205 CMR 214.00 shall be deposited into the Sports Wagering Control Fund established in M.G.L. c. 23N, § 15.

214.02 Additional Fees for Investigations

- (1) Pursuant to 205 CMR 214.00, 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 214.00, 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. 23N 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 contract 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 214.00.
- (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.



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 214: Sports Wagering Application Fees** for which a public hearing was held on January 17, 2023, at 9:15am EST.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §§ 4, and 7(a).

The adoption of 205 CMR 214.00 applies to potential sports wagering operators, acting as applicants for licensure under G.L. c. 23N. Accordingly, this regulation is unlikely to have an impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

While it is unknown at this time if a potential sports wagering operator subject to this regulation would identify as a small business, the Commission submits that are no less stringent compliance or reporting requirements to establish for small businesses at this time.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

This regulation requires applicants to pay the fees associated with the evaluation and review of their applications for licensure. There are no less stringent schedules or deadlines for small businesses.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

This amendment does not impose reporting requirements upon small businesses.

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:



Massachusetts Gaming Commission

Performance based standards are set forth in this regulation, as well as a schedule of fees that will be posted upon the Commission's website.

5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

The proposed regulation is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

It does not appear that 205 CMR 214.00 will produce any adverse impact on small businesses.

Massachusetts Gaming Commission
By:

/s/ Judith A. Young
Associate General Counsel
Legal Division

Dated: January 11th 2023



Massachusetts Gaming Commission

205 CMR 215: APPLICANT AND QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

215.01 Affirmative Suitability Standards for Applicants and Qualifiers

215.02 Persons required to be qualified.

215.01 Affirmative Suitability Standards for Applicants and Qualifiers

(1) Durable finding of suitability.

- (a) An Applicant or Qualifier shall have the duty to establish its suitability by clear and convincing evidence.
- (b) No Applicant shall be determined to be suitable in accordance with this 205 CMR 215.01(1) unless and until all Qualifiers identified in 205 CMR 215.02 have been found by the Commission suitable in accordance with this 205 CMR 215.01(1).
- (c) Before the Commission may determine that an Applicant or Qualifier is suitable in accordance with this 205 CMR 215.01(1), the Bureau shall conduct an investigation into the qualifications and suitability of the Applicant or Qualifier, consistent with 205 CMR 115.03(1). At the completion of the Bureau’s investigation, it shall submit a written report to the Commission, which will include recommendations and findings of fact relative to the suitability of the Applicant or Qualifier for a Sports Wagering License.
- (d) The Commission shall make any finding of suitability in accordance with this 205 CMR 215.01(1) after an adjudicatory proceeding pursuant to 205 CMR 101.00 concerning the applicant or qualifier pursuant to 205 CMR 215.01(1)(c).
- (e) After the proceedings under 205 CMR 215.01(1)(d), the Commission shall issue a written determination of suitability as follows:
 - (i) Negative Determination. If the Commission finds that an applicant or new qualifier or existing qualifier failed to meet its burden of demonstrating its suitability, the Commission shall issue a negative determination of suitability.
 - (ii) Positive Determination. If the Commission finds that an applicant or new qualifier or existing qualifier has met its burden of demonstrating its suitability, the Commission shall issue a positive determination of suitability which may include conditions and restrictions.

(2) Preliminary finding of suitability. Notwithstanding any other provision of 205 CMR 215.00, the Commission, in its sole discretion, may determine in

accordance with 205 CMR 215.01(5) that an Applicant or Qualifier is preliminarily suitable in accordance with this 205 CMR 215.01(2) based on a certification pursuant to 205 CMR 215.01(2)(a) and an investigatory report pursuant to 205 CMR 215.01(2)(b).

- (a) To be found preliminarily suitable in accordance with 205 CMR 215.01(2), the Applicant or Qualifier must certify:
 - (i) that it understands it may be denied a Sports Wagering License or have a Sports Wagering License revoked if it has willfully, knowingly, recklessly, or intentionally provided false or misleading information to the Commission;
 - (ii) that, under pains and penalties of perjury, to the best of its reasonable knowledge and belief, it is suitable to hold a license pursuant to M.G.L c. 23N, §§ 5, 6, and 9(a), and 205 CMR 215.01(3)-(4); and
 - (iii) (for an Applicant): the Applicant certifies, under pains and penalties of perjury, that to the best of its reasonable knowledge and belief, all of its Qualifiers are also suitable to hold a license pursuant to M.G.L c. 23N, §§ 5, 6, and 9(a), and 205 CMR 215.01(3)-(4).
- (b) Before the Commission may determine that an Applicant or Qualifier is preliminarily suitable in accordance with this 205 CMR 215.01(2), the Bureau shall conduct an investigation into the qualifications and suitability of the Applicant or Qualifier. The investigation may be limited to a review of the Applicant or Qualifier’s 205 CMR 215.01(2)(a) certification; an Applicant’s self-disclosed licensing and compliance history in other jurisdictions; self-disclosed open litigation involving an Applicant; and an open-source check concerning the Applicant or, if a natural person, a Qualifier. At the completion of the Bureau’s investigation, it shall submit a written report to the Commission.
- (c) Any evaluation of whether an Applicant or Qualifier is preliminarily suitable shall take place during deliberations held in accordance with 205 CMR 218.06(4). The Bureau’s report may be redacted consistent with the Massachusetts Public Records Law, G.L. c. 66, and other sources of law.
- (d) After evaluating whether the Applicant or Qualifier is preliminarily suitable in accordance with 205 CMR 215.01(2)(c):
 - (i) If the Commission finds the Applicant or Qualifier preliminarily suitable, and deems the relevant Applicant eligible to request a Temporary License, in accordance with 205 CMR 218.07(1)(a): the Commission shall issue a written determination of preliminary

suitability for the Applicant or Qualifier. The determination may include conditions and restrictions.

- (ii) Otherwise: the Commission may issue a negative determination of suitability.
- (3) In determining whether an Applicant or Qualifier is suitable, the Commission shall evaluate and consider the overall reputation of the Applicant and its Qualifiers, if any, including, without limitation, and on the basis of a report from the Bureau, sworn attestations, or other information or evidence available to the Commission:
- (a) the integrity, honesty, good character and reputation of the Applicant and its Qualifiers;
 - (b) the financial stability, integrity, and background of the Applicant and its Qualifiers;
 - (c) whether the Applicant and its Qualifiers have a history of compliance with gaming and Sports Wagering licensing requirements in other jurisdictions;
 - (d) whether the Applicant or any Qualifier, at the time of the request, is a defendant in litigation;
 - (e) whether the Applicant or any Qualifier is ineligible to hold a license under 205 CMR 215.01(4), M.G.L. c. 23N, § 9(a), or M.G.L. c. 23N, § 6(e);
 - (f) whether the Applicant or any Qualifier has been convicted of a crime of moral turpitude;
 - (g) whether, and to what extent, the Applicant or any Qualifier has associated with members of organized crime and other Persons of disreputable character; and
 - (h) the extent to which the Applicant and its Qualifiers have cooperated with the Bureau during the review of the Sports Wagering License Application.
- (4) The Commission shall determine that an Applicant is unsuitable if the Applicant or one of its Qualifiers:
- (a) has knowingly made a false statement of a material fact to the Commission;
 - (b) has had a license revoked by any Governmental Authority responsible for regulation of gaming or Sports Wagering activities;
 - (c) has been convicted of a felony or other crime involving embezzlement, theft, fraud, perjury or a gambling-related offense;

- (d) has not demonstrated to the satisfaction of the Commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;
- (e) has Affiliates or Close Associates that would not qualify for a Sports Wagering License or whose relationship with the Applicant may pose an injurious threat to the interests of the Commonwealth.

215.02 Persons Required to be Qualified.

- (1) The following Persons shall be required to qualify as part of the Sports Wagering License review:
 - (a) If the Applicant is a corporation:
 - (i) Each officer;
 - (ii) Each inside director;
 - (iii) Any Person owning, or having another beneficial or proprietary interest in, 10% or more of the common stock of the Applicant, or a holding, intermediary or subsidiary company of such company; and
 - (iv) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant’s Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the Applicant’s operations in the Commonwealth.
 - (b) If the Applicant is a limited liability corporation:
 - (i) Each member;
 - (ii) Each transferee of a member’s interest;
 - (iii) Any other holder of a beneficial or proprietary interest of 10% or more in the Applicant;
 - (iv) Each manager; and
 - (v) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant’s Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the prospective Applicant’s operations in the Commonwealth.

- (c) If the Applicant is a partnership:
 - (i) Each partner;
 - (ii) Any other holder of a beneficial or proprietary interest of 10% or more in the Applicant; and
 - (iii) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant’s Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the Applicant’s Operations in the Commonwealth.

- (2) Other Qualifiers. The Commission may, in its sole discretion, require other Persons that have a Business association of any kind with the Applicant to undergo a Qualifier review and determination process. These Persons may include, but are not limited to, holding, intermediary or subsidiary companies of the requestor.

- (3) Waivers and Persons Deemed Qualified.
 - (a) Waivers. In addition to any other exception or exemption under 205 CMR 215.00, upon written petition, the Commission may waive the requirement to be qualified as a Qualifier under this Section 205 CMR 215 for:
 - (i) Institutional investors holding up to 15% of the stock of the Applicant, or holding, intermediary or subsidiary company thereof, upon a showing by the Person seeking the waiver that it purchased the securities for investment purposes only and does not have any intention to influence or affect the affairs or operations of the Applicant or holding, intermediary or subsidiary company thereof. Provided, however, any institutional investor granted a waiver which subsequently determines to influence or affect the affairs or operations of the Applicant, or a holding, intermediary or subsidiary company thereof shall provide not less than 30 days’ notice to the Commission of such intent and shall file an application and may be subject to the licensing requirements of 205 CMR 210.00 through 218.00 before taking any action that may influence or affect the affairs of the Applicant or a holding, intermediary or subsidiary company; or
 - (ii) Any Person who, in the opinion of the Bureau or the Commission, cannot exercise control or provide direction to an Applicant or a holding, intermediary or subsidiary company thereof.
 - (b) Persons deemed qualified. Any Person previously qualified pursuant to M.G.L. c. 23K or 205 CMR 116.00 may be deemed qualified for purposes

of M.G.L. c. 23N and 205 CMR 105 without an additional finding of suitability pursuant to this 205 CMR 215.

(4) Qualification of New Qualifiers.

- (a) No Person requiring qualification pursuant to 205 CMR 215.02(1)-(2) may perform any duties or exercise any powers relating to the position that said Qualifier is seeking to assume for a Sports Wagering Operator unless the Person notifies the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by the applicable Business entity or personal disclosure form specified by the Bureau. Following such notification and submission of the completed form, the Person may continue to perform duties and exercise powers relating to the position pending qualification.
- (b) A Person with reason to believe that his or her new position with a Sports Wagering Operator may require qualification pursuant to 205 CMR 215.02(1)-(2) shall notify the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by a summary of the responsibilities and/or features of the position. The Bureau shall determine whether the Person shall be designated a Qualifier pursuant to 205 CMR 215.02(1)-(2) and shall notify the Person of such designation in writing. Within 30 days of designation as a Qualifier, the Person shall submit a completed personal disclosure form. Following submission of the completed form, the Person may continue to perform duties and exercise powers relating to the position pending qualification.
- (c) The Bureau shall review the forms submitted by the new Qualifier, as well as such other information that the Bureau may request, and, upon completion of its investigation, shall make a recommendation in accordance with 205 CMR 215.01(1)(c) whether the new Qualifier meets the standards for suitability.
- (d) Upon notification by the Bureau of a determination that reasonable cause exists to believe the Qualifier may not ultimately be found suitable, an Applicant shall promptly remove the Qualifier from his or her position until such time as the Commission makes its final determination on suitability.

(5) Internal Review of Determinations. An Applicant may ask for review of any determination made by the Bureau in accordance with either 205 CMR 215.02(1)-(3) or 205 CMR 215.02(4)(b) to the Commission, by filing a petition on a form prescribed by the Commission. The Commission shall decide the question at a public meeting on the matter at which it may allow representatives of the petitioner and Bureau to testify.

Public Comments Pertaining to 205 CMR 215.00 - Applicant and Qualifier Suitability Determination, Standards, And Procedures

Subsection	Comment	Commenter	Entity
205 CMR 215.01(4)	<p>I watched the meeting relative to proposed regulation 205 CMR 115.01(4), which regulation states that, “The Commission shall determine that an Applicant is unsuitable if the Applicant or one of the qualifiers:” (Emphasis added.) This is at odds with G.L c. 23N, section 9, which is the sports wagering law. Section 9(a) states, “The Commission may deny a license to any applicant, reprimand, and licensee or suspend or revoke a license if the applicant or licensee:” (Emphasis added.)</p> <p>The Commission’s proposed regulations for sports wagering are taken for the most part from the regulations for gaming. The gaming regulations are taken from the statute. G.L. c. 23K, section 16(a), the Gaming Statute, states, “The commission shall deny an application for a gaming license or a license for a key gaming employee issued un the chapter, if the applicant:” (Emphasis added.)</p> <p>On October 27, 2022 the Commission held a meeting and discussed a number of the regulations, including 205 CMR 215. The attorney hired by the Commission in drafting the regulation told the Commission that 205 CMR</p>	<p>Walter Sullivan</p> <p>Wsullivan@wltersullivanlaw.com</p>	N/A

	<p>215.01(4) was taken from section 9 of the chapter 23N of the Massachusetts General Laws. If this case, the law firm should have put a “may” and not a “shall.” The firm made a mistake and used the language from 23K, section 16(a) and not section 9(a) of the sports wagering statute. Thus, 205 CMR 215.01(4) should be amended. The word “shall” should be stricken and replaced with the word “may.”</p>		
<p>215.02(2)</p>	<p>Proposing to change “Persons that have a business association of any kind with the Applicant to undergo a Qualifier review and determination process” to Persons that have a material Business association with the Applicant to undergo a Qualifier review and determination process”</p> <p>BetMGM Comment: Persons with an insignificant or immaterial business association with the applicant should not have to be subjected to an investigation.</p>	<p>Jess Panora jess.panora@betmgm.com</p>	<p>BetMGM</p>
<p>215.02 Persons Required to be Qualified (2)</p>	<p>Commission should not have an unqualified right to conduct these reviews on any entity in any way affiliated with the Applicant. Revised wording is below.</p> <p>(2) Other Qualifiers. The Commission may, in its sole discretion, require other Persons that have a direct Business association of any kind with the Applicant to undergo a Qualifier</p>	<p>Robyn Bowers robyn.bowers@betmgm.com</p>	<p>BetMGM</p>

	<p>review and determination process. These Persons are limited to, holding, intermediary or subsidiary companies of the requestor.</p>		
<p>215.02(3)(a)</p>	<p>In this subsection the Commission provides a process for institutional investors who hold up to 15% percent of the stock of an applicant to apply for a waiver from licensing as a “Qualifier” so long as the securities were purchased for investment purposes only and the institutional investor has no intent to influence the affairs or operation of an operator. While we thank the Commission for the creation of such a waiver, we suggest that the ownership threshold should be increased to 25% to match that found in other jurisdictions, such as Michigan.</p> <p>Suggested edit(s):</p> <p>After “holding up to” strike “15” and replace with “25.”</p>	<p>Andrew Winchell, andrew.winchell@fanduel.com</p>	<p>FanDuel</p>



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 215: Applicant & Qualifier Suitability Determination, Standards, and Procedures** for which a public hearing was held on January 17, 2023, at 9:15am EST.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §§ 4, 6(c), 9(a) and 6(e).

The adoption of 205 CMR 215.00 applies to potential sports wagering operators, who are applying for licensure under G.L. c. 23N, and have submitted applications with materials and information related to their suitability. Accordingly, this regulation is unlikely to have an adverse impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

0. Establishing less stringent compliance or reporting requirements for small businesses:

The Commission submits that there are no less stringent compliance or reporting requirements to establish for small businesses, as it is not apparent that these regulations would affect small businesses.

1. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

This regulation requires applicants seeking licensure as Sports Wagering Operators under G.L. c. 23N to establish their suitability by disclosing their: compliance and licensing history in other jurisdictions; history of open litigations involving the applicant; and an additional review by the Bureau. There are no less stringent schedules for small businesses have been established at this time.

2. Consolidating or simplifying compliance or reporting requirements for small businesses:



Massachusetts Gaming Commission

This amendment does not impose reporting requirements upon small businesses, rather creates a performance based standard that applicants must meet to achieve a finding of suitability by the Commission.

3. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

Performance based standards are set forth in this regulation so that an applicant may receive a preliminary finding of suitability; and then ultimately found suitable by the Commission.

4. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

The proposed regulation is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

5. Minimizing adverse impact on small businesses by using alternative regulatory methods:

It does not appear that this regulation will adversely impact small businesses.

Massachusetts Gaming Commission
By:

/s/ Judith A. Young
Associate General Counsel
Legal Division

Dated: January 11th 2023



Massachusetts Gaming Commission

205 CMR 219: TEMPORARY LICENSING PROCEDURES

- 219.01 Eligibility to Request a Temporary License
- 219.02 Temporary License Request Process
- 219.03 Temporary License Expiration
- 219.04 Temporary License Renewal Process

219.01 Eligibility to Request a Temporary License

- (1) A Person shall be eligible to request a Temporary License if:
 - (a) The Commission deems it eligible in accordance with 205 CMR 218.07(1)(a); or
 - (b) The Commission awards it a Sports Wagering License in accordance with 205 CMR 218.07(1)(b).

219.02 Temporary License Request Process

- (1) Any Person who is eligible to request a Temporary License may submit a request for a Temporary License to the Executive Director on a form to be approved by the Commission. Such request shall be accompanied by an initial licensing fee of \$1,000,000 payable to the Commission.
- (2) Upon receiving a request for a Temporary License, the Executive Director or their designee shall within fourteen days determine whether the requestor is eligible to request a Temporary License and has paid the initial licensing fee as described in 205 CMR 219.02, and make a written recommendation to the Commission as follows:
 - (a) If the Executive Director determines that the requestor is eligible and has paid the initial licensing fee, they shall recommend to the Commission that the Commission issue the requested Temporary License.
 - (b) If the Executive Director determines that the requestor is not eligible or has not paid the initial licensing fee, they shall recommend to the Commission that the Commission deny the requested Temporary License.
- (3) Upon receiving a recommendation from the Executive Director in accordance with 205 CMR 219.02(2), the Commission shall, at an open public meeting held within fourteen days, either issue or deny the requested Temporary License.
 - (a) The Commission shall send written notice of the public meeting to the requestor at least seven days in advance of the meeting.
 - (b) The Commission may in its discretion receive comment or presentations from representatives of the requestor or from the public.

- (4) Any Temporary License shall be subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.

219.03 Temporary License Expiration

- (1) The Temporary License shall expire after the Commission makes a supplemental determination of suitability in accordance with 205 CMR 218.06(7), or one year, whichever is longer; provided, that if the Commission has not made a supplemental determination of suitability within one year, the Temporary License shall:
 - (a) expire after the Commission makes a supplemental determination of suitability in accordance with 205 CMR 218.06(7), or after three years, whichever is shorter, if the Operator does not request a renewal in accordance with 205 CMR 219.04; or
 - (b) expire after the Commission makes a supplemental determination of suitability in accordance with 205 CMR 218.06(7), or after five years, whichever is shorter, if the Operator timely requests and is granted a renewal in accordance with 205 CMR 219.04.
- (2) Under no circumstances shall any Operator conduct Sports Wagering under a Temporary License after five years from the date the Temporary License issued.

219.04 Temporary License Renewal Process

- (1) No Operator shall submit a renewal request in accordance with this 205 CMR 219.04 until twenty-one months or more than two years after the date the Temporary License issued.
- (2) Renewal requests shall be submitted to the Executive Director on a form approved by the Commission.
- (3) Before the Commission may consider the renewal request, the Bureau shall conduct an investigation into the qualifications and continued suitability of the licensee and its Qualifiers, and submit a written report to the Commission, in accordance with 205 CMR 215.01(2)(b).
- (4) Upon receiving a report from the Bureau in accordance with 205 CMR 219.03(2), the Commission shall, at an open public meeting, either grant or deny the requested renewal. The Commission shall send written notice of the public meeting to the requestor at least fourteen days in advance of the meeting.
- (5) If the Commission denies a request for renewal of a Temporary License, the Temporary License shall expire no sooner than two weeks after the date on which the Commission denies the renewal.

(6) Renewal application and licensing fees.

(a) Application fee.

- (i) Any renewal request shall be accompanied by a nonrefundable application fee of \$50,000 to defray the costs associated with the processing of the renewal request and investigation of the licensee. Except for the dollar amount of the fee, said fee shall be subject to the provisions of 205 CMR 214.01 and 205 CMR 214.02.
- (ii) The Executive Director shall deny, without prejudice, any renewal request not accompanied by the required application fee.

(b) Renewal licensing fee.

- (i) Within 30 days after the renewal of a Temporary License pursuant to 205 CMR 219.04(4), the licensee shall pay a non-refundable license fee of \$1,000,000 in accordance with 205 CMR 221.01(2).

Public Comments Pertaining to 205 CMR 219: Temporary Licensing Procedures

Subsection	Comment	Commenter	Entity
219.04 Temporary License Renewal Process (1)	<p>BetMGM Comment: Please indicate whether the Commission meant to say “twenty-four months or more than two years.”</p> <p>(1) No Operator shall submit a renewal request in accordance with this 205 CMR 219.04 until twenty-one months or more than two years after the date the Temporary License issued.</p>	Robyn Bowers robyn.bowers@betmgm.com	Bet MGM



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 219: Temporary Licensing Procedures** for which a public hearing was held on January 17, 2023, at 9:15am EST.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §§ 4, and 6(c).

The adoption of 205 CMR 219.00 applies to potential sports wagering operators, who are applying for temporary licensure under G.L. c. 23N and have submitted applications with materials and information related to their suitability. Accordingly, this regulation is unlikely to have an adverse impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

0. Establishing less stringent compliance or reporting requirements for small businesses:

It is not readily apparent that this regulation would affect small businesses, as it applies to the prospective Operators seeking licensure within the Commonwealth.

1. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

This regulation requires applicants seeking a temporary license as a Sports Wagering Operators under G.L. c. 23N and in accordance with 218.00. There are no less stringent schedules for small businesses have been established, as it does not appear that this regulation impacts or affects small businesses.

2. Consolidating or simplifying compliance or reporting requirements for small businesses:

This amendment does not impose reporting requirements upon small businesses.

3. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:



Massachusetts Gaming Commission

Performance based standards are set forth in this regulation so that an applicant seeking temporary licensure is aware of the process, fees and timing required; however, it does not appear that these regulations will impact small businesses.

4. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

The Commission does not anticipate that the proposed regulation will deter nor encourage the formation of new businesses in the Commonwealth.

5. Minimizing adverse impact on small businesses by using alternative regulatory methods:

As it is currently drafted, it does not appear that 219.00 will adversely impact small businesses.

Massachusetts Gaming Commission
By:

/s/ Judith A. Young
Associate General Counsel
Legal Division

Dated: January 11th 2023



Massachusetts Gaming Commission

**MASSACHUSETTS GAMING COMMISSION
 PROPOSED REGULATIONS AT 205 CMR 220
 SPORTS WAGERING: LICENSE CONDITIONS
 1/8/23 A&K Redline**

SPORTS WAGERING: LICENSE CONDITIONS AND FORM

220.01 Conditions on All Licenses

220.01 Conditions on All Licenses

- (1) All Sports Wagering Licenses shall be issued subject to the following conditions:
 - (a) That the Operator obtain an Operation Certificate before conducting any sports wagering in the Commonwealth.
 - (b) That the Operator comply with all terms and conditions of its license and Operation Certificate;
 - (c) That the Operator comply with G.L. c. 23N and all rules and regulations of the Commission;
 - (d) That the Operator make all required payments to the Commission in a timely manner;
 - (e) That the Operator maintain its suitability to hold a sports wagering license; and
 - (f) That the Operator conduct sports wagering in accordance with its approved system of internal controls, consistent with 205 CMR, and in accordance with its approved house rules, in accordance with G.L. c. 23N, § 10(a) and consistent with 205 CMR.
- (2) All Temporary Licenses shall be issued subject to the condition that the license shall expire in accordance with 205 CMR 219.03 and 219.04.
- (3) All Category 1 and 2 Licenses shall be issued subject to the condition that the license, in the form prescribed by the Commission, shall be posted in a location continuously conspicuous to the public within the Sports Wagering Facility at all times.
- (4) All Category 3 licenses shall be issued subject to the condition that the license, in the form prescribed by the Commission, shall be prominently displayed on the Operator’s website or mobile application.
- ~~(3)~~(5) The Commission may impose any other conditions on particular licenses that it determines are appropriate to secure the objectives of G.L. c. 23N and 205 CMR.

Public Comments Pertaining to 205 CMR 220: Sports Wagering License Conditions

Subsection	Comment	Commenter	Entity
220.02	<p>In this subsection, it appears that if the Commission does not make a determination on the suitability of an applicant for a license within 5 years of receiving a temporary license, their temporary license shall expire, and the applicant will need to cease operating in the state. While we expect that the Commission will be able to complete their suitability review and issue a determination within 5 years, if they did not it would leave operators no recourse but to shut down. Additionally, this subsection goes beyond the language found in G.L. c. 23N § 6(c)(2), which only provides for an expiration of the temporary license upon the completion of a determination of suitability. To address this concern, we suggest striking the language related to expiration of the temporary license after five years if the Commission has not made a determination of suitability.</p> <p style="text-align: center;">Suggested edit(s):</p> <p style="text-align: center;">Strike “provided, that the Temporary License shall expire after five years if the Commission has not made a supplemental determination of suitability in that time.”</p>	<p>Andrew Winchell andrew.winchell@fanduel.com</p>	<p>FanDuel</p>



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 220: Sports Wagering License Conditions**, for which a public hearing was held on January 17, 2023, at 9:15am EST.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §§ 4, 6 and 10(a).

The adoption of 205 CMR 220.00 applies to all Sports Wagering Operators who have been licensed pursuant to G.L. c. 23N and 205 CMR. Accordingly, this regulation is unlikely to have an adverse impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

0. Establishing less stringent compliance or reporting requirements for small businesses:

It is not readily apparent that this regulation would affect small businesses, as it applies to the Sports Wagering Operators who have received licensure within the Commonwealth.

1. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

This regulation places conditions upon Licensees that they must meet to remain in compliance with G.L. c. 23N and 205 CMR. The time-based schedules and deadlines included therein are not anticipated to impact small businesses.

2. Consolidating or simplifying compliance or reporting requirements for small businesses:

This regulation does not impose reporting requirements upon small businesses. 205 CMR 220 does cite to regulations that impose reporting requirements upon Licensees, and Temporary Licensees under G.L. c. 23N and 219.00, however.



Massachusetts Gaming Commission

3. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

Performance based standards are set forth in this regulation to ensure transparency and that Licensees are aware of the Commission's intent to impose conditions on all Licensees; and also have a reasonable expectation that the Commission may impose other conditions upon particular Licensees.

4. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

The Commission does not anticipate that the proposed regulation will deter or encourage the formation of new businesses in the Commonwealth.

5. Minimizing adverse impact on small businesses by using alternative regulatory methods:

As it is currently drafted, it does not appear that 205 CMR 220.00 will have an adverse impact on small businesses.

Massachusetts Gaming Commission
By:

/s/ Judith A. Young
Associate General Counsel
Legal Division

Dated: January 11th 2023



Massachusetts Gaming Commission

205 CMR 221: SPORTS WAGERING LICENSE FEES

- 221.01 Licensing and Assessment Fees
- 221.02 Payment of Fees
- 221.03 Annual Reconciliation of Commission Budget

221.01 Licensing and Assessment Fees

- (1) Upon submission of a request for a Temporary License pursuant to 205 CMR 219.00, the requestor shall pay an initial non-refundable license fee of \$1,000,000 to the Commission.
- (2) Within 3 years after the renewal of Temporary License pursuant to 205 CMR 219.03, the licensee shall pay a non-refundable renewal license fee of \$1,000,000 to the Commission.
- (3) Within 30 days after the award of a Sports Wagering Operator License by the Commission, the Operator shall pay a license fee of \$5,000,000 to the Commission; provided, however, that any \$1,000,000 fee or fees paid to the Commission because the Operator previously received or renewed a Temporary License shall be credited against that \$5,000,000. As a pre-condition of any award, the Commission may provide that such license fees be paid on an installment basis before the award is made and the license issued.
- (4) The following additional fees are due and payable to the Commission for each Sports Wagering Operator:
 - (a) An Annual Assessment as provided by M.G.L. c. 23N, § 15(c), to be determined by the Commission and calculated in accordance with M.G.L. c. 23N, § 15(c) to cover costs of the Commission necessary to maintain control over Sports Wagering, in proportion to each licensee's actual or projected Adjusted Gross Sports Wagering receipts; provided, however, that such assessment may be adjusted by the Commission at any time after payment is made where required to reflect the actual Adjusted Gross Sports Wagering Receipts, and accordingly, the payment of additional funds may be required or a credit may be issued towards the payment due the following year;
 - (b) An annual fee, as provided by M.G.L. c. 23N, § 15(e) reflecting each Operator that is not a Category 1 Sports Wagering Licensee's share of \$1,000,000 to be deposited into the Public Health Trust Fund; provided, however, that the Commission shall determine each Operator's share as their proportional share of anticipated or actual Adjusted Gross Sports Wagering Receipts; provided further, however, that such assessment may be adjusted by the Commission at any time after payment is made where required to reflect the actual adjusted gross sports wagering revenue; and

- (c) any other such license fees required under M.G.L. c. 23N and required to be assessed by the Commission.

221.02 Payment of Fees

- (1) Except in the case of an assessment for fiscal years 2023 and 2024 the Annual Assessment due under 205 CMR 221.01(3)(a) shall be assessed on or about 30 days prior to the start of the Commission fiscal year. The Annual Assessment for each Operator shall be the difference between the Commission's projected costs to regulate Sports Wagering minus any other revenues anticipated to be received by the Commission related to Sports Wagering and assessed as provided in 205 CMR 221.01(3)(b). The Commission may assess the Annual Assessment on a *pro rata* basis commencing in fiscal year 2023 and will make such assessment each fiscal year thereafter. The Commission, in its sole discretion, may allow the Annual Assessment to be paid in one or more installments during the fiscal year.
- (2) All license fees and assessments due to the Commission shall be due and payable within 30 days of receipt of an invoice from the Commission.
- (3) All license fees and assessments shall be submitted in the form of a certified check or secure electronic funds transfer payable to the "Massachusetts Gaming Commission."
- (4) In the event that a licensee fails to pay any fees or assessments as provided in 205 CMR 221.01, the Commission may take any remedial action it deems necessary up to and including revocation of the Sports Wagering Operator License.

221.03 Commission Budget and Reconciliation

- (1) The Commission shall establish a budget for Sports Wagering in the course of establishing its overall budget pursuant to 205 CMR 121.03 and 121.04.
- (2) If at any time during the fiscal year the Commission determines that actual costs associated with Sports Wagering will exceed the projected costs and projected revenue associated with Sports Wagering in the budget the Commission will revise the Annual Assessment assessed to Operator and invoice each Operator for its proportional share of such costs.
- (3) Within 90 days of the close of each fiscal year the Commission will reconcile its actual costs to actual revenues. In no case will the Commission end a fiscal year on a negative basis. No commitment or expense shall cause the Sports Wagering Control Fund to end the fiscal year with a negative cash balance.
- (4) In the event that actual revenues exceed actual costs for a given fiscal year, the Commission in its sole discretion shall credit such Excess Assessment to the Annual Assessment due for the next fiscal year.

- (5) In the event that actual revenues associated with Sports Wagering are less than actual costs associated with Sports Wagering for a given fiscal year, the Commission will assess each Operator for its share of the excess costs (Excess Cost Assessment) in the same manner in which the Commission assessed the Annual Assessment. Such Excess Cost Assessment shall be due and payable as part of the Annual Assessment due for the next fiscal year.



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 221: Sports Wagering License Fees**, for which a public hearing was held on January 17, 2023, at 9:15am EST.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §§ 4, 6(c), 15(c), 15(e).

The adoption of 205 CMR 221.00 governs the fees required of all prospective Operators who have submitted applications for licensure, and ultimately been licensed pursuant to 205 CMR 219.00 and G.L. c. 23N, §§ 15(c), and 15(e). Accordingly, this regulation is unlikely to affect small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

- 0. Establishing less stringent compliance or reporting requirements for small businesses:

It is not readily apparent that this regulation would affect small businesses, as it applies to the Sports Wagering Operators who have received licensure within the Commonwealth. Accordingly, the Commission has not established less stringent compliance or reporting requirements.

- 1. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

This regulation establishes the one-time fees and annual assessments owed by applicants and Operators in the Commonwealth - and time-period and method of payment required by the Commission. As such, there have been no less stringent deadlines for compliance or reporting pertaining to small businesses.

- 2. Consolidating or simplifying compliance or reporting requirements for small businesses:

This regulation does not impose reporting requirements upon small businesses. However, 205 CMR 211 does refer to regulations that impose reporting requirements



Massachusetts Gaming Commission

upon Licensees, and Temporary Licensees under relevant portions of G.L. c. 23N and 205 CMR.

3. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

Performance based standards are set forth in this regulation to ensure transparency and provide Licensees with sufficient notice of the fees and protocols required by the Commission to remain in compliance.

4. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

The Commission does not anticipate that 205 CMR 221.00 will deter or encourage the formation of new businesses in the Commonwealth.

5. Minimizing adverse impact on small businesses by using alternative regulatory methods:

As it is currently drafted, it does not appear that 205 CMR 221.00 will have impose an adverse impact on small businesses.

Massachusetts Gaming Commission

By:

/s/ Judith A. Young
Associate General Counsel
Legal Division

Dated: January 11th 2023



Massachusetts Gaming Commission



Legal Division

TO: Cathy Judd-Stein, Chair
 Eileen O'Brien, Commissioner
 Brad Hill, Commissioner
 Nakisha Skinner, Commissioner
 Jordan Maynard, Commissioner

FROM: Todd Grossman, General Counsel
 Mina S. Makarious, Anderson & Krieger LLP
 Paul Kominers, Anderson & Krieger LLP
 Lon F. Povich, Anderson & Krieger, LLP

DATE: January 11, 2023

RE: Final Adoption of 205 CMR 218: Sports Wagering Operator Application Regulation

On November 10, 2022, the Commission voted to approve 205 CMR 218 governing the application process for Sports Wagering Operators to both file by emergency and to begin the formal promulgation process. These regulations are currently in effect by emergency, and we are now seeking a vote for final adoption of the regulations at the conclusion of the promulgation process.

205 CMR 218 is modeled on 205 CMR 118 and 119, which together covered the "RFA-2" process for gaming establishment licensing under G.L. c. 23K. The key distinction between 205 CMR 118 and 119 and 205 CMR 218 is that, consistent with the Commission's input, the sports wagering license process will proceed in one phase, without separating out suitability review into a gating "RFA-1" phase.

205 CMR 218 largely proceeds chronologically through the application process and consists of the following sections:

- **218.01** contemplates a pre-application consultation process. In accordance with feedback at the October 12 Commission meeting, there is also language included contemplating other methods of disseminating information to applicants such as publishing questions and answers, or information sessions.
- **218.02** sets out the basic application requirements for all Applicants and refers back to 205 CMR 211, previously adopted by the Commission. It provides that the Commission may choose to review applications received only after an applicable application deadline has passed (as has been discussed with respect to Category 3 license applications) or on a



Massachusetts Gaming Commission

rolling basis (which may be appropriate for other categories of applications). It also makes clear that Applicants must comply with deadlines while preserving flexibility for the Commission to allow an extension of time in the manner provided in 205 CMR 211.

- **218.03** mirrors 118.03 and provides for a purely administrative review of an application to make sure all required questions have been answered. This provision makes clear that review for completeness is in no way intended to substitute for the Commission’s review of the merits of an application.
- **218.04** governs the initial procedures for the Commission’s review of applications, including giving the Commission the option of referring further study of an application to the Bureau, Commission staff, or consultants. However, as the subsequent sections make clear, the Commission would retain its review authority and only receive recommendations, not final findings, from these entities.
- **218.05** provides a simplified provision to permit the holding of public meetings regarding applications.
- **218.06** governs how the Commission will actually review applications, providing flexibility in process (e.g., preserving the ability to utilize weighted or unweighted scoring, hear applicant presentations, request further information, etc.). It also identifies the Commission’s stated criteria for evaluation, consistent with the Commission’s approved application forms.

In recognition of the potential “competitive” process for untethered Category 3 licenses, 218.06(6) allows for a comparative evaluation of applications, not simply an application-by-application consideration. It also provides for a potential competitive process for untethered Category 3 licenses, including the potential for multiple rounds of review. We are recommending that the Commission preserve maximum flexibility in this process, as explained at the Commission’s October 12 meeting.

- **218.07** provides the determinations the Commission may make with respect to each application. Because the current drafts of 205 CMR 215 (governing suitability) and 219 (governing temporary licensing) contemplate the possibility of temporary licensing prior to the completion of a full suitability review, 205 CMR 218.07 provides the Commission the option to make a preliminary suitability finding which would enable the applicant to request a temporary license.
- **218.08** sets out a few general provisions governing the application process including a requirement that the Commission issue a written decision with respect to each successful application, including specific findings of fact, and noting any conditions of licensure imposed under 205 CMR 220. It also provides that the award of a license is to be

deemed to happen immediately upon the Commission's decision *unless the Commission* specifies otherwise. This is intended to trigger the Commission's ability to require payment of licensing fees and capital investments under G.L. c. 23N, but preserve flexibility for unique circumstances.

205 CMR 218: GENERAL SPORTS WAGERING APPLICATION REQUIREMENTS, STANDARDS, AND PROCEDURES

- 218.01 Pre-application Consultation
- 218.02 Application Requirements
- 218.03 Administrative Completeness Review
- 218.04 Review Procedures
- 218.05 Public Meetings Regarding Sports Wagering Applications
- 218.06 Evaluation of the Application by the Commission
- 218.07 Sports Wagering License Determinations
- 218.08 Provisions Applicable to All Sports Wagering Licensing Determinations

218.01 Pre-application Consultation

The Commission or its designees may conduct one or more consultation meetings or information sessions with Sports Wagering License Applicants, or prospective applicant, to provide guidance on application procedures, including the requirements of this 205 CMR 218.00. In addition, the Commission may use other methods to respond to inquiries regarding the application process, such as publishing responses to questions submitted by Applicants.

218.02 Application Requirements

- (1) A Sports Wagering License Application must be filed on or before any applicable deadline established by the Commission, if any, and pursuant to any instructions and process posted by the Commission on its website or in the application.
 - (a) For any application submitted after a given deadline has passed, the Commission may decline to take any action or particular actions on that application until it has made determinations in accordance with 205 CMR 218.07 on all applications of the same category received by the prior deadline.
 - (b) The Commission may establish different deadlines for applications for different categories or groups of sports wagering licenses, or parts thereof.
 - (c) After an application deadline for any category or group of applications or parts thereof has passed, the Commission may establish a new application deadline for such applications or parts thereof.
- (2) The Commission shall have no obligation to accept or review an incomplete application submitted by an established deadline or an application submitted after an established deadline except where permitted pursuant to 205 CMR 211.01(10) and 205 CMR 218.03(3).

218.03 Administrative Sufficiency Review

- (1) The Commission’s Division of Licensing will review each Sports Wagering License Application for administrative sufficiency.
- (2) When determining whether an application is administratively sufficient, the Division of Licensing shall review only the portions of the application required by 205 CMR 211.01(1)(c)-(f) and only determine whether all information or materials required to be provided in response to each question or request has been submitted.
- (3) If an application is determined to be insufficient:
 - (a) The Division shall notify the Applicant by email. The notification shall specifically identify the deficiencies.
 - (b) The Applicant shall have the right to submit supplemental or corrected information to cure the deficiencies within fourteen days.
 - (c) For each deficient application component, the fourteen day period established in 205 CMR 218.03(3)(b) shall begin the day after:
 - (i) The applicable deadline established by the Commission under 205 CMR 218.02(1), if that deadline has not passed; or
 - (ii) The date on which the notification sent pursuant to 205 CMR 218.03(3)(a) was sent, if the applicable deadline established by the Commission under 205 CMR 218.02(1) has passed.
- (4) A positive determination of administrative sufficiency shall not constitute a finding with respect to the accuracy of the information submitted, and shall not bar a request for further information by the Commission, the Bureau or their agents and employees with respect to the application.

218.04 Review Procedures

- (1) In reviewing the merits of the Sports Wagering License Application, the Commission may, at such times and in such order as the Commission deems appropriate, take some or all of the following actions:
 - (a) Refer the 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) Commission staff; and
- (v) Any consultant retained by the Commission to aid in the review of the application;
- (b) Retain, or authorize the Executive Director or the Executive Director's designee to retain, using the application fee and investigation reimbursements described in 205 CMR 214.00, such professional consultants (including without limitation financial and accounting experts, legal experts, Sports Wagering experts, contractor investigators, and other qualified professionals) as the Commission in its discretion deems necessary and appropriate to review the request and make recommendations; and
- (c) Require or permit, in the Commission's discretion, the Applicant to provide additional information and documents.

218.05 Public Meetings Regarding Sports Wagering Applications

- (1) The Commission may conduct one or more meetings to:
 - (a) receive public feedback on sports wagering license applications;
 - (b) allow any Applicant to make a presentation; and
 - (c) allow any Applicant to respond to questions or public comments.
- (2) Prior to any meeting held in accordance with this 205 CMR 218.05, the commission will prescribe the manner in which it will receive comments from members of the public.

218.06 Evaluation of the Application by the Commission

- (1) Once a submitted Sports Wagering License Application is deemed administratively sufficient, 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) The Commission shall analyze the factors and considerations set out in 205 CMR 218.06(5) and 218.06(6) in no particular order, and giving any particular weights, or no weight, to any factor.
- (3) In reviewing any application, the Commission may also utilize any of the following methods, without limitation:
 - (a) Public meetings and presentations; or

- (b) Requests for additional information, modified proposals, or applications from Applicants, including requesting the Applicants’ “best and final” proposals.
- (4) The Commission shall deliberate on license applications in a public meeting, and shall not be required to use the procedures set out in 205 CMR 101.00.
- (5) In determining whether any Applicant will be awarded a Sports Wagering License, the Commission will evaluate the Sports Wagering License Application to determine whether a license award would benefit the Commonwealth, and consider the following factors:
 - (a) The Applicant’s experience and expertise related to Sports Wagering, including:
 - (i) The Applicant’s background in Sports Wagering;
 - (ii) The Applicant’s experience and licensure in other jurisdictions with Sports Wagering;
 - (iii) A description of the Applicant’s proposed Sports Wagering operation, or description, technical features, and operation of Sports Wagering platform, as applicable; and
 - (b) The economic impact and other benefits to the Commonwealth if the Applicant is awarded a License, including:
 - (i) Employment opportunities within the Commonwealth;
 - (ii) The projected revenue from wagering operations, and tax revenue to the Commonwealth;
 - (iii) For Category 1 and 2 Sports Wagering License Applicants, the Applicant’s proposed plans for construction and capital investments associated with the license award; and
 - (iv) Community engagement; and
 - (c) The Applicant’s proposed measures related to responsible gaming, including:
 - (i) The Applicant’s responsible gaming policies;
 - (ii) The Applicant’s advertising and promotional plans; and
 - (iii) The Applicant’s history of demonstrated commitment to responsible gaming; and

- (d) A description of the Applicant’s willingness to foster racial, ethnic, and gender diversity, equity, and inclusion, including:
 - (i) Within the Applicant’s workforce;
 - Through the Applicant’s supplier spend; and
 - (ii) In the Applicant’s corporate structure; and
 - (e) The technology that the Applicant intends to use in its operation, including:
 - (i) Geofencing;
 - (ii) Know-your-customer measures; and
 - (iii) Technological expertise and reliability; and
 - (f) The suitability of the Applicant and its qualifiers, including:
 - (i) Whether the Applicant can be or has been determined suitable in accordance with 205 CMR 215;
 - (ii) The Applicant’s and all parties in interest to the license’s integrity, honesty, good character, and reputation;
 - (iii) The Applicant’s financial stability, integrity, and background;
 - (iv) The Applicant’s business practices and business ability to establish and maintain a successful sports wagering operation;
 - (v) The Applicant’s history of compliance with gaming or sports wagering licensing requirements in other jurisdictions; and
 - (vi) Whether the Applicant is a defendant in litigation involving its business practices; and
 - (g) Any other appropriate factor, in the Commission’s discretion.
- (6) Additional considerations for applications for untethered Category 3 licenses
- (a) In determining whether a particular Applicant will be awarded an Untethered Category 3 License, the Commission shall take into consideration the variations between the Applicants as they relate to any other Sports Wagering License Applicants or licensees, and how granting any particular Application, or combination of Applications, would maximize overall benefits and minimize overall harms or the risk of harms to the Commonwealth.

- (b) The Commission may, in its discretion, implement competitive processes for awarding Untethered Category 3 Licenses, and may, without limitation:
 - (i) Utilize scored or unscored selection systems;
 - (ii) Grant or deny one or more particular applications, while reserving action on other applications for future deliberation; or
 - (iii) Review applications in multiple phases or rounds, and use different review methodologies in each phase or round.

(7) Supplemental suitability determinations

- (a) At any time after deeming an Applicant eligible to request a Temporary License in accordance with 205 CMR 218.07, the Commission may make a supplemental determination of suitability according to the standard set out in 205 CMR 215.01(1).
- (b) If the Commission determines under 205 CMR 218.06(7)(a) that the Applicant is:
 - (i) suitable, the Commission shall award the Applicant a Sports Wagering License in accordance with 205 CMR 218.07;
 - (ii) unsuitable, the Commission shall deny the Applicant a Sports Wagering License in accordance with 205 CMR 218.07.

218.07 Sports Wagering License Determinations

- (1) After evaluating each Sports Wagering License application in accordance with 205 CMR 218.06, the Commission may:
 - (a) Find the Applicant preliminarily suitable in accordance with 205 CMR 215.01(2), and deem the Applicant eligible to request a Temporary License, which shall be subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.00;
 - (b) Find the Applicant suitable in accordance with 205 CMR 215.01(1), and award the Applicant a Sports Wagering License, subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.00; or
 - (c) Deny the application for any of the reasons set out in M.G.L. c. 23N §§ 6(e), 9, or in 205 CMR.

- (2) The Commission shall not take make a determination in accordance with 205 CMR 218.07(1) on any Untethered Category 3 License Application until the deadline applicable to Untethered Category 3 License Applications has passed, and the Commission has provided an opportunity for public feedback at one or more public meetings held in accordance with 205 CMR 218.05.

218.08 Provisions Applicable to All Sports Wagering Licensing Determinations

- (1) Upon granting an application, the Commission shall prepare and file its decision, and shall issue a statement of the reasons for the grant, including specific findings of fact, and noting any conditions of licensure imposed under 205 CMR 220.
- (2) Upon denial of an application, the Commission shall prepare and file its 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.
- (3) For purposes of 205 CMR and M.G.L. c. 23N, the award of a Sports Wagering License shall be deemed to have occurred immediately upon a majority vote by the Commission to issue the license, unless otherwise determined by the Commission.
- (4) An Applicant awarded a Sports Wagering License, or deemed eligible to request a Temporary License, shall not conduct sports wagering until it meets all other applicable requirements of M.G.L. c. 23N and 205 CMR including having been issued an operation certificate.

**Public Comments Pertaining to
205 CMR 218: General Sports Wagering Application
Requirements, Standards, and Procedures**

Subsection	Comment	Commenter	Entity
<p style="text-align: center;">218.05 Public Meetings Regarding Sports Wagering Applications (2)</p>	<p>BetMGM Comment: This is a slightly amended version of an earlier proposed edit to this effect.</p> <p>Prior to any meeting held in accordance with this 205 CMR 218.05, the commission will prescribe the manner in which it will receive comments from members of the public. Before any confidential or proprietary information about an Applicant will be publicly disclosed during these meetings , such Applicant will be notified in advance, to the extent possible.</p>	<p>Robyn Bowers robyn.bowers@betmgm.com</p>	<p>Bet MGM</p>
<p>218.06 Evaluation of the Application by the Commission (1)</p>	<p>BetMGM Comment: This is a slightly amended version of an earlier proposed edit to this effect.</p> <p>Once a submitted Sports Wagering License Application is deemed administratively sufficient, the Commission shall commence a substantive</p>	<p>Robyn Bowers robyn.bowers@betmgm.com</p>	<p>Bet MGM</p>

	<p>evaluation of its contents. The Commission may utilize any technical assistance it deems necessary to aid in its review but, to the extent persons providing technical assistance obtain access to confidential or proprietary information during the course of their assistance, such information must be stored in a secure physical or electronic location, or must be promptly deleted or destroyed upon the end of such assistance .</p>		
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AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 218: General Application Requirements, Standards and Procedures** for which a public hearing was held on January 17, 2023, at 9:15am EST.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §§ 4, 6(c), 9(a) and 6(e).

The adoption of 205 CMR 218.00 applies to potential sports wagering operators, who are applying for licensure under G.L. c. 23N, and have submitted applications with materials and information related to their suitability. Accordingly, this regulation is unlikely to have an adverse impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

0. Establishing less stringent compliance or reporting requirements for small businesses:

The Commission submits that there are no less stringent compliance or reporting requirements to establish for small businesses, as it is not apparent that these regulations would affect small businesses.

1. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

This regulation requires applicants seeking licensure as Sports Wagering Operators under G.L. c. 23N to submit an application that meets certain requirements and contain specific information. This regulation permits the Commission to establish different deadlines for application for different categories or groups or parts thereof.

2. Consolidating or simplifying compliance or reporting requirements for small businesses:

This amendment does not impose reporting requirements upon small businesses, rather creates a performance based standard that applicants seeking licensure must meet to receive review of their application by the Commission.



Massachusetts Gaming Commission

3. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

Performance based standards are set forth in this regulation.

4. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

205 CMR 218 is unlikely to deter or encourage the formation of new businesses within the Commonwealth.

5. Minimizing adverse impact on small businesses by using alternative regulatory methods:

The Commission does not anticipate that this regulation will create an adverse impact upon small businesses.

Massachusetts Gaming Commission
By:

/s/ Judith A. Young
Associate General Counsel
Legal Division

Dated: January 11th 2023



Massachusetts Gaming Commission



TO: Cathy Judd-Stein, Chair
 Eileen O’Brien, Commissioner
 Brad Hill, Commissioner
 Nakisha Skinner, Commissioner
 Jordan Maynard, Commissioner

FROM: Carrie Torrisi, Deputy General Counsel
 Judith Young, Associate General Counsel
 Mark Vander Linden, Director of Research and Responsible Gaming
 David Mackey, Anderson & Kreiger LLP
 Annie Lee, Anderson & Kreiger LLP

DATE: January 11, 2023

RE: Final Adoption of 205 CMR 233: Sports Wagering Voluntary Self-Exclusion

On November 10, 2022, the Commission voted to 205 CMR 233 governing Sports Wagering voluntary self-exclusion to both file by emergency and to begin the formal promulgation process. These regulations are currently in effect by emergency, and we are now seeking a vote for final adoption of the regulations at the conclusion of the promulgation process.

205 CMR 233 carries out the Commission’s mandate to create and maintain a list of individuals self-excluded from sports wagering. It largely tracks, and where appropriate incorporates by reference, 205 CMR 133 governing the list of individuals self-excluded from gaming.

Summary of Sections

- 233.01 Consistent with G.L. c. 23N, § 13(e)(2), this section reiterates the Commission’s duty to create and maintain a list of individuals self-excluded from sports wagering. As with 205 CMR 133, the purpose of the self-exclusion list is to offer individuals means to help address or deter problematic sports wagering.
- 233.02 This section outlines the consequences of placement on the self-exclusion list, as well as the procedures by which an individual can apply to have their name placed on the voluntary self-exclusion list. The procedure follows the same procedures set out in 205 CMR 133. Unlike 205 CMR 133, which requires gaming licensees to update its internal management system with the names of individuals being added or removed from the self-exclusion list every 72 hours, this section requires sports wagering operators to make those updates every 24 hours.



Massachusetts Gaming Commission

- 233.03 This section sets out the minimum requirements for individuals to apply for inclusion on the self-exclusion list. These requirements follow the same requirements set out in 205 CMR 133, but as applicable to sports wagering.
- 233.04 The duration periods for which an individual can elect to be included on the self-exclusion list, and processes and procedures for applying to remove oneself from the self-exclusion list are the same as those provided in 205 CMR 133 for gambling. When an individual removes themselves from the self-exclusion list and participates in a reinstatement session, the individual will be automatically offered resources to address problematic sports wagering, unless they expressly decline such resources.
- 233.05 The Commission has the same obligations relative to the maintenance and custody of the voluntary self-exclusion list as it does under 205 CMR 133. Sports wagering operators have the same access to and obligations regarding the voluntary self-exclusion list as gaming licensees do under 205 CMR 133.
- 233.06 A sports wagering operator's responsibilities relative to the administration of the voluntary self-exclusion list follow the same responsibilities gaming licensees are subject to under 205 CMR 133 in the sports wagering context.
- 233.07 A sports wagering operator may be sanctioned for its failure to abide by its responsibilities set out in 205 CMR 233. Any sanctions are subject to the same procedural requirements, including review before the Commission, as set out in 205 CMR 133.
- 233.08 Just as an individual on the self-exclusion list is not entitled to recover losses, and a gaming licensee is not prohibited from seeking payment of a debt from an individual on a self-exclusion list under 205 CMR 133, the same applies to individuals self-excluded from sports wagering and sports wagering operators.

205 CMR 233: SPORTS WAGERING VOLUNTARY SELF-EXCLUSION

Section

- 233.01: Scope and Purpose
- 233.02: Placement on the Self-exclusion List
- 233.03: Contents of the Application
- 233.04: Duration of Exclusion and Reinstatement from the List
- 233.05: Maintenance and Custody of the List
- 233.06: Responsibilities of the Sports Wagering Operator
- 233.07: Sanctions against a Sports Wagering Operator
- 233.08: Collection of Debts

233.01: Scope and purpose

- (1) In accordance with M.G.L. c. 23N, § 13(e)(2), the Commission shall establish a list of self-excluded Persons from Sports Wagering. 205 CMR 233.00 shall govern the procedures and protocols relative to the list of Persons self-excluded from entering a Sports Wagering Area or a Sports Wagering Facility, or holding a Sports Wagering Account. The voluntary-self exclusion list shall consist of names and information relative to those individuals who have complied with the requirements of 205 CMR 233.00 and have been placed on the list by the Commission. Placement of one’s name on the self-exclusion list is intended to offer individuals one means to help address problem gambling behavior or deter an individual with family, religious, or other personal concerns from entering the Sports Wagering Area or Sports Wagering Facility, or holding a Sports Wagering Account.
- (2) For purposes of 205 CMR 233.00, the term ‘problem gambler’ shall have the same meaning as that term is defined in 205 CMR 133.01.

233.02: Placement on the Self-exclusion List

- (1) An individual whose name is placed on the voluntary self-exclusion list shall be prohibited from entering a Sports Wagering Area or a Sports Wagering Facility, or holding a Sports Wagering Account, for the duration of the exclusion period and until the completion of the reinstatement session required by 205 CMR 233.04(2), and shall not collect any winnings or recover any losses resulting from any Sports Wagering. Provided, however, that an employee of a Sports Wagering Operator or vendor who is on the voluntary-self exclusion list may be in a Sports Wagering Area or a Sports Wagering Facility, or hold a Sports Wagering Account, solely for the purposes of performing the employee’s job functions.
- (2) An individual may request to have the individual’s name placed on the voluntary self-exclusion list in accordance with the procedures outlined in 205 CMR 133.02(2)-(7) and (9)-(10). Applications for placement on the voluntary self-exclusion list shall also be available at designated locations on and off the premises of the gaming establishment in which there is a Sports Wagering Area, at a Sports Wagering Facility, and on a public web page directly accessible from a link prominently placed on a Sports Wagering Operator’s mobile application or other digital platform as determined by the Commission.

- (3) The course of training required to become a designated agent who can accept and perform intakes related to an application for placement on the voluntary self-exclusion list pursuant to 205 CMR 133.02 shall also include an understanding of 205 CMR 233.00.
- (4) If the Sports Wagering Operator utilizes an internal management system to track individuals on the self-exclusion list, the Sports Wagering Operator shall update that system at least every 24 hours with names of individuals being added or removed from the self-exclusion list.

233.03: Contents of the Application

The application for voluntary self-exclusion shall require provision of, at a minimum, the same content required by 205 CMR 133.03(2)-(4), (7), (10)-(11) and (13). The application for voluntary self-exclusion shall also require provision of, at a minimum, the following content:

- (1) Name, home address, email address, telephone number, date of birth, last four digits of social security number of the applicant, and any other information required by the Commission;
- (2) An acknowledgment by the applicant that the applicant will not enter the Sports Wagering Area or Sports Wagering Facility, or engage in Sports Wagering, for the duration of the exclusion period and until the completion of the reinstatement session required by 205 CMR 233.04(2) (except as provided by 205 CMR 233.02(1)), and that it is the applicant's responsibility to refrain from doing so;
- (3) An acknowledgment by the applicant that the applicant shall not collect any winnings or recover any losses resulting from Sports Wagering for the duration of the exclusion period and until completion of the reinstatement session required by 205 CMR 233.04(2);
- (4) An acknowledgment by the applicant that by placing the applicant's name on the voluntary self-exclusion list, the prohibitions identified in 205 CMR 233.02(1) may apply to all forms of gaming offered by any entities licensed by the Commission, as well as by any affiliates of such entities, whether within Massachusetts or another jurisdiction, and that the Commission may share the list with other domestic or international gaming or Sports Wagering jurisdictions resulting in placement on the lists of such other jurisdictions, and may share such portion of the list with designated agents as may be necessary for the purpose of administering the voluntary self-exclusion program;
- (5) An acknowledgment by the applicant that if the applicant violates the agreement to refrain from entering the Sports Wagering Area or Sports Wagering Facility, or engage in Sports Wagering, the applicant shall notify the Commission of such violation within 24 hours of the violation; and
- (6) An acknowledgment by the applicant that once the applicant's name is placed on the self-exclusion list, the applicant may be refused entry or ejected from the gaming establishment, Sports Wagering Area or Sports Wagering Facility, or be prohibited from having the applicant's Sports Wager be accepted.

233.04: Duration of Exclusion and Reinstatement from the List

- (1) As part of the request for voluntary self-exclusion, the individual must select the duration for which the individual wishes to be voluntarily excluded in accordance with 205 CMR 133.04(1). The processes and procedures concerning removal from the voluntary self-exclusion list shall be the same as those processes and procedures provided in 205 CMR 133.04(2)-(4) and (6)-(9).
- (2) In addition, to be eligible for removal from the voluntary self-exclusion list, the petitioner shall participate in a reinstatement session with a designated agent. The reinstatement session shall include a review of the risks and responsibilities of Sports Wagering, budget setting and a review of problem gambling resources unless the petitioner declines such a review. Upon completion of the reinstatement session, the designated agent shall sign the individual's petition for removal from the list attesting to the fact that the reinstatement session was conducted. The designated agent shall submit an electronic verification to the Commission that the petitioner has completed a reinstatement session. The designated agent shall provide a copy of the electronic verification that the petitioner has completed a reinstatement session to Sports Wagering Operators and the petitioner.

233.05: Maintenance and Custody of the List

- (1) The Commission shall be subject to the same obligations relative to the maintenance and custody of the voluntary self-exclusion list as set forth in 205 CMR 133.05(1) and (3).
- (2) Sports Wagering Operators shall have the same access to and obligations regarding the voluntary self-exclusion list as gaming licensees pursuant to 205 CMR 133.05(1)-(2).

233.06: Responsibilities of the Sports Wagering Operator

A Sports Wagering Operator shall have the same responsibilities relative to the administration of the voluntary self-exclusion list as gaming licensees have pursuant to 205 CMR 133.06(3)-(6) and (7)(b). An individual on the self-exclusion list shall have the same rights as those provided under 205 CMR 133.06(7)(b). A Sports Wagering Operator shall also have the following responsibilities relative to the administration of the voluntary self-exclusion list:

- (1) A Sports Wagering Operator shall eject from or refuse entry into the Sports Wagering Area or Sports Wagering Facility any individual on the voluntary self-exclusion list;
- (2) A Sports Wagering Operator shall not accept any Sports Wager from an individual on the voluntary self-exclusion list attempts to place;
- (3) A Sports Wagering Operator shall promptly notify the Commission, or its designee, if an individual on the voluntary self-exclusion list is found in the Sports Wagering Area or Sports Wagering Facility, or attempting to place a Sports Wager;
- (4) A Sports Wagering Operator shall not pay any winning derived from Sports Wagering to an individual who is prohibited from Sports Wagering by virtue of having their name on the voluntary self-exclusion list in accordance with 205 CMR 233.00. Winnings derived from Sports Wagering shall include, but not be limited to, such things as proceeds derived

from wagering on a Sports Wagering Kiosk. When reasonably possible, the Sports Wagering Operator shall confiscate in a lawful manner or shall refuse to pay, or shall notify a Commission agent who shall confiscate in a lawful manner, any such winnings derived from Sports Wagering or any money or thing of value that the individual has converted or attempted to convert into a wagering instrument whether actually wagered or not. A wagering instrument shall have the same meaning as that term is defined in 205 CMR 133.06(7)(a) and shall also include electronic credits on a Sports Wagering Kiosk. The monetary value of the confiscated winnings or wagering instrument shall be paid to the Commission for deposit into the Sports Wagering Fund within 45 days;

- (5) In cooperation with the Commission, and where reasonably possible, the Sports Wagering Operator shall determine the amount wagered and lost by an individual who is prohibited from Sports Wagering. The monetary value of the losses shall be paid to the Commission for deposit into the Sports Wagering Fund within 45 days;
- (6) A Sports Wagering Operator shall submit a written policy for compliance with the voluntary self-exclusion program for Commission approval at least 30 days before the Sports Wagering Operator begins accepting bets from individuals participating in Sports Wagering from Massachusetts. The Commission shall review the plan, and if approved, the plan shall be implemented and followed by the Sports Wagering Operator. The plan for compliance with the voluntary self-exclusion program shall include at a minimum those procedures provided under 205 CMR 133.06(9)(a)-(f) and 251. If the plan is not approved, the Commission may withhold issuance of an Operations Certificate until the Sports Wagering Operator has submitted a new policy that is approved by the Commission.
- (7) The Commission shall review each Sports Wagering Operator’s written policy at least once a year.
- (8) If a Sports Wagering Operator amends its written policy prior to the Commission’s annual review, the Sports Wagering Operator shall submit an amended written policy for Commission approval within 30 days of amending the written policy. The Sports Wagering Operator shall not implement the amended written policy until the Commission approves the amended written policy. While the Commission reviews the amended written policy, the Sports Wagering Operator shall continue to implement the written policy most recently approved by the Commission.
- (9) A Sports Wagering Operator shall notify the Commission within ten days if an employee or agent fails to exclude or eject from its premises, or fails to reject or block an attempted Sports Wager, from any individual on the voluntary self-exclusion list, or otherwise fails to perform its obligation set forth in 205 CMR 233.06, including any provision of its approved written policy for compliance with the voluntary self-exclusion program.

233.07: Sanctions Against a Sports Wagering Operator

- (1) Grounds for Action. A Sports Wagering Operator license may be conditioned, suspended, or revoked, or a Sports Wagering Operator assessed a civil administrative penalty if it is determined that a Sports Wagering Operator has:

- (a) knowingly or recklessly failed to exclude or eject from the Sports Wagering Area or the Sports Wagering Facility any individual placed on the voluntary self-exclusion list, or knowingly or recklessly failed to reject or block an attempted Sports Wager by any individual placed on the voluntary self-exclusion list. Provided, it shall not be deemed a knowing or reckless failure if an individual on the voluntary self-exclusion list shielded their identity or otherwise attempted to avoid identification while present at a Sports Wagering Area, Sports Wagering Facility, or on a Sports Wagering Platform; or
 - (b) failed to abide by any provision of 205 CMR 233.00, M.G.L. c. 23N, § 13(e)(2), a Sports Wagering Operator’s approved written policy for compliance with the voluntary self-exclusion program pursuant to 205 CMR 233.00, or any law related to the voluntary self-exclusion of patrons from a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform. Provided, a Sports Wagering Operator shall be deemed to have marketed to an individual on the voluntary self-exclusion list only if marketing materials are sent directly to an address, email address, telephone number, or other contact identified by the individual on their application.
- (2) Finding and Decision. If the bureau finds that a Sports Wagering Operator has violated a provision of 205 CMR 233.07(1), it may issue a decision or notice in accordance with 205 CMR 133.07(2).
 - (3) Civil Administrative Penalties. The Commission may assess a civil administrative penalty on a Sports Wagering Operator in accordance with M.G.L. c. 23N, § 16 for a violation of 205 CMR 233.07(1).
 - (4) Review of Decision. A recommendation that a Sports Wagering Operator license be suspended or revoked shall proceed in accordance with the procedures set out in 205 CMR 133.07(4).

233.08: Collection of Debts

- (1) An individual who is prohibited from Sports Wagering under 205 CMR 233.00 shall not be entitled to recover losses as a result of prohibited Sports Wagering based solely on their inclusion on the list.
- (2) Nothing in 205 CMR 233.00 shall be construed to prohibit a Sports Wagering Operator from seeking payment of a debt from an individual whose name is on the voluntary self-exclusion list.

Public Comments Pertaining to 205 CMR 233: Sports Wagering Voluntary Self-Exclusion

Subsection	Comment	Commenter	Entity
233.07(1)(a)	<p style="text-align: center;">"Proposing to remove 'or recklessly' and 'or reckless'."</p> <p style="text-align: center;">BetMGM Comment: Only the knowing failure to exclude or eject a self- excluded person should warrant this type of discipline."</p>	<p style="text-align: center;">Jess Panora</p> <p style="text-align: center;">jess.panora@betmgm.com</p>	BetMGM



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 233: Sports Wagering Voluntary Self-Exclusion** for which a public hearing was held on January 17, 2023.

205 CMR 233.00 was developed as part of the process of promulgating regulations governing the operation of Sports Wagering in the Commonwealth. The proposed amendments to the regulations will extend the process for accepting voluntary self-exclusion applications to Sports Wagering lawfully authorized under G.L. c. 23N. submissions. This regulation is governed largely by G.L. c. 23N, §§ 4,13(d), 13(e)(2).

The amendment to 205 CMR 233.00 apply to licensed Sports Wagering Operators and their employees, designated agents responsible for intake of self-excluded persons, and individuals placing themselves on the self-exclusion list. Accordingly, this regulation is unlikely to have an impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

As a general matter, no small businesses will be negatively impacted by this amendment as it solely relates to licensed Sports Wagering Operators, their employees, designated agents, and individuals placing themselves on the self-exclusion list. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

There are no schedules or deadlines for compliance or reporting requirements within this regulation that would pertain to small businesses.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

This regulation does not impose any reporting requirements.



Massachusetts Gaming Commission

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

There are no design or operational standards within in the proposed regulation.

5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

This regulation is not likely to deter or encourage the formation of new businesses in the Commonwealth, as it is limited in its likely impact on the business community.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

This amendment does not create any adverse impact on small businesses.

Massachusetts Gaming Commission

By:

/s/ Judith Young

Judith A. Young

Associate General Counsel
Legal Division

Dated: January 11th 2023



Massachusetts Gaming Commission