



## NOTICE OF MEETING AND AGENDA

Pursuant to the Massachusetts Open Meeting Law (G.L. c. 30A, §§ 18-25), St. 2022, c. 107, and St. 2023, c. 2, notice is hereby given of a public meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

**Thursday | November 16, 2023 | 9:30 a.m.**  
**VIA REMOTE ACCESS: 1-646-741-5292**  
**MEETING ID/ PARTICIPANT CODE: 111 403 6163**  
**All meetings are streamed live at [www.massgaming.com](http://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](http://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 - #488**

1. Call to Order – Cathy Judd-Stein, Chair
  
2. Minute Minutes
  - a. February 28, 2023
  - b. March 1, 2023
  - c. March 2, 2023
  
3. Administrative Update – Todd Grossman, Interim Executive Director & General Counsel
  - a. MGC Information Security Plans – Katrina Jagroop-Gomes, Chief Information Officer, Kevin Gauvreau, Information & Network Security Manager
  
4. Legal – Todd Grossman, Interim Executive Director & General Counsel
  - a. 205 CMR 152: Individuals Excluded From Gaming and Sports Wagering Review for Commencement of Promulgation Process and Small Business Impact Statement – Ying Wang, Associate General Counsel, Mark Vander Linden, Director of Research and Responsible Gaming **VOTE**



Massachusetts Gaming Commission

- b. 205 CMR 2.00: Racing Meeting Licensing – Discussion and Review of Regulation and Small Business Impact Statement for Final Review and Possible Adoption – Judith Young, Associate General Counsel, Caitlin Monahan, Deputy General Counsel, Dr. Alexandra Lightbown, Director of Racing **VOTE**
- 5. Sports Wagering Division – Bruce Band, Director of Sports Wagering; Crystal Beauchemin, Sports Wagering Business Manager; Andrew Steffen, Interim Sports Wagering Operations Manager; Caitlin Monahan, Deputy General Counsel; Mina Makarious, Anderson & Kreiger; Annie Lee, Anderson & Kreiger
  - a. Sports Wagering Operators’ Requests for Waivers from 205 CMR 238.02(7) and 205 CMR 257: Sports Wagering Data Privacy. Operators requesting waivers include MGM Springfield, BetMGM, Fanatics, DraftKings, Caesars, FanDuel, Betr, Plainridge Park Casino, PSI, Encore Boston Harbor, and WynnBET **VOTE**
  - b. The Commission anticipates that it may need to meet in executive session in conjunction with its review of the above-referenced Operator waiver requests in accordance with G.L. c. 30A, § 21(a)(4) to discuss the deployment of security devices, or strategies with respect thereto, in particular with respect to use of data for sports wagering operations. The public session of the Commission meeting will reconvene at the conclusion of the executive session. **VOTE**
  - c. DraftKings: Request to Void Wagers – Jacob List, Senior Director of Regulatory Operations for DraftKings **VOTE**
- 6. Community Affairs Division – Joe Delaney, Chief of Community Affairs
  - a. Plainridge Park Casino Q3 Quarterly Report – North Grounsell, General Manager, Heidi Yates-Akbaba, Vice President Finance, Kathy Lucas, Vice President Human Resources
  - b. Encore Boston Harbor Q3 Quarterly Report – Jacqui Krum, Senior Vice President and General Counsel, Juliana Catanzariti, Executive Director Legal, Carla Pivero, Director of Investigations and Training
  - c. Final FY 2025 Community Mitigation Fund Guidelines **VOTE**
  - d. Final FY 2025 Community Mitigation Fund Grant Amounts **VOTE**
- 7. IEB – Heather Hall, Interim IEB Director and Chief Enforcement Counsel
  - a. Security at MGM Springfield
  - b. Executive Session  
The Commission anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(4), to discuss the use and deployment of



Massachusetts Gaming Commission

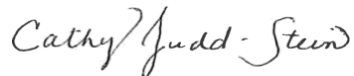
security personnel or devices, or strategies with respect thereto at MGM Springfield, specifically with regard to firearms. The public session of the Commission meeting will reconvene at the conclusion of the executive session.

**VOTE**

8. Commissioner Updates
9. 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](http://www.massgaming.com) and emailed to [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us). Posted to Website: November 14, 2023 | 9:30 a.m. EST

November 14, 2023



*Cathy Judd-Stein, Chair*

*If there are any questions pertaining to accessibility and/or further assistance is needed, please email [Gertrude.Lartey@massgaming.gov](mailto:Gertrude.Lartey@massgaming.gov).*



Massachusetts Gaming Commission



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** February 28, 2023, 11:00 a.m.  
**Place:** Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 1431 1966

The Commission conducted this public meeting remotely utilizing collaboration technology. The 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](#) (00:00)

Chair Judd-Stein called to order the 438<sup>th</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

#### 2. [Sports Wagering](#) (00:53)

##### a. Finalization of Temporary Licensing Process for Digital Gaming Corporation

Executive Director Karen Wells stated that DGC had submitted their request for a temporary sports wagering license and the \$1 million temporary licensing fee. She stated that she had made the determination in her role as Executive Director that DGC was a qualified gaming entity. Director of Sports Wagering Bruce Band stated that DGC anticipated a start date in quarter one of 2024.

Commissioner Hill moved that pursuant to G.L. Chapter 23N, § 6(c)(2) and 205 CMR 219.00, the Commission issue a temporary sports wagering license to Digital Gaming Corporation d/b/a

Betway, an authorized digital gaming corporation, to conduct sports wagering for the period of one year under a temporary license or until a final determination on its operator's license application was made. Commissioner Skinner seconded the motion.

*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.*

### 3. [Legal](#) (3:36)

Deputy General Counsel Caitlin Monahan stated that public comments on regulation amendments had been received the morning of the meeting. She stated that the legal team and outside counsel would address comments received prior to this date during this meeting and that the new comments would be addressed at the meeting the following day.

#### a. [205 CMR 254](#): Temporary Prohibition from Sports Wagering: Regulation and Amended Small Business Impact Statement (5:07)

Outside counsel from the law firm Anderson and Krieger, Attorney David Mackey explained that 205 CMR 254 governed voluntary temporary prohibition from sports wagering. The *amended small business impact statement, draft 205 CMR 254, and public comments* were included in the Commissioner's Packet on pages 212 through 224.

Mr. Mackey explained that the initial version of the regulation had specified durations for temporary prohibition. He stated that the regulation was changed in response to Commission discussion and public comments received and that it was revised to allow patrons to select the period of time for temporary prohibition. He stated that this language was more flexible for the patrons and licensees.

Mr. Mackey stated that the patrons had to be notified upon enrollment that temporary prohibition was available. He noted that the provisions regarding notification of the ending of the temporary prohibition period were removed due to comments that the notification could cause an undesired negative effect,

Mr. Mackey stated that 205 CMR 254.05, the provision related to sanctions, was also removed as sanctions were adequately covered by 205 CMR 232. He noted that a comment was received that stated patrons in the temporary prohibition period should be able to access their accounts to withdraw funds, review their wagering history, and extend the cooling-off period. He stated that the temporary prohibition would prevent making deposits or placing wagers.

Director of Research and Responsible Gaming Mark Vander Linden stated that an opt-in notification would be discussed at a roundtable discussion. Chair Judd-Stein stated that the present recommendation was that there not be a notification, but that the Commission could reintroduce a notification requirement.

Commissioner O'Brien asked if Director Vander Linden was comfortable with no notification requirement for the March 10, 2023, category three sports wagering operator launch. Director Vander Linden replied that he was comfortable with no notification requirement and stated that temporary prohibition was important as a responsible gaming tool. Director Vander Linden stated that he supported exploring the notification requirements further if the operators were given development time to get the feature working.

Commissioner Skinner asked if the use of 'may' in 205 CMR 254.02(3)(c) should be changed to 'shall'. She expressed that she thought it was reasonable to adjust the language to shall in this provision. Chair Judd-Stein asked if this language would reflect what the Commission does for the voluntary self-exclusion list. Director Vander Linden stated that it was handled this way with voluntary self-exclusion and that he agreed with Commissioner Skinner's suggestion. Mr. Mackey agreed with Commissioner Skinner and stated that the Commission would not want possible confusion where operators could read this regulation ambiguously.

Commissioner Skinner asked to review the public comments which were not recommended for adoption. Mr. Mackey stated that proposed changes to the regulation to allow patrons access to their account to withdraw funds, review their wagering history, or extend their temporary prohibition period during their temporary prohibition were based upon the first comments by BetMGM.

Mr. Mackey explained that a comment had requested a change to the length of the temporary prohibition period. He stated that the time periods were changed to be as flexible as possible without specifying a period of time.

Mr. Mackey explained that the next comment was regarding the concern that reaching out to notify a player that their cooling-off period was expiring could have the unintended consequence of getting the patron excited to gamble again. He noted that the notification provision had been struck, and that the Commission was going to hold a roundtable discussion to see if the positives of the notification would outweigh the potential unintended consequences.

Mr. Mackey stated that BetMGM had commented on 205 CMR 254.03(1) stating that the minimum temporary prohibition period in most other jurisdictions was 72 hours. He noted that BetMGM's comment identified Maryland as having a shorter 24-hour temporary prohibition period. He stated that the current regulation, as drafted, did not have any minimum temporary prohibition period and that the language was drafted to be as flexible as possible.

Commissioner Skinner expressed concern regarding the patron's ability to enter a retail operator's establishment during their cooling-off period. She asked the Commission to consider additional guardrails. Mr. Mackey stated that kiosks were initially considered for this regulation

but were eventually eliminated due to technological challenges. Commissioner Skinner stated that it could be a future consideration.

Mr. Mackey explained that several of the comments were concerns related to the notification requirement which had since been removed. He stated that one comment suggested removing the word 'recklessly' from 205 CMR 254.05 but noted that 205 CMR 254.05 had since been struck, and moved to 205 CMR 232. He reported that the last comment was from a private citizen who suggested that the cooling-off period could be administered by the Commission in such a way that the patron could have the cooling-off period apply to all licensees.

Director Vander Linden stated that the immediateness of the cool-off period was important, and that doing it through the Commission would cause a delay between when the information was gathered and disseminated to the operators. He stated that individuals could apply for the voluntary self-exclusion list if they wanted it applied to each operator.

Commissioner O'Brien stated that the comments on 205 CMR 254.05 should be cross-referenced to 205 CMR 232. Mr. Mackey stated that the one comment on that provision was related to the reckless standard, and that 205 CMR 232.02 was already broader to capture any violation.

Chair Judd-Stein asked if any of the new comments submitted the morning of the meeting were related to this provision. Deputy General Counsel Carrie Torrisi stated that the five comments received had three comments relative to the notification process which was already addressed and two comments that required further review. Chair Judd-Stein expressed that she wanted to allow Director Vander Linden to have the opportunity to do research and have more input on the notification issue.

b. [205 CMR 138](#): Uniform Standards of Accounting Procedures and Internal Controls for Gaming: Regulation and Amended Small Business Impact Statement for final review and possible adoption (41:38)

Attorney Mina Makarious from Anderson and Krieger presented the changes made to 205 CMR 138. He stated that it was an existing regulation regarding internal controls and that the changes were to update the regulation for sports wagering. He stated that no changes had been made since no comments were received until the morning of the meeting. He stated that the one comment received was regarding 205 CMR 138.05, and that the remainder of the comments were related to 205 CMR 138.73. He noted that Gaming Laboratories International ("GLI") were instrumental in drafting this regulation and that he wanted to review the comments regarding 205 CMR 138.73 with them before the meeting the following day.

Mr. Makarious explained that DraftKings had submitted a comment suggesting additional language be added to 205 CMR 138.051(d) as it may be difficult to terminate or suspend an employee within twenty-four hours of Commission notice that the employee's license or registration was suspended. He stated that DraftKings cited concerns regarding labor laws and professional contracts. He noted that adding this language to 205 CMR 138 would change the relevant provision for both gaming and sports wagering.

Commissioner O'Brien noted that the regulation had used this language for six years without a licensee raising any issues regarding it. She stated that suspending would incorporate the changes DraftKings suggested. Commissioner Skinner stated that the proposed language would allow the employee to shift to another role that did not require the same licensure. Mr. Makarious stated that suspension had been read in the past to include this option, and that he believed the current language would have the same effect as the suggested language. Commissioner Hill stated that he could see it being an issue if it was raised by an existing licensee rather than a new licensee.

Chair Judd-Stein stated that the language could help clarify the issue, but it would not necessarily change the provision. Commissioner O'Brien expressed that she was not comfortable with the phrasing provided by DraftKings as there was not a clear definition of "relevant responsibilities". Chair Judd-Stein stated that this comment could be reviewed in the next meeting with input from the licensing division.

Commissioner Skinner inquired as to why this language was not found in 205 CMR 238.05 as it was relevant to sports wagering. Mr. Makarious stated that this provision was applied to sports wagering employees by reference rather than creating a new provision.

Commissioner Skinner suggested removing the term "for gaming" from the title of 205 CMR 238 to clarify that the regulation was for both sports wagering and gaming. Mr. Makarious agreed, stating that 205 CMR 238 could also be retitled to clarify that it was additional standards for sports wagering.

Chair Judd-Stein stated that the statutory change to General Law Chapter 23K allowed the Commission to exempt service workers from licensure and asked if that change also applied to sports wagering. Executive Director Wells stated that the levels of licensure and registration in sports wagering applied to higher positions, and that similar positions under sports wagering would not require exemption. Mr. Makarious stated that the comments pertaining to 205 CMR 138.73 would be addressed in the public meeting the following day.

c. [205 CMR 238](#): Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering: Regulation and Amended Small Business Impact Statement for final review and possible adoption

Mr. Makarious presented the changes to 205 CMR 238. The *Amended Small Business Impact Statement, draft 205 CMR 238, and public comments* were included in the Commissioner's Packet on pages 101 through 155.

Mr. Makarious stated that this regulation was regarding sports wagering specific internal controls, and as just discussed would be retitled to "Additional uniform standards of accounting procedures and internal controls for sports wagering" for clarification. He stated that a new provision was added to the end of 205 CMR 238.02(d) in response to comments received at the sports' governing bodies roundtable related to a process for reporting to the governing body the violations of sports wagering done by athletes. He noted other changes from the roundtable



included the sports wagering operator's maintaining confidentiality of information provided by the sports' governing bodies, the requirement that the governing bodies will maintain confidentiality while the investigations are pending, and additional categories for when it was appropriate to have disclosure of that information.

Mr. Makarios noted that language was added to 205 CMR 238.02 to account for tethered operators. He stated that BetMGM had submitted a comment requesting changes to how data security would be addressed. He stated that this issue was already adequately addressed and that operators have the potential to request a waiver.

Mr. Makarios noted that operators had asked whether they were expected to create a trust vehicle on top of the segregated accounts requirement. He stated that the language was adopted by other jurisdictions and that it was not clear that a trust account was necessary for the regulation. Commissioner Skinner asked how the legal team was responding to questions it received in public comments. Deputy General Counsel Monahan stated that the questions were being answered in the various areas they were sent in, and that similar questions were being addressed in group responses.

Chair Judd-Stein asked if a trust vehicle requirement would inhibit operators from applying payment processor reserve receivables to the reserve requirement. Deputy General Counsel Monahan replied that she would look into that issue, and report back to the Commission. Chair Judd-Stein asked if the operators would be required to cash fund this portion of the reserve and stated that GLI and the Sports Wagering Division could work with the Legal Division and outside counsel on this question. Mr. Makarios stated that his view was that a trust fund was not required, but that establishment of a mechanism to ensure patrons get their money back was.

Mr. Makarios stated that BetMGM requested a change to 205 CMR 238.12 to allow different corporate restructuring rather than prohibition from dissolving with unsatisfied obligations to patrons. He stated that as a policy matter, the regulation was concerned about protecting patrons, and that operators could apply for relief in the case of a corporate restructuring.

Mr. Makarios stated that a comment requested eight hours' notice prior to a Commission audit. He stated that there could be concerns about reserves being added within the eight-hour period; and stated that this change was not recommended. He answered a question from the comments clarifying that 205 CMR 238.14(3) required that any error be reported to the Commission, not just ones that led to the voiding or cancelling of wagers. Chair Judd-Stein asked if the reports would go to the Sports Wagering Division or the Investigations and Enforcement Bureau ("IEB"). Executive Director Wells stated that there would be coordination between the IEB and Sports Wagering Division.

Mr. Makarios stated that a comment had requested the term 'vendor' be changed to 'integrity monitor' in 205 CMR 238.18(1). He stated that vendor covered integrity monitors and that the IEB was considering another potential regulation regarding integrity monitors. Chair Judd-Stein stated that the term vendor includes integrity monitors.

Mr. Makarios stated that a comment suggested the language in 205 CMR 238.18(2)(d)(2) be changed to only report actual breaches to the sports' governing bodies. He stated that the governing bodies might want to be apprised of information on athletes who were caught trying to place bets before they were successful with the plan. He suggested no change be made.

Mr. Makarios stated that a comment requested the language "evaluate or" be struck from 205 CMR 238.18(5), based upon the concern that this would allow the Commission to perform its own integrity monitoring. He noted that the suggested change would not be adequate to ensure sufficient controls on software and hardware and recommended against making this change.

Mr. Makarios presented a comment requesting that the Commission only request Massachusetts-specific reports on abnormal betting activity in 205 CMR 238.18(5)(a). He stated that information from other states could assist the Commission in seeing larger problems and patterns. He recommended rejecting the suggested change.

Mr. Makarios stated that a comment was received suggesting that 205 CMR 238.22 be changed to allow operators to respond ten business days after the completion of their investigation rather than after ten business days. He stated that this would create an open-ended timeline for responding to complaints and recommended against adopting this suggestion. He stated that a suggestion was made to remove the requirement of operators to request specific additional information from the complainant if a complaint was too vague. He stated that this was an important provision and that he did not recommend removing it.

Mr. Makarios stated that a comment was received relative to 205 CMR 238.22(7) suggesting the term 'promptly' be changed to 48-hours. He stated that 'promptly' gives more flexibility for fact-gathering and recommended against the suggested change. He noted that another suggested change was requiring the patron to notify the Commission that a complaint has not been resolved. He recommended keeping the language as it was. Commissioner Skinner asked how a patron would be able to file such a complaint. Executive Director Wells stated that the patrons could use the Fair Deal Hotline, the Commission website, or report it directly to a gaming agent. She stated that the operator should also have an internal system for complaints from patrons.

Mr. Makarios stated that a new comment received the morning of the meeting was also regarding this section, and that DraftKings stated they did not have a way of knowing if a complaint had been resolved to the satisfaction of a patron. Mr. Makarios stated that a process should be in place and that the operators could ask patrons if they are satisfied with how the complaint was handled.

Mr. Makarios stated that many comments had requested changes to standards regarding violations to be based on actual and constructive knowledge. He stated that knowledge factors into enforcement proceedings, but it also sets a standard that allows operators to look the other way. He recommended against adopting these changes.

Mr. Makarios noted that a commenter requested a reasonableness standard be applied to 205 CMR 238.33(1)(h). He stated that the request misinterpreted the purpose of that language, as it

was used to capture categories that were not listed. In response to a question posed in one of the public comments, Mr. Makarios clarified that under 205 CMR 238.35, it was mandatory to cancel wagers. Chair Judd-Stein asked where the commenter's confusion stemmed from. Mr. Makarios stated that the comments questioned an implied ability to not cancel a bet, but that canceling was mandatory as written. He stated that removing the word "only" could help further clarify this provision. Commissioner Skinner asked if there were situations where the operator had discretion to cancel. Mr. Makarios stated that there was no discretion for the operator in subsections a through k.

Mr. Makarios stated that a comment was received from Plainridge Park Casino ("PPC") suggesting that the regulation be changed to allow wagers with a potential payout over \$10,000 to be taken at sports wagering kiosks. He stated that he discussed this matter with GLI, and that the regulation as written has stronger protections. Commissioner Maynard stated that during his tour of PPC, General Manager North Grounsell had explained that it was easy to have wagers reach the \$10,000 limit due to parlay wagers with several legs. He stated that the payout threshold may prove cumbersome to patrons.

Sports Wagering Operations Manager Sterl Carpenter stated that any payout over \$10,000 must go to the sportsbook window to cash out. He added that kiosks cannot make payouts over \$5,000, due to taxation purposes.

Chair Judd-Stein sought clarification as to what the proposed change encompassed. Sports Wagering Operations Manager Carpenter stated that it was possible for parlay wagers with eight or nine legs to turn a five-dollar bet to a \$10,000 taxable event. He stated that the regulation, as written, the patron would have to place the wager with the sportsbook window. Commissioner Maynard stated that it seemed unnecessary to prevent the wager from happening at the kiosk when the payout would have to occur at the window. He expressed concern that not allowing these wagers at the kiosk would lengthen the queue at the sportsbook.

Mr. Makarios stated that the language suggested in the comment seemed to be a compromise, but that the compromise seemed to be more confusing than the policy decision. Commissioner Hill stated that he agreed with Commissioner Maynard. Mr. Makarios stated that the suggested language would have the same effect as removing the provision. He stated that deleting the provision would allow the wagers to be placed at kiosks and the payout at the ticket counter.

Sports Wagering Operations Manager Carpenter noted he had received similar questions from Encore Boston Harbor and MGM Springfield. He agreed that the wager should be allowed to be placed on a kiosk. Commissioner Skinner asked what the proposed change was from the legal team. Mr. Makarios stated that there was a policy issue of whether to allow these bets with larger payouts on the kiosks by deleting the provision in 2(b) or to retain the language as was.

Commissioner O'Brien asked if there was a way for kiosks to capture who placed the bets. Sports Wagering Operations Manager Carpenter stated that monitoring payouts for slots or table games was easier as the event was instantaneous whereas sports wagering tickets could be held for up to one year and sometimes get transferred as gifts. Commissioner O'Brien asked if could

be done on an advanced deposit wagering account online. Sports Wagering Operations Manager Carpenter stated that mobile operators would not have this issue. Commissioner O'Brien expressed concern that striking this provision would result in further attempts to circumvent tax obligation or child support obligations.

Chair Judd-Stein noted that there was surveillance over the kiosks. Commissioner O'Brien stated that footage was not kept in perpetuity and there was the issue that wagers could be redeemed up to one-year later. Commissioner Skinner stated that the reporting requirements for taxable events were lower than the \$10,000 threshold already, and that the threshold amounts may be a larger discussion outside of the context of 205 CMR 238.

Sports Wagering Operations Manager Carpenter stated that bets are anonymous when placed at the windows, and that the kiosks have the exact same controls. Commissioner Maynard expressed that patrons should not have to bet at the window if there were no additional controls in comparison to the kiosks. Commissioner O'Brien stated that maximizing delinquencies in taxes and child support was a policy question beyond the scope of 205 CMR 238. Commissioner Skinner agreed with Commissioner O'Brien's concern but added that the elimination of this provision would not likely make much of a difference. Chair Judd-Stein stated that the Commission could further consider removing this provision prior to the vote in the following day's public meeting.

Mr. Makarios stated that BetMGM suggested that the language in 205 CMR 238.44(3) be modified from medium risk on the common vulnerability scoring system to high risk. He recommended against accepting this change as the Commission wants to be more protective. He noted that the next suggested change was a corresponding change with an absence of justification for the change. He recommended against adopting these two changes.

Mr. Makarios stated that a comment suggested the language in 205 CMR 238.452 be changed to include confidential proprietary information of the operator. He noted that the internal controls are meant to protect patrons and that if an operator wanted to protect that information it can be done through internal HR policies, employment policies, and security policies. He stated that as it was an internal matter between the operator and employees, he did not recommend adopting the change.

Mr. Makarios stated that a comment suggested changes to 205 CMR 238.48(1)(a) requesting that operators transfer the money to the sports wagering control fund on an annual basis. He stated that this was not consistent with the purpose of the statute, and with sufficient automation, transfers to the sports wagering control fund could be made on a regular basis. Mr. Makarios stated that a similar request was submitted for 205 CMR 238.48(3) and recommended that it would be best for the Commission and Commonwealth to receive these transfers on a regular basis. He recommended against adopting either of these changes.

d. [205 CMR 247](#): Uniform Standards of Sports Wagering: Regulation and Amended Small Business Impact Statement for final review and possible adoption (2:18:01)

Attorney Paul Kominers from Anderson and Krieger presented the changes to 205 CMR 247.00. He explained that this regulation addressed how the Commission permits or prohibits wagers on certain events or categories of events and how operators accept wagers. The *amended small business impact statement, draft of 205 CMR 247, and public comments* were included in the Commissioner's Packet on pages 157 through 186.

Mr. Kominers stated that one proposed edit was based on a comment from a member of the public who requested that previous versions of the house rules be available to the public. He recommended this change. Commissioner Skinner said she was happy to see this change incorporated.

Mr. Kominers stated that a comment suggested 205 CMR 247.09(2) be changed as the extensive disclosure of terms of promotions would be impossible in some formats. He stated that the suggested change would ease the requirements so that all material terms would be on the face of the advertisement with all terms within one click away. He stated that the language was adapted from Virginia, which allowed operators to hyperlink the terms of the promotion in online advertising.

Commissioner O'Brien stated that there was a jurisdiction that stated if the terms of a promotion could not fit in a medium, then it was not the proper medium for the promotion. She stated that this would prevent patron confusion, and that she believed the jurisdiction that used this language was either Ohio or Maine.

Mr. Kominers stated that there were related restrictions in the advertising regulation, 205 CMR 256.00. He stated that the issue seemed to be whether extremely small font size or the abbreviation of terms was sufficient for full and accurate disclosure. Commissioner O'Brien stated that it may not be the proper medium for the promotion if the terms cannot be obviously and prominently displayed. Chair Judd-Stein noted that the Commission heard several complaints related to the font size of billboard, but that the Commission only heard from one operator on this issue. Mr. Kominers stated that he would cross-reference the comments from 205 CMR 256.00 prior to the Commission's review at the next meeting.

Mr. Kominers stated that BetMGM's comment regarding 205 CMR 247.09 would be addressed at the next day's meeting. He stated that a public comment was received requesting the Commission to approve certain classes of esports for wagering and to identify entities as esports governing bodies. He expressed that he appreciated the input, but that this comment could be addressed when the Commission revisited the approval of esports events in the future.

In response to questions from BetMGM, Mr. Kominers clarified that operators cannot offer bets on collegiate events that are dependent upon the performance of a single player. He stated that the statute language was clear, and that no clarification was needed in the regulation. He clarified that the absence of location-based qualifying language meant that operators could offer wagering on tournaments located in Massachusetts and other states.

Mr. Kominers stated that a member of the public requested that the Commission restrain operators' ability to limit the amount individual players may wager. He stated that he was unsure of whether the proposed change was necessary or sufficient. He stated that it would be a major policy change and that he did not recommend the Commission address the issue at this point.

Mr. Kominers stated that another member of the public requested adding user-specific information to the information required to be available to the public. He recommended against adopting this change.

Mr. Kominers stated that a comment requested that the operators have seven days to respond to a sports governing body or player association limiting wagers on events. He stated that this would limit the ability of the Commission to respond to emergency requests and that he did not recommend adopting this change.

Mr. Kominers stated that another comment recommended the Commission instruct operators not to retain personally identifying information ("PII") longer than was lawful. He noted that it was already unlawful to retain and did not recommend the Commission adopt this comment.

Mr. Kominers noted that another comment from BetMGM responded to an old version of the regulation, and that the language they requested the Commission change was already changed during the adoption of 205 CMR 247.00. He noted that the remaining comments requested to insert knowing and reasonableness standards, and that he generally recommended rejecting those requests.

Chair Judd-Stein stated that 205 CMR 248.00 and the additional comments received the morning of this meeting would be addressed in the public meeting during the next day.

#### 4. [Commissioner Updates](#) (2:40:49)

There were no Commissioner updates presented at this meeting.

#### 5. [Other Business](#) (2:41:32)

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

Commissioner Hill moved to adjourn. 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.*

### **List of Documents and Other Items Used**

1. [Revised Notice of Meeting and Agenda](#) dated February 24, 2023
2. [Commissioner's Packet](#) from the February 28, 2023, meeting (posted on massgaming.com)



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** March 1, 2023, 11:15 a.m.  
**Place:** Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE:111 1431 1966

The Commission conducted this public meeting remotely utilizing collaboration technology. The 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](#) (00:00)

Chair Judd-Stein called to order the 439<sup>th</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

#### 2. [Administrative Update](#) (01:18)

Executive Director Karen Wells stated that the launch of category three mobile sports wagering was scheduled for March 10, 2023, but there was not a publicly stated time for operators to start. She recommended a 10:00 a.m. start time. The Commission reached a consensus to launch category three sports wagering at 10 a.m. Eastern Standard Time on March 10.

Commissioner Hill asked why an earlier start time was not considered. Executive Director Wells stated that if there were issues the Commission staff should be on duty for the launch.

Commissioner Skinner asked if the Commission was required to be involved on the launch date. Executive Director Wells stated that mobile operators had no locations to inspect. Chair Judd-



Stein stated that the certificate of operations would be voted for on March 9, 2023, and that all testing would be done prior to that date.

Executive Director Wells noted that only operators planning to launch on March 10 would have their operations certificates voted for on March 9 to allow Gaming Laboratories International (“GLI”) to focus testing efforts on operators ready to launch. She stated that she was meeting with GLI to confer as to whether potential changes to 205 CMR 254 and 205 CMR 238 would impact their review of internal controls.

Director of Sports Wagering Bruce Band stated that internal controls may not be completed by March 9 due to the changes in 205 CMR 238 and the responsible gaming regulation. Executive Director Wells stated that more information would be gathered that afternoon, and it may require both interim approval for launch and final approval after launch.

### 3. [Legal](#) (10:43)

- a. 205 CMR 138.00: Uniform Standards of Accounting Procedures and Internal Controls for Gaming: Regulation and Amended Small Business Impact Statement for final review and possible adoption.

Outside counsel from the law firm Anderson and Kreiger Attorney Mina Makarious presented the new comments relative to 205 CMR 138. The *Amended Small Business Impact Statement, draft of 205 CMR 138, and public comments* were included in the Commissioner’s Packet on pages 1 through 99.

Mr. Makarious noted that the Commission had not received any public comments prior to the morning of February 28. He noted that the comment proposing a change to 205 CMR 138.05 was addressed at the previous meeting, and that the remainder of the comments were regarding the data security protocols in 205 CMR 173. He noted that the title of the regulation was changed to remove “from gaming” due to the discussion at the prior meeting.

Mr. Makarious explained that DraftKings had suggested a change to 205 CMR 138.05 to add language to include “modifying relevant responsibilities. He noted that the Investigations and Enforcement Bureau (“IEB”) had recommended against this change. He expressed concern related to the vagueness of the term relevant responsibilities and stated that it could lead to inefficiency in determining whether the employee was removed from the network. He noted that the procedure for suspension only suspended duties and envisioned the employees being reassigned. He stated that the Investigations and Enforcement Bureau (“IEB”) preferred the existing language and recommended against adopting this change.

Mr. Makarious stated that there were requests to remove 205 CMR 138.73 and rely on background data privacy laws. He stated that the legal team wanted to strike a balance between ensuring there was adequate data security for patrons' information but not an overly prescriptive set of requirements. He recommended leaving 205 CMR 138.731 and 205 CMR 138.732 with minor changes and striking the remainder of the provision.

Mr. Makarios explained that 205 CMR 138.731 required personally identifiable information to be protected to the level of state laws and regulations. He stated that provisions related to the details of patron's access to information and the destruction of data, when necessary, would be appropriate to address in a separate regulation. He proposed that the Commission return to this regulation with additional provision or develop a separate regulation in the future.

Commissioner O'Brien suggested the legal team discuss sports wagering applications mobile security with the Attorney General's Data Privacy and Security Division as they had reached out to at least one licensee. Mr. Makarios stated that the legal team would do so. He stated that the substantive change to 205 CMR 138 would be to strike all subsections past 205 CMR 138.73(2) and remove "for gaming" from the title of the regulation. Commissioner O'Brien asked if the legal team was comfortable with the recommended deletions in terms of addressing privacy protections required under statute. Mr. Makarios stated that he was comfortable with the change. Director of Client Solutions from GLI Joe Bunevith stated that GLI was in alignment with the recommendation.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 138 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 to finalize the regulation promulgation process. Commissioner Maynard seconded the motion.

*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. [205 CMR 238](#): Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering: Regulation and Amended Small Business Impact Statement for final review and possible adoption. (31:00)

Mr. Makarios noted that there were no additional comments on 205 CMR 238 past the ones discussed in the prior meeting. The *Amended Small Business Impact Statement, draft of 205 CMR 238, and public comments* were included in the Commissioner's Packet on pages 100 through 154.

Mr. Makarios stated that the word "additional" would be added to the title of the regulation to help clarify that 205 CMR 138.00 applies to sports wagering and gaming. He reiterated that the changes relevant to sharing information with the sports governing bodies, aligned with the comments made during the roundtable discussion. He reiterated that 205 CMR 238.32 was changed to align the terms to match other regulations and address tethered operators. He noted

that 205 CMR 238.33(1) added a reference to 205 CMR 152. He stated that 205 CMR 238.35(1) was changed to clarify that the reasons to cancel a placed wager were mandatory in subsections a through k.

Mr. Makarios stated that the next change was to allow placing a wager that may result in a payout of \$10,000 or more at a kiosk. He noted that the collection of the payout would still occur at the ticket window. Chair Judd-Stein stated that the amount of \$5,000 was discussed regarding tax implications and wondered if the amount should be changed. Commissioner O'Brien questioned whether the regulation should be reviewed to be more aggressive in compliance with delinquent child support and tax obligations.

Deputy General Counsel Caitlin Monahan stated that if the payout was over \$5,000 with 300:1 odds it was required to go through the intercept process. Commissioner O'Brien asked if it could create confusion by not including it in this provision. General Counsel Todd Grossman stated that the \$10,000 was the money laundering threshold while the \$5,000 with 300:1 odds was the tax withholding and intercept threshold. Commissioner Skinner inquired whether the threshold amount for child support was \$1,200. General Counsel Grossman noted that the \$1,200 threshold was applicable to slot machines. He explained that Massachusetts had tethered their intercept for child support to the federal law regarding events that require tax recording or withholding.

Mr. Makarios suggested listing both thresholds in one place. Commissioner O'Brien asked if there was a regulation that cross-referenced the \$5,000 threshold. General Counsel Grossman stated that 205 CMR 138.56 required that operators have intercept procedures in place and that it was also governed by the operators' Memorandums of Understanding with the Department of Revenue. Mr. Makarios noted that 205 CMR 238.15 and 205 CMR 238.16 contained provisions related to compliance with tax withholding and IRS requirements.

Chair Judd-Stein noticed that the provision did not mention child support. Commissioner O'Brien asked if child support was a withholding requirement of the Department of Revenue. Sports Wagering Operations Manager Sterl Carpenter noted that General Law Chapter 23N, § 24 referenced the Internal Revenue Code regarding child support and the federal government code number for taxation.

Mr. Makarios explained that 205 CMR 238.36 was related to what a sports wagering kiosk could do without requiring a patron to go to the window. Mr. Makarios read the modified language of the provision which delineated that kiosks prohibited the payout of wagers in excess of the \$10,000 threshold and the limits set by the IRS; rather than prohibiting both the acceptance of wagers and payouts. The Commission reached a consensus in support of the change. Commissioner Skinner suggested a few grammatical changes to the regulation for clarity.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 238 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 to finalize the regulation promulgation process. Commissioner Hill seconded the motion.

*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.*

c. [205 CMR 254](#): Temporary Prohibition from Sports Wagering: Regulation and Amended Small Business Impact Statement for final review and possible adoption. (1:00:18)

Attorney David Mackey from Anderson and Krieger presented the new public comments to 205 CMR 254. The *Amended Small Business Impact Statement, draft of 205 CMR 254, and public comments* were included in the Commissioner's Packet on pages 211 through 232.

Mr. Mackey stated that three of the new comments were already addressed as they related to the notification requirement that had previously been struck. He stated that the change suggested in DraftKings' comment related to patron acknowledgement in 205 CMR 254.02(3) was not recommended as acknowledgement was a significant step and the patron would be more likely to understand the contents of the notification if they were required to acknowledge them.

Mr. Mackey stated that FanDuel's suggestion relative to 205 CMR 254.03(1) had already been addressed as the five timeframes in the initial draft had since been removed. He noted that DraftKings had suggested that the patron should only be able to extend the cooling-off period once the initial cooling-off period had expired. He stated that a patron should be able to extend their cooling-off and take advantage of responsible gaming tools at any time. He recommended against adopting this change.

Chair Judd-Stein asked if there were technological limitations in extending the cooling-off period while the initial cooling-off was still active. Mr. Mackey noted that the commentor's concerns were based on the action violating 205 CMR 254.02, but that the provision had since been amended to allow access to the application to engage with responsible gaming tools or withdraw funds. Chair Judd-Stein asked if GLI had identified any technology issues with implementing this. Mr. Bunevith stated that if a platform requires a change in functionality, it may take additional time to implement.

Commissioner O'Brien asked if DraftKings was the only operator to raise this issue. Deputy General Counsel Monahan confirmed that was correct. Commissioner Skinner stated that their comment did not seem to be based on a technological problem and stated her preference for keeping the language as it was. Commissioner O'Brien agreed.

Chair Judd-Stein noted that past requirements the Commission developed were technologically challenging to implement, and that she wanted to ensure this change was possible. Senior Director of Engineering from GLI Joe Carlon stated that there should not be a technological problem with patrons in their cooling-off period being able to access the platform, withdraw their funds, and extend exclusion.

Mr. Mackey stated that comments from DraftKings and FanDuel had addressed the notification and duration requirements of the cooling-off period. He explained that the specific time periods and notification requirement had been removed from the regulation and addressed in a previous discussion. Commissioner Skinner expressed an interest in adding a date to the comments submitted to gain a better understanding of their timing within the promulgation process.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 254.00 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 to finalize the regulation promulgation process. Commissioner Skinner seconded the motion.

*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.*

d. [205 CMR 247](#): Uniform Standards of Sports Wagering: Regulation and Amended Small Business Impact Statement for final review and possible adoption. (1:31:39)

Attorney Paul Kominers from Anderson and Krieger presented the new comments to 205 CMR 247. The *Small Business Impact Statement, draft of 205 CMR 247, and public comments* were included in the Commissioner's Packet on pages 155 through 185.

Mr. Kominers explained that Maine and Ohio required all material terms to be on the face of advertisements, and that the change to 205 CMR 247.092 was no longer recommended. He stated that BetMGM expressed opposition to the requirement of using official league data for tier one data. He noted that the regulation did not contain that requirement regarding tier one data. He stated that BetMGM had also proposed not requiring the licensure of providers of data service as sports wagering vendors. He noted that the definition of sports wagering vendor in 205 CMR 202 explicitly included entities providing data to operators. He did not recommend these changes to be adopted. He noted that the only substantive change was to add a provision for operators to provide previous versions of house rules to patrons.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 247 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 to finalize the regulation promulgation process. Commissioner Maynard seconded the motion.

*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.*

d. [205 CMR 248](#): Sports Wagering Account Management: Regulation and Amended Small Business Impact Statement for final review and possible adoption. (1:39:33)

Mr. Kominers presented the new comments to 205 CMR 248. The *small business impact statement, draft of 205 CMR 248, and public comments* were included in the Commissioner's Packet on pages 186 through 210.

Mr. Kominers stated that an edit was made to clarify that the operator needs to maintain records of patron's acknowledgements that only they may use their sports wagering account, consent to monitoring and recording use of the sports wagering account, and affirmation that personal identifiable information provided by the patron was accurate. He noted that GeoComply had recommended the Commission shorten the time period to reverify a potentially compromised account. He recommended accepting this change.

Mr. Kominers stated that a commentor suggested patrons who had their accounts suspended should have the right to be told why their account was suspended. He noted that this can cause difficulty in suspensions involving integrity issues as it could reveal the existence of an investigation. He stated that GLI and the Sports Wagering Division had compromised on operators informing suspended patrons of how to submit a complaint to the operator or the Commission.

Mr. Kominers stated that BetMGM requested to use hashing instead of encryption for certain purposes. He explained that GLI stated encryption was the industry standard in other jurisdictions, and that operators would be able to comply with the requirement. He stated a comment requested the ability to destroy patron's personally identifying information that was not necessary for legal and enforcement purposes. He noted that all information the operator was required to collect was useful for those purposes, and that he did not want to invite confusion about what could be destroyed. He recommended against adopting these changes. He recommended against adopting BetMGM's comment regarding the sharing of information as he was unsure how much of a burden it would be on operators or how useful it would be to patrons. He stated that the request could be incorporated into a discussion on data privacy and security.

Mr. Kominers stated that GeoComply’s request for monitoring and consumer protection measures were addressed elsewhere in the regulations. He stated that BetMGM requested that logging in to the account be added to the list of activities that prevent escheatment. He noted that Massachusetts Treasurer Deborah Goldberg asked that accounts be escheated after a certain period of inactivity. He stated that the activities to prevent escheatment were based on Iowa’s regulations and were limited to depositing funds, withdrawing funds, or placing a wager.

Mr. Kominers stated that the Treasurer’s regulations list a series of activities that demonstrate an owner’s interest in maintaining accounts and that logging in was not defined as sufficient. He noted that BetMGM’s reliance on the Securities and Exchange Commission (“SEC”) guidance was not a conflict as the SEC was concerned with brokerage accounts and not sports wagering accounts. He noted that the document from the SEC was an informal advisory and not a law, and that state laws govern escheatment. He stated that BetMGM’s third argument was related to players not in the financial or emotional position to engage with their account. He stated that withdrawal of funds was also a permissible form of activity to keep an account active. He stated that no other operator raised issues with this provision and that he did not recommend adopting BetMGM’s suggested changes.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 248.00 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 to finalize the regulation promulgation process. Commissioner Maynard seconded the motion.

*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.*

f. [205 CMR 256](#): Sports Wagering Advertising: Discussion re: 205 CMR 256.01(3) (regarding revenue sharing and cost per acquisition agreements and related issues) and potential waiver. (2:36:50)

Deputy General Counsel Monahan stated that the Commission’s decision of whether to allow cost per acquisition (“CPA”) agreements and revenue sharing agreements would impact the discussion of the vendor regulation. She stated that 205 CMR 256.00 was in the promulgation process with a final vote on March 23, 2023. Chair Judd-Stein inquired about where the vendor regulation was in the promulgation process. Deputy General Counsel Monahan stated that the vendor regulation was in effect and would need to be changed via amendment.

Chair Judd-Stein asked how 205 CMR 256.00 intersected with the vendor regulation. Deputy General Counsel Monahan stated clarity was needed as to whether third-party marketing entities

would require licensing or registration and that the change would need to occur in the vendor regulation. She noted that the current waiver allowed marketing affiliates to be registered, and that an amendment would be needed to formalize that change.

Commissioner Hill sought clarification as to how CPA and revenue sharing agreements affected responsible gaming. Director of Research and Responsible Gaming Mark Vander Linden stated that it impacts the Commission's ability to protect vulnerable populations, effectively regulate sports wagering advertising, and prevent saturation of the advertising market. He stated that he was not fully versed in the positives and negatives of CPA and revenue share, and that he wanted to ensure the protections in the regulation are enforced.

Commissioner Hill stated that other industries also have vulnerable populations and expressed that the Commission's current regulations provide better protections. He stated that he needed more information on the positives and negatives of these forms of marketing arrangements. He recommended removing that prohibition on CPA and revenue sharing, and returning to the regulation if an issue arose as a result.

Director Vander Linden stated that the roundtable exhibited that marketing affiliates being allowed was not necessarily bad. He suggested adding guardrails for how marketing affiliates operate so that they are held accountable alongside the operators. Chair Judd-Stein stated that a strength in the Commission's regulations was that operators were responsible for the content and conduct of their vendors regardless of the contractual relationship type.

Commissioner O'Brien noted that the prohibition was initially placed in the regulation due to a training where a Michigan regulator had commented that marketing affiliates could result in saturation of the market. She noted that the roundtable suggested that the attempt to prohibit affiliate marketers could result in more saturation. She stated that she wanted safeguards in place before eliminating the restrictions on CPA and revenue share agreements. She noted that New York had voted to ban revenue share agreements since the roundtable. She stated that revenue share agreements could be seen as counter to responsible gaming and the protection of vulnerable people.

Commissioner O'Brien stated that not all marketing affiliates would be as active with responsible gaming as the ones who participated at the roundtable. She expressed an interest in guardrails to mitigate potential damage. She stated that Kansas capped the number of marketing affiliate contracts an operator could have. She recommended licensure of marketing affiliates to ensure Massachusetts received suitable corporations. She recommended reporting requirements for third-party marketing affiliates data that could help feed research into the impact of third-party marketers and the development of intervention and responsible gaming protocols. She also suggested a sunset provision prohibiting revenue share after a certain time period.

Commissioner Skinner sought clarification regarding the difference between CPA and revenue sharing models. Deputy General Counsel Monahan stated that CPA was payment upon account creation while revenue sharing was based on a percentage of the operator's revenue. Commissioner Skinner stated that she was unsure if the Commission was informed enough to



take a position on whether to keep the language in this provision. She asked if there were marketing affiliates who used push marketing that could result in oversaturation of the market. She agreed with Commissioner O'Brien that the prohibition should not be eliminated without proper controls in place.

Commissioner Skinner noted that Connecticut prohibited CPA and revenue sharing and that Illinois prohibited revenue share agreements. She inquired as to what their reasoning was for the ban. Commissioner O'Brien noted that New York had also prohibited revenue share. Deputy General Counsel Monahan stated that the language in the regulation was based on these jurisdictions, but that she was unaware of the reasoning behind their prohibitions.

Commissioner Maynard expressed worry about the proliferation of advertisements. He noted that the marketing affiliates at the roundtable used pull advertising, where the advertisement was targeted to individuals who had expressed interest in sports wagering. He stated that someone who uses google will get a result and that he would prefer the results to be generated by regulated sportsbooks and their marketing instead of illegal offshore books. He agreed with Commissioner O'Brien that there should be a heightened level of review for affiliates who engage in revenue sharing agreements.

Chair Judd-Stein stated that marketing affiliates could add a responsible gaming component. She expressed an interest in registration for CPA agreements and licensure for revenue sharing agreements, with follow-up research as suggested by Commissioner O'Brien and Commissioner Skinner.

Commissioner Skinner asked if it made a difference to the underlying values whether profits were attained from push advertising or pull advertising. Chair Judd-Stein stated that push advertising was sent to everyone while pull advertising was targeted to those interested in sports wagering. Commissioner Skinner stated that marketing works with affiliates across all industries and questioned whether it was appropriate to take issue with because the Commission was regulating sports wagering.

Commissioner Skinner inquired as to whether some affiliates did push advertising rather than pull advertising. Commissioner O'Brien suggested it might be different between the more established responsible entities and those intending to make a quick profit and leave the jurisdiction. Commissioner O'Brien stated that the waiver was a short-term solution, and that it should be changed in a way most effective in stopping saturation.

Chair Judd-Stein noted that it was not a waiver but a suspension of the rule. She asked for the Licensing Division's opinion. Chief of the Licensing Division Karalyn O'Brien stated that the division was working through vendor applications in anticipation of the March 10 launch date. Chief Enforcement Counsel Heather Hall stated that she did not have a specific recommendation and was waiting for Commission Guidance.

Deputy General Counsel Monahan stated that the Commission could waive the prohibition in 205 CMR 256.013 of CPA relationships or revenue sharing relationships. She stated that the

Commission could decide to issue a waiver for a limited time through the launch with the directive that the legal team return with regulations for protections. She stated that the time provided by the waiver would allow the legal team to research other jurisdictions and collaborate with the research and responsible gaming division. Commissioner Maynard noted that the language in the draft motion had a waiver until April 14, 2023, and asked if there was a reason for that date. Deputy General Counsel Carrie Torrisi stated that April 14 would be the date the final version of the advertising regulation would go into effect. She stated that if the language was adjusted for the final version of the regulation, then a waiver would not be needed past that date.

Commissioner Hill expressed an interest in doing a waiver for the CPA and revenue sharing prohibition and requesting that the legal team return with suggestions for safeguards. Chair Judd-Stein expressed unease with removing the restrictions altogether through April 14. She recommended CPA agreements undergo the registrant process and revenue sharing affiliates be licensed. She stated that this approach was used in Illinois, Colorado, and New Jersey. Commissioner O'Brien stated that she agreed with Commissioner Hill. She stated that she did not believe CPA agreements were without risk and that she preferred to do a short waiver while the Commission staff researched different approaches.

Commissioner Skinner expressed concern that an elevated level of licensure would not adequately address the issue and that she wanted to explore other available options. She stated that there was not enough information to make a sound decision at this time. She noted that the marketing industry frequently uses marketing affiliates and that she was unsure if putting limitations on these entities was the correct approach.

Commissioner Maynard stated that his understanding was that most affiliate marketing used the pull marketing method. He stated that he was comfortable moving forward with the CPA model and that he agreed there should be a heightened level of scrutiny for revenue sharing. He stated that it would take time to develop the heightened scrutiny. He recommended allowing CPA agreements and providing a temporary waiver for revenue share agreements until safeguards were available.

Chair Judd-Stein stated that the prohibition of these agreements was the most conservative approach. She stated that the roundtable recommended CPA deals be allowed but recognized that revenue share agreements might have a degree of risk. She questions why these agreements would be allowed without any available guardrails during the launch of category three sports wagering.

Commissioner O'Brien stated that she would prefer to not lift the prohibition until the guardrails were established, but that she was concerned that leaving the ban in place could result in an oversaturation of the advertising market. She expressed that she was okay with CPA agreements moving forward in the short term as guardrails were developed. Chair Judd-Stein asked if Commissioner O'Brien would do the same for revenue sharing agreements. Commissioner O'Brien noted that the vast majority of third-party affiliates were not using revenue sharing, and that she did not believe it was troublesome to allow the minority of affiliates to use revenue

sharing for a short period of time. She stated that she was more comfortable with CPA than revenue share.

Commissioner Hill stated that he wanted to learn more about some issues due to this discussion and expressed that he believed his suggestion was a compromise. Commissioner Skinner agreed with Commissioner Hill and stated that she needed to reevaluate the underlying principle of regulating this well-known practice in the advertising industry.

Chair Judd-Stein stated that the Commission should also consider the impact of prohibiting revenue sharing on smaller media and marketing affiliates. She stated that higher licensure was a good option for the less experienced marketing affiliates that would be reliant on revenue sharing. She asked what the typical term of a third-party marketing agreement would be; and if these contracts could be formed for the waiver period. Deputy General Counsel Monahan stated that she did not know the typical length of the contractual relationships in the industry, but that the division could look into the matter further.

Commissioner Skinner asked how many affiliates using revenue share agreements planned to enter the Massachusetts Market. Chief O'Brien stated that the Licensing Division had received lists of hundreds of marketing affiliates prior to the advertising regulations being put in place. She noted that there was a process for temporary licensure under the vendor regulations, and suggested if that could be used as opposed to registration. Commissioner Skinner asked how many of the marketing affiliates used revenue share agreements. Chief O'Brien stated that the number was not split out at the time of this meeting. Deputy General Counsel Monahan stated that Colorado had approximately 250 affiliates with CPA agreements and 7 with revenue share agreements.

Commissioner Skinner moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to all licensed sports wagering operators from 205 CMR 256.01(3) that allows cost per acquisition agreements and revenue sharing agreements until April 14, 2023, as granting the waiver meets the requirements of 205 CMR 102.03(4) and was consistent with the purposes of General Law Chapter 23N. Commissioner Hill seconded the motion.

Chair Judd-Stein noted her preference that the vote on this motion be held until the Commission received more information about how these third-party marketing agreements impacted the industry. She noted that the Commission did not presently know whether this change could have an impact on the industry. Commissioner Skinner asked Chair Judd-Stein how long it would take to gather this information. Chair Judd-Stein stated that it could likely be ready by the next day's meeting.

Chair Judd-Stein explained that she was not comfortable in not knowing whether there was a practical implication in allowing these agreements. Commissioner Skinner stated that she felt the reverse sentiment and was concerned about not knowing the impact of prohibiting these agreements. Chair Judd-Stein restated her preference of using licensure as a guardrail. Executive Director Wells stated that a vote in the next day's meeting would give the Licensing Division clarity on how they approach applications, but that she wanted to ensure there was sufficient time

for the Licensing Division to address marketing affiliates' applications prior to the March 10 launch. Commissioner Skinner withdrew her motion to allow for further discussion.

Commissioner O'Brien asked if any of the CPA agreement applicants had gone through the registrant process. Chief O'Brien stated that some had. Executive Director Wells inquired what information the Commission was looking to receive. Commissioner O'Brien stated that she wanted to know if a waiver until April 14, 2023, would make a difference in an operator's entrance in the market. Chair Judd-Stein asked if the lack of certainty behind the temporary nature of the waiver would impact the decision to do business with marketing affiliates. Executive Director Wells stated that she would ask whether a waiver on the prohibition of CPA and revenue sharing agreements until April 14, 2023, would negatively impact business operations, especially if further restrictions were added after the date. Commissioner O'Brien inquired whether a six-week waiver would be disruptive or helpful to the operators' business operations.

Commissioner Maynard stated that it would be beneficial for Commissioners to receive the operators' input; knowing that the Commission could add additional safeguards in the future. Commissioner Skinner expressed concern that marketing affiliates not being in place by launch could allow illegal operators to populate search results. Commissioner O'Brien stated that the roundtable participants explained that it did take some time for illegal markets to take hold in search engine results. She noted that she also wanted to minimize advertisement saturation for the launch. Commissioner Skinner stated that she shared Commissioner O'Brien's concerns about saturation.

### 3. [Annual Report](#) (4:15:40)

Sports Wagering Business Manager, Crystal Beauchemin submitted a final draft of FY22 Annual Report from the Commission. She requested Commission approval to finalize and release the report. The Commissioners offered no further edits.

Commissioner Skinner moved that the Commission approve the FY22 Annual Report as included in the Commissioner's Packet and discussed here today and authorize its release. Commissioner O'Brien seconded the motion.

*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.*

### 4. [Other Business](#) (4:18:00)

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 February 27, 2023
2. [Commissioner's Packet](#) from the March 1, 2023, meeting (posted on massgaming.com)
3. [Additional Meeting Materials](#) from the March 1, 2023, meeting



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** March 2, 2023, 1:00 p.m.  
**Place:** Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 619 5152

The Commission conducted this public meeting remotely utilizing collaboration technology. The 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](#) (00:00)

Chair Judd-Stein called to order the 440<sup>th</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

### 2. [Legal](#) (03:55)

- a. 205 CMR 256: Sports Wagering Advertising: Discussion re: 205 CMR 256.01(3) (regarding revenue sharing and cost per acquisition agreements and related issues) and potential waiver.

Chair Judd-Stein stated that the Commission requested information as to whether there would be a positive or negative impact on operators or third-party marketing affiliates if a waiver was granted for the prohibition on cost per acquisition ("CPA") agreements and revenue share agreements temporarily through April 14, 2023. She stated that a letter was submitted by Attorney Jeff Ifrah of Ifrah Law, who had represented some of the third-party marketing affiliates at the roundtable. Commissioner Skinner noted that the proposed motion from the prior

meeting for 205 CMR 256 was to offer a waiver for the prohibition on revenue share and CPA agreements to the sports wagering operators and third-party marketing affiliates until April 14, and that those entities would be registrants for that time.

Executive Director Wells stated that two operators indicated that they would not be using affiliate marketing, one operator indicated that the waiver would be disruptive, another operator indicated that the waiver would be helpful. She stated that another operator stated that they use only two, third-party marketing affiliates, and that the waiver would not make an operational difference. She noted that one of the operators who did not use marketing affiliates did not plan to launch on March 10.

Chair Judd-Stein stated that Mr. Ifrah indicated that the marketing affiliates supported the waiver for both CPA agreements and revenue share agreements, and that the affiliates would have no problems amending their agreements for any additional guardrails put in place.

Commissioner O'Brien stated that the CPA model would have a deterrent effect on push marketing, which could not be said for revenue share. She stated that other states, such as New York, had moved towards prohibiting revenue share. She stated that the CPA model could be used to provide information for developing a research and responsible gaming agenda. She stated her preference that the prohibition remain for revenue share agreements. Chair Judd-Stein stated that revenue share was utilized by smaller entities which were newer to the market and may include minority-owned business enterprises.

Commissioner Maynard stated that he shared Commissioner O'Brien's concerns and that he supported a heightened licensure of revenue-sharing advertisers. He stated that he had heard that Connecticut was considering lifting their prohibition on revenue sharing. He expressed a preference for licensure of revenue-sharing advertisers and a waiver for CPA advertisers. He noted that the Commission could adjust their approach when more information became available.

Commissioner Skinner stated she agreed with Commissioner Maynard, and that she felt more comfortable with heightened licensure for marketing affiliates who used revenue share agreements. She stated that additional guardrails could be implemented prior to April 14, and that the Commission needed more information. She requested information as to whether any of the third-party marketing affiliates used push advertising. Chair Judd-Stein asked if the data from the waiver period would be helpful in determining guardrails. Commissioner Skinner replied that it would.

Commissioner Skinner stated that his opinion had not changed since the prior meeting and that he would prefer a waiver for both forms of agreement. Chair Judd-Stein asked if the heightened licensure for revenue sharing should be implemented here or prior to the April 14 ending of the waiver period. Commissioner Skinner stated that she wanted to adjust the vendor licensure regulation prior to April 14.

Chair Judd-Stein inquired as to whether a heightened licensure for revenue sharing would impact the Investigation and Enforcement Bureau's ("IEB") work. Director of the IEB Loretta Lillios stated that the licensing division would be able to intake some reduced application material from

the affiliates. She noted that it was important to acknowledge attestations required for temporary licensure. She stated that the licensing division should be able to accommodate the timeline with prompt participation from the entities. She stated that the intake could be conditioned upon continued cooperation and an administrative completeness review after the launch date.

Director Lillios stated that these entities could be prioritized for the temporary licensing protocol post-launch and stated that there were few revenue sharing companies. Commissioner O'Brien inquired about the licensing and application fees. Director Lillios stated that the registrants must pay \$5,000 and the licensed sports wagering vendors were required to pay \$15,000 and investigative costs. Commissioner O'Brien asked who pays the investigation fee for the registrants. Director Lillios replied that the funds come from the sports wagering assessment. Executive Director Wells noted that the \$5,000 went toward investigative costs.

Chair Judd-Stein asked if the Commission staff had spoken with other jurisdictions about using higher licensure for revenue sharing. Director Lillios stated that other jurisdictions used heightened licensure based on the perceived risk around responsible gaming issue and vulnerable population. She noted that the IEB received feedback from the other jurisdictions on what to look for during investigations.

Commissioner O'Brien stated that the advertising regulations and vendor licensing regulations seemed intertwined and that it would be beneficial to have the licensing language figured out to help with decisions regarding the waiver. Commissioner Skinner agreed and stated that the language for 205 CMR 234 addressing licensure should be looked at in parallel to 205 CMR 256.

Commissioner O'Brien clarified that if the Commission agreed to allow revenue sharing that she wanted a higher licensure but expressed that she wanted to prohibit revenue sharing. Commissioner Skinner stated that without revenue sharing the smaller marketing affiliates may not be able to engage with operators. Commissioner O'Brien stated that as revenue share agreements were not yet lawful no marketing affiliates fall into that category, and that it was uncertain if there will be interest in revenue share. Commissioner Skinner stated that the potential deprivation of a vendor from entering the Massachusetts market concerned her.

Commissioner Skinner stated that allowing the waiver would not preclude the Commission from later maintaining the current prohibition of revenue share. She stated that the waiver would level the playing field for all entities until the Commission had a better understanding of the industry. Commissioner Hill noted that the proposed motion from the previous meeting waived both CPA and revenue sharing. He suggested bifurcating the motion and having a vote on a waiver for CPA as there seemed to be a consensus on that issue.

Chair Judd-Stein suggested having a sunset provision of April 14 for the waiver of the advertising regulation, but no sunset provision on the requirement of licensure in 205 CMR 234. Deputy General Counsel Caitlin Monahan stated that the vendor licensure regulation would be an amendment to a regulation that would begin the promulgation process and could be changed through the final vote. The Commission reached a consensus to waive the prohibition on CPA agreements through April 14, 2023.



Commissioner Skinner moved that in accordance with 205 CMR 202.02(3), the Commission issue a waiver to all licensed sports wagering operators from 205 CMR 256.01(3) that allows cost per acquisition agreements until April 14, 2023; as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and was consistent with the purposes of General Laws Chapter 23N. Commissioner Hill seconded the motion.

Commissioner O'Brien noted that her opinion on CPA agreements was different as they had a positive impact on reducing push marketing and saturation.

*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. [205 CMR 234](#): Sports Wagering Vendors: Amended Regulation (regarding third-party marketing entities, disciplinary action, and related issues) and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (54:41)

Outside counsel from the law Firm Anderson and Krieger Attorney Paul Kominers presented three changes to 205 CMR 234. He explained that he had formalized the IEB's request that third-party marketing affiliates be registered rather than licensed, changed the discipline provision to be in line with 205 CMR 232, and dealing with the heightened licensure requirement for revenue sharing agreements.

Commissioner O'Brien asked why the licensure for revenue-sharing advertisers included the language "regularly" in the definition. Mr. Kominers stated that the language came from the definition of sports wagering vendor, but that it could be removed for the revenue-sharing advertisers' definition. Commissioner O'Brien expressed concern about potential third-party marketing affiliates who only occasionally provided revenue sharing services. She stated that she would prefer all affiliates with revenue sharing contracts were licensed.

Chair Judd-Stein noted that the term "regularly" had been used throughout the regulation. Director Lillios stated that it was in the gaming regulations as well and was used to allow licensees to have flexibility in taking care of their operational needs. She stated that licensure would not work well with one-off contracts as the scope of their services would be completed before the investigation. Commissioner O'Brien asked if any of the licensees used this exception for advertising as opposed to maintenance. Director Lillios stated that it had not been used by advertisers in the past. Commissioner O'Brien stated that advertising was a different industry and that it may be an issue. Chair Judd-Stein expressed concern with the inconsistency of requiring the language elsewhere but not her.

Commissioner Skinner stated that she was comfortable with the language as it was. She sought clarification as to whether a one-off revenue sharing agreement would be required to register. MR. Kominers stated that a non-sports wagering vendor would have to be disclosed to the IEB, and that the IEB would have the option to upgrade them to a registrant depending on the details of the contract. Commissioner O'Brien suggested that the one-off revenue sharing agreements be considered registrants automatically. Mr. Kominers stated that the language would need tweaking, but that it was possible.

Chair Judd-Stein expressed concern about inadvertently creating an unfair barrier for smaller licensing affiliates who were reliant on revenue share. She expressed concern with one-off revenue sharing agreements being required to jump through licensing hoops. She noted that the participants of the roundtable expressed that revenue share was relied upon by smaller businesses and stated that she did not want to shut down opportunities for diversity, equity, and inclusion.

Commissioner O'Brien stated that while there was a promising entity at the roundtable, she was uncertain if revenue share agreements would actually increase diversity, equity, and inclusion. She stated that she would prefer entities using one-off revenue share agreements, rather than to default to being registrants. Commissioner Skinner stated that she did not want to impose barriers upon small businesses. She suggested an exemption process that would allow these vendors to apply for an exemption to the licensing process. Mr. Kominers stated that an exemption could be drafted, provided that the Commission develops criteria required to meet the exemption. Commissioner O'Brien's stated that she liked Commissioner Skinner's idea.

Director Lillios stated that it would be helpful for the IEB to have guidance from the Commission as to what specific criteria third-party marketing affiliates must meet to be registered. Mr. Kominers said that it would be beneficial to have more time to implement changes from the Commission's discussion in this meeting.

Chair Judd-Stein stated that there appeared to be a consensus to waive the prohibition on revenue share agreements, if they had a heightened licensure requirement. Commissioner O'Brien stated that her agreement was contingent upon all entities utilizing revenue share being registered at a minimum. Chair Judd-Stein suggested a provision be added that any third-party marketing affiliate not required to be licensed due to lack of regularity would be registered.

Commissioner Skinner reiterated that she was comfortable with the language as written. She noted that the Commission would return to these regulations when they return for a final promulgation vote. Mr. Kominers requested a five-minute break to write a potential carve-out provision for third-party marketing affiliates using revenue share agreements as a one-off.

After a short break, Mr. Kominers suggested a proposed change of removing "regularly" from the definition of revenue-sharing advertiser in 205 CMR 234.011(f)(i) and moving it to 205 CMR 234.01(1)(f)(ii) which sets out the licensing standard. He also presented a new catch-all clause that stated that no revenue-sharing advertiser could conduct business unless registered. Commissioner O'Brien suggested an edit to fix some typos. She stated that she was comfortable

with the proposed revision. Commissioner Skinner stated that she was satisfied with the suggested language.

Mr. Kominers presented the changes to 205 CMR 234.00. The *Amended Small Business Impact Statement and draft 205 CMR 234* were included in the Commissioner's Packet on pages 280 through 301.

Commissioner Skinner moved that the Commission approved the Amended Small Business Impact Statement and the draft 205 CMR 234.00 as included in the Commissioner's Packet and discussed here today. Commissioner O'Brien seconded the motion.

*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 Skinner moved that 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 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.

Commissioner O'Brien seconded the motion.

*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 Skinner moved that in accordance with 205 CMR 202.02(3), the Commission issue a waiver to all licensed sports wagering operators from 205 CMR 256.01(3) that allows revenue sharing agreements until April 14, 2023, as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and was consistent with the purposes of General Laws Chapter 23N. Commissioner Hill seconded the motion.

*Roll call vote:*

*Commissioner O'Brien: Nay.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed, 4-1.*

3. [Other Business](#) (1:57:09)

Commissioner O'Brien expressed her concern to her fellow Commissioners that she had seen an advertisement saying that a sports wagering account could be loaded by a credit card in Massachusetts. She stated that FanDuel was responsive and pulled the advertisement. She stated that she would like to discuss this issue at some point. Commissioner O'Brien noted that the revised advertisement mentioned a prepaid FanDuel card, and asked Director of Sports Wagering Bruce Band to look into whether this would be an issue with the prohibition on fundings sports wagering accounts with credit cards, or payment methods one-step away from a credit card.

Chair Judd-Stein expressed an interest in getting an update on universal wallet issues that had arisen. She stated that she had heard of an issue with a sports wagering kiosk not having security near it. She noted that she was unsure whether there was an affirmative requirement that security be near each kiosk, but that it was an expectation of the Commission.

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

Commissioner O'Brien moved to adjourn. 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.*

**List of Documents and Other Items Used**

1. [Notice of Meeting and Agenda](#) dated February 28, 2023
2. [Commissioner's Packet](#) from the March 2, 2023, meeting (posted on massgaming.com)
3. [Additional Meeting Materials](#) from the March 2, 2023, meeting



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

FROM: Ying Wang, Associate General Counsel

CC: Mark Vander Linden, Director of Research and Responsible Gaming  
Heather Hall, Interim Director/Chief Enforcement Counsel, IEB

DATE: November 16, 2023

RE: 205 CMR 152.00: Individuals Excluded from Gaming and Sports Wagering

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Enclosed for the Commission's review are proposed amendments to 205 CMR 152.00, which have been amended to include reference to court ordered exclusion from gaming establishments. This regulation is being proposed for promulgation in the normal course.

M.G.L. c. 23K, §45(i) instructs the Commission to place a person's name on the list of excluded persons if the district court orders a person be prohibited from gaming in gaming establishments. The statute provides in pertinent part:<sup>1</sup>

An immediate family member or guardian may petition, in writing, a district court for an order of exclusion from gaming establishments applicable to a person whom the petitioner has reason to believe is a problem gambler. Upon receipt of a petition for an order of exclusion of a person and any sworn statements the court may request from the petitioner, the court shall immediately schedule a hearing on the petition and shall cause a summons and a copy of the petition to be served upon the person as provided in section 25 of chapter 276. The person may be represented by legal counsel and may present independent expert or other testimony. The court shall order examination by a qualified psychologist. If after a hearing the court based upon competent testimony finds that the person is a problem gambler and there is a likelihood of serious harm as a result of the person's gambling, the court may order that such person be prohibited from gaming in gaming establishments. **The court shall communicate this order to the commission, which shall place the person's name on the list of excluded persons. (Emphasis added).**

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<sup>1</sup> The statute also included definitions for "immediate family member" and "problem gambler."



The amended regulation expands upon court ordered exclusion pursuant to M.G.L. c. 23K, §45(i). It establishes that the Bureau will place the name of an individual on the exclusion list, that the list shall be maintained by the Bureau, and that the Bureau shall not remove the name of an individual from the list until ordered to do so by the district court.

Lastly, the amendment to 205 CMR 152.00 clarifies that the “list of excluded persons” as defined in M.G.L. c. 23K, §2 includes those who have been ordered excluded by the court. However, the name and year of birth of persons ordered excluded by the court will not be posted on the Commission’s website.



Massachusetts Gaming Commission

## 205 CMR: MASSACHUSETTS GAMING COMMISSION

### 205 CMR 152.00: INDIVIDUALS EXCLUDED FROM GAMING AND SPORTS WAGERING

#### Section

- 152.01 : Scope and Authority
- 152.02 : Maintenance and Distribution of Exclusion List
- 152.03: Criteria for Exclusion
- 152.04: Investigation and Initial Placement of Names on the Exclusion List
- 152.05: ~~Placement on the Court Ordered~~ Exclusion List Pursuant to M.G.L. c. 23K, § 45(i)
- 152.06: Duty of Gaming or Sports Wagering Licensee
- 152.07: Petition to Remove Name from Exclusion List
- 152.08: Forfeiture of Winnings
- 152.09: Sanctions against a Gaming or Sports Wagering Licensee
- 152.01: Scope and Authority

#### 152.01 : Scope and Authority

The provisions of 205 CMR 152.00 shall provide for the establishment and maintenance of a list, and associated protocols and procedures, for exclusion of individuals from gaming in accordance with M.G.L. c. 23K, §§ 45(a) through (e) and 45(j), and sports wagering in accordance with M.G.L. c. 23N, § 13(e)(1), as well as M.G.L. c. 23K, § 45(i). Such list shall be maintained separately from those established and maintained in accordance with M.G.L. c. 23K, § 45(f) through (h) and M.G.L. c. 23N, § 13(e)(2).

#### 152.02 : Maintenance and Distribution of Exclusion List

(1) The commission shall maintain the list of persons to be excluded from gaming and sports wagering as set forth in 205 CMR 152.00. The name and year of birth of each person on the exclusion list shall be posted on the commission's website (<http://massgaming.com/>), except for the individuals on the court ordered exclusion list pursuant to M.G.L. c. 23K, § 45(i).

(2) The Bureau shall promptly notify each gaming licensee, and Sports Wagering Operator of the placement of an individual on the exclusion list. The notifications shall include:

- (a) The individual's full name and all aliases the individual is believed to have used;
- (b) A description of the individual's physical appearance, including height, weight, type of build, color of hair and eyes, and any other physical characteristics which may assist in the identification of the individual;
- (c) The individual's date of birth;
- (d) The effective date of the order mandating the exclusion of the individual;
- (e) A photograph, if obtainable, and the date thereof; and
- (f) Such other information deemed necessary by the commission for the enforcement of 205 CMR 152.00.

#### 152.03 : Criteria for Exclusion

(1) In the commission's discretion, an individual may be placed on the exclusion list if the commission determines that the individual meets one or more of the following criteria:

- (a) the individual has been convicted of a criminal offense under the laws of any state, tribe, or the United States that is punishable by more than six months in a state prison, a house of correction or any comparable incarceration, a crime of moral turpitude or a violation of the gaming or other wagering laws of any state, tribe, or the United States;
- (b) the individual has violated or conspired to violate M.G.L. c. 23K or c. 23N; or violated

152.03 : continued

or conspired to violate any other law, if the violation or conspiracy is in connection with gaming or sports wagering;

(c) the individual has a notorious or unsavory reputation which would adversely affect public confidence and trust that the gaming or sports wagering industries are free from criminal or corruptive elements;

(d) the individual is an associate of an individual who falls into a category identified in 205 CMR 152.03(1)(a) through (c);

(e) the individual's presence in a gaming establishment, sports wagering area, sports wagering facility, or maintenance of a sports wagering account, presents the potential of injurious threat to the interests of the Commonwealth in a gaming establishment, sports wagering area, sports wagering facility, or sports wagering platform, or sports wagering.

(2) In determining whether there exists the potential of injurious threat to the interests of the Commonwealth in accordance with 205 CMR 152.03(1)(e), the commission may consider, without limitation, the following:

(a) Whether the individual is a known cheat;

(b) Whether the individual has had a license or registration issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*, 234.00: *Sports Wagering Vendors*, 235.00: *Sports Wagering Occupational Licenses*, or a qualification determination made in accordance with 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards, and Procedures*, 116.00: *Persons Required to Be Licensed or Qualified*, or 215.00: *Applicant and Qualifier Suitability Determination, Standards, and Procedures*, or a like license or registration issued by another jurisdiction, suspended or revoked or has been otherwise subjected to adverse action;

(c) Whether the individual's egregious or repeated conduct poses a clear threat to the safety of the patrons, employees or others on or near the premises of a gaming establishment, sports wagering area, or sports wagering facility; or the individual's egregious or repeated conduct relating to sports wagering poses a clear threat to the safety of others;

(d) Whether the individual has a documented history of conduct involving the undue disruption of gaming or sports wagering operations in any jurisdiction including, without implied limitation, attempting to corrupt or corrupting a betting outcome of a sporting event;

(e) Whether the individual is subject to a no trespass order at any casino or gaming establishment, sports wagering area, or sports wagering facility in any jurisdiction; and

(f) Whether, in connection with sports wagering, the individual has either:

1. willfully and maliciously engaged in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress; or

2. expressed an intent to injure the person or property of another, now or in the future; intended that the threat be conveyed to a particular person; the injury threatened, if carried out, would constitute a crime; and the threat was made under circumstances which could reasonably have caused the person to whom it was conveyed to fear that the individual had both the intention and ability to carry it out.

(3) The commission shall not base a finding to place an individual on the exclusion list on an individual's race, color, religion, religious creed, national origin, ancestry, sexual orientation, gender identity or expression, age (other than minimum age requirements), marital status, veteran status, genetic information, disability or sex.



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152.04 : Investigation and Initial Placement of Names on the ~~Exclusion~~ List

(1) The Bureau shall investigate any individual who may meet one or more criterion for inclusion on the list in accordance with 205 CMR 152.03 upon referral by the commission, the Gaming Enforcement Division of the Office of the Attorney General, a gaming licensee, a sports wagering operator, a sports governing body, or a players association. The Bureau may investigate any individual on its own initiative.

(2) If, upon completion of an investigation, the Bureau determines to place an individual on the exclusion list, the Bureau shall prepare an order that identifies the individual and sets forth a factual basis as to why the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03.

(a) The Bureau shall serve the order prepared in accordance with 205 CMR 152.04(2) upon the named individual advising them that it intends to place the individual's name on the exclusion list. The order shall also notify the individual that placement of their name on the exclusion list will result in their prohibition from being present in a gaming establishment, sports wagering area, or sports wagering facility, and from maintaining a sports wagering account; and

(b) offer them an opportunity to request a hearing before a hearing officer to review the Bureau's order. The order shall be sent by registered or certified mail return receipt requested or by publication in a daily newspaper of general circulation for one week. The individual shall have 30 days from the date of the service of the order to request a hearing, except for notice provided by publication in a newspaper in which case the individual shall have 60 days from the last publication. Alternatively, the Bureau may provide an individual with in hand service of order in which case the individual shall have ten days from the date of service to request a hearing.

(3) If a request for a hearing is received from the individual, a hearing shall be scheduled before a hearing officer in accordance with 205 CMR 101.00: *M.G.L. C. 23K Adjudicatory Proceedings* and notice of such, including the date, time, and issue to be presented, shall be sent to the individual. The hearing shall be conducted in accordance with 205 CMR 101.02: *Review of Orders or Civil Administrative Penalties/Forfeitures Issued by the Bureau, Commission Staff, or the Racing Division*.

(4) If no request for a hearing is received within the applicable timeline provided in 205 CMR 152.04(3), the individual's name shall be placed on the exclusion list.

(5) In accordance with 205 CMR 101.00: *M.G.L. C. 23K Adjudicatory Proceedings*, a decision of the hearing officer may be appealed to the commission. A request for appeal to the commission shall not operate as a stay of the decision of the hearing officer.

152.05 : ~~Placement on the Court Ordered~~ Exclusion ~~List~~ Pursuant to M.G.L. c. 23K, § 45(i)

(1) Upon receipt of notice from a district court that an individual has been prohibited from gaming in gaming establishments in accordance with M.G.L. c. 23K, § 45(i) and 205 CMR 152.05, the ~~commission~~ Bureau shall place the name of an individual on the exclusion list.

(2) The list of court ordered exclusions shall be maintained by the Bureau and shared with the gaming licensees.

(3) Pursuant to 205 CMR 152.07(5), the Bureau shall not remove the name of an individual from the court ordered exclusion list until ordered to do so by a court of competent jurisdiction.

152.06 : Duty of Gaming or Sports Wagering Licensee

(1) Each gaming or sports wagering licensee shall ensure that it accesses and reviews the exclusion list on a regular basis and that the exclusion list is made available to employees of the gaming or sports wagering licensee in a manner designed to assist them in identifying and inhibiting excluded individuals from entering the gaming establishment, sports wagering area, or sports wagering facility, or maintaining a sports wagering account.

152.06: continued

(2) Upon identifying any individual who has been placed on the exclusion list present in a gaming establishment, sports wagering area, or sports wagering facility, the gaming or sports wagering licensee shall immediately notify the Massachusetts State Police Gaming Enforcement Unit, the Surveillance Department, and the Security Department. The Surveillance Department shall track the individual who has been placed on the list while that individual is present in the gaming establishment, sports wagering area, or sports wagering facility and the Security Department shall coordinate with the Massachusetts State Police Gaming Enforcement Unit regarding removing the individual from the gaming establishment, sports wagering area, or sports wagering establishment.

(3) Upon determining that an individual who has been placed on the exclusion list maintains a sports wagering account or has engaged in prohibited sports wagering, a sports wagering licensee shall:

(a) Cancel any sports wagers placed by the individual and confiscate any resulting funds in accordance with 205 CMR 238.33(3);

(b) Suspend the sports wagering account used to engage in prohibited sports wagering in accordance with 205 CMR 248.17: *Account Suspension and Restoration*; and

(c) Notify the Director of Sports Wagering and the Bureau.

(4) It shall be the continuing duty of a gaming or sports wagering licensee to refer to the Bureau, in writing, individuals whom it wishes to be placed on the exclusion list and to promptly notify the Bureau in writing of no trespass orders which it issues.

(5) A gaming or sports wagering licensee shall submit a written policy for compliance with the exclusion list program for approval by the executive director. The executive director shall review the plan for compliance with 205 CMR 152.00. If approved, notice shall be provided to the commission and the plan shall be implemented and followed by the gaming or sports wagering licensee. The plan for compliance with the exclusion list program shall include, at a minimum, procedures to:

(a) Prevent an individual on the exclusion list from entering the gaming establishment, sports wagering area, or sports wagering facility, maintaining a sports wagering account; or engaging in prohibited sports wagering;

(b) Identify and coordinate with the Massachusetts State Police Gaming Enforcement Unit to eject individuals on the list from the gaming establishment, sports wagering area, or sports wagering facility if they are able to enter;

(c) Remove individuals on the exclusion list from marketing lists, and refrain from sending or transmitting to them any advertisement, promotion, or other direct marketing mailing pertaining to gaming or sports wagering more than 30 days after receiving notice from commission that the individual has been placed on the exclusion list;

(d) Prevent an individual on the exclusion list from having access to credit, cashless wagering program access, or from receiving complimentary services, check-cashing services, junket participation and other benefits from the gaming establishment, sports wagering area, or sports wagering facility, or benefits from a sports wagering account; and

(e) Train employees relative to the exclusion list and the license's program.

(6) The commission may revoke, limit, condition, suspend or fine a gaming or sports wagering licensee if it knowingly or recklessly fails to exclude, or identify, or coordinate with the Massachusetts State Police Gaming Enforcement Unit to eject from its gaming establishment or sports wagering facility, any individual placed by the commission on the exclusion list; or

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152.06 : continued

prevent an individual on the exclusion list from maintaining a sports wagering account or engaging in prohibited sports wagering.

152.07 : Petition to Remove Name from Exclusion List

(1) An individual who has been placed on the list in accordance with 205 CMR 152.00~~3~~ may petition the Bureau in writing to request that their name be removed from the list. Except in extraordinary circumstances, such a petition may not be filed sooner than five years from the date an individual's name is initially placed on the list.

(2) The individual shall state with particularity in the petition, the reason why the individual believes they no longer satisfy one or more criterion for inclusion on the list in accordance with 205 CMR 152.03. Following an investigation, the Bureau shall prepare a written determination whether to remove the individual from the list and setting forth a factual basis as to why the individual does or does not continue to satisfy one or more of the criterion for inclusion on the list.

(3) The individual shall have 30 days from the date of service of the Bureau's determination to request a hearing before the hearing officer in accordance with 205 CMR 101.00: *M.G.L. C. 23K Adjudicatory Proceedings*. The commission shall schedule a hearing on any properly filed petitions and provide written notice to the petitioner identifying the time and place of the hearing. Such a hearing shall be conducted in accordance with 205 CMR 101.00.

(4) In accordance with 205 CMR 101.00: *M.G.L. C. 23K Adjudicatory Proceedings*, a decision of a hearing officer may be appealed to the commission. Removal of an individual's name from the list shall not occur until all agency appeals have been exhausted or the time for such appeals has run.

(5) An individual who was placed on the exclusion list by virtue of an order of the district court, in accordance with M.G.L. c. 23K, § 45(i), may not petition for removal in accordance with 205 CMR 152.07.

(6) The Bureau shall promptly notify each gaming licensee and Sports Wagering Operator of the removal of an individual from the exclusion list.

152.08 : Forfeiture of Winnings

(1) An individual who is on the exclusion list shall not collect any winnings or recover losses arising as a result of prohibited gaming or sports wagering, and such winnings shall be forfeited to the commission. To the extent that the winnings arise from gaming or a source which cannot be determined, they shall be deposited into the Gaming Revenue Fund pursuant to M.G.L. c. 23K, §§ 45(j) and 59. To the extent that the winnings arise from prohibited sports wagering, they shall be deposited into the Sports Wagering Fund established by M.G.L. c. 23N, § 17.

(2) Upon verification that an individual:

(a) who is present in its gaming establishment, sports wagering area, or sports wagering facility is on the exclusion list, a gaming or sports wagering licensee shall take steps to:

1. In accordance with 205 CMR 152.06(2) and 205 CMR 152.06(3), coordinate with the Massachusetts State Police Gaming Enforcement Unit to remove the individual from the gaming establishment, sports wagering area, or sports wagering facility; and

2. Notify the Bureau who shall lawfully confiscate, or cause to be refused to pay any winnings or things of value obtained from engaging in a gaming or prohibited sports wagering transaction including:

a. gaming chips, gaming plaques, slot machine tokens and vouchers, gaming vouchers, and sports wagering vouchers;

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- b. any electronic gaming device or slot machine jackpot won by the individual; and
- c. any cashable credits remaining on an electronic gaming device or slot machine credit meter played by the individual.

3. Deliver any winnings or things of value obtained from the individual to the cashier's cage, and transmit the cash value to the commission for deposit in the Gaming Revenue Fund or Sports Wagering Fund in accordance with 205 CMR 152.08(1).

(b) maintains a sports wagering account or has engaged in prohibited sports wagering, a sports wagering licensee shall take steps to:

- 1. Cancel any wagers and confiscate resulting funds in accordance with 205 CMR 238.33(1) and (3);
- 2. Suspend the sports wagering account used to engage in prohibited sports wagering in accordance with 205 CMR 248.17: *Account Suspension and Restoration*; and
- 3. Notify the Director of Sports Wagering and the Bureau.

(3) If an individual wishes to contest the forfeiture of winnings or things of value, the individual may request a hearing in writing with the commission within 15 days of the date of the forfeiture. The request shall identify the reason why the winnings or things of value should not be forfeited. A hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. C. 23K Adjudicatory Proceedings* to determine whether the subject funds were properly forfeited in accordance with 205 CMR 152.08.

152.09: Sanctions against a Gaming or Sports Wagering Licensee

(1) Grounds for Action. A gaming or sports wagering license may be conditioned, suspended, or revoked, and/or the gaming or sports wagering licensee assessed a civil administrative penalty based on a finding that a licensee has:

(a) knowingly or recklessly:

- 1. failed to exclude or eject from its premises any individual placed on the list of excluded persons; or
- 2. permitted an individual placed on the list of excluded persons to maintain an account on a sports wagering platform or engage in prohibited sports wagering. Provided, it shall not be deemed a knowing or reckless failure if an individual on the exclusion list shielded their identity or otherwise attempted to avoid identification while present at a gaming establishment, sports wagering area, or sports wagering facility, or evaded the commercially reasonable standards for sports wagering identity verification required by 205 CMR 248.04(4).

(b) failed to abide by any provision of 205 CMR 152.00, M.G.L. c. 23K, § 45, M.G.L. c. 23N, § 11(e)(1), the gaming or sports wagering licensee's approved written policy for compliance with the exclusion list program pursuant to 205 CMR 152.06(5), or any law related to the exclusion of patrons in a gaming establishment or from sports wagering.

(2) Finding and Decision. If the Bureau finds that a gaming licensee has violated a provision of 205 CMR 152.09(1), it may issue a written notice of decision recommending that the commission suspend, revoke, and or condition said gaming licensee. Either in conjunction with or in lieu of such a recommendation, the Bureau may issue a written notice assessing a civil administrative penalty upon said licensee. Such notices shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the decision.

(3) Civil Administrative Penalties. The Bureau may assess a civil administrative penalty on a gaming licensee in accordance with M.G.L. c. 23K, § 36 for a violation of 205 CMR

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152.09: continued

152.09(1).

(4) Review of Decision. A recommendation made by the Bureau to the commission that a gaming license be conditioned, suspended or revoked shall proceed directly to the commission for review in accordance with 205 CMR 101.01: *M.G.L. C. 23K Adjudicatory Proceedings*. If the gaming licensee is aggrieved by a decision made by the Bureau to assess a civil administrative penalty in accordance with 205 CMR 152.09(2) and (3), it may request review of said decision in accordance with 205 CMR 101.00.

(5) Sports Wagering Operators. Discipline of a sports wagering operator for a violation of 205 CMR 152.09(1) shall follow the process set out in 205 CMR 232.00.

REGULATORY AUTHORITY

205 CMR 152.00: M.G.L. c. 23K, § 4; M.G.L. c. 23N, §§ 4 and 13(e)(1).



## **SMALL BUSINESS IMPACT STATEMENT**

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2, relative to the proposed amendment of **205 CMR 152: INDIVIDUALS EXCLUDED FROM A GAMING ESTABLISHMENT.**

This regulation is being promulgated as part of the process of promulgating regulations governing gaming in the Commonwealth, and is primarily governed by G.L. c. 23K, §§ 4(28), 4(37), and 45. It provides for the establishment and maintenance of a list, and associated protocols and procedures, for exclusion of individuals from gaming, including court-ordered exclusion of individuals.

The proposed amendments to 205 CMR 152 apply to gaming licensees, district courts, and individuals involved. None of these entities or individuals are small businesses. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

**1. Estimate of the number of small businesses subject to the proposed regulation:**

This regulation is unlikely to have an impact on small businesses because none of the impacted entities or individuals are small businesses.

**2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:**

The proposed regulation is an amendment to an existing regulation that has already been implemented by the gaming licensees and is required by statute. Accordingly, this regulation amendment does not propose any new projected reporting, recordkeeping, or other administrative costs required to comply with this regulation.

**3. State the appropriateness of performance standards versus design standards:**

This is an amendment to an existing regulation that does not pose a burden on small businesses. This is a performance standard and it is appropriate in this case because we need to ensure uniformity of the process and that the Commission has all the information it needs to complete the process.

**4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:**



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There are no conflicting regulations in 205 CMR and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

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

The underlying regulation amendment is based on a statutory requirement. It is unlikely to have any specific effect on the formation of new businesses in the Commonwealth.

Massachusetts Gaming Commission

By:

*Ying Wang*

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Ying Wang, Associate General Counsel

Dated: November 16, 2023



Massachusetts Gaming Commission



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

FROM: Caitlin Monahan, Deputy General Counsel  
Judi Young, Associate General Counsel  
Mina Makarious, Esq., Anderson & Kreiger  
Paul Kominers, Esq., Anderson & Kreiger

CC: Todd Grossman, Interim Executive Director and  
General Counsel

DATE: November 9, 2023

RE: 205 CMR 2.00

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Enclosed for the Commission's review is a proposed 205 CMR 2.00. The proposed regulation would govern applications for racing meeting licenses under 205 CMR 128A. The regulation borrows many structural elements from the sports wagering licensing regulations, but adapts them for the racing context and statutes. The regulation was presented to the Commission for the first time on Thursday, October 19, and has been posted for public comment since.

The only public comment received was from Baystate Racing LLC. Baystate requests three specific revisions to 205 CMR 2.00.

First, Baystate requests a clarification that new applicants may submit applications prior to October 1. We think the regulation is clear that application materials can be submitted prior to October 1. For the avoidance of doubt, we have recommended a minor amendment to 205 CMR 2.03(5) that clarifies that the Commission can begin reviewing an application even if the "application deadline" (i.e., October 1) has not passed.

Second, Baystate suggests a provision requiring the Commission to make a decision on any complete application within 45 days of completion. We do not recommend adopting this suggestion. The time required to review an application will vary with the particulars of the application, and a hard deadline may disserve both the Commission and applicants with complex applications. Of course, if an applicant submits a completed application to the Commission, it can request that the Commission respond by a date certain, and the Commission can respond as appropriate under the circumstances.



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Third, Baystate Racing asks that the specific lead times set out for the receipt of scoping surveys, BEDs, MJPHDs, and Mass. Supps. be omitted, and that the Commission rely instead on the general duty of an applicant to comply with any information requests. We do not understand Baystate to be objecting to the requirement to submit any particular piece of information – only the sequencing, the timeline, and the perceived rigidity of both.

The required submission, the sequence in which they are to be submitted, and the timeline were all developed in consultation with the IEB and Division of Licensing based on experience from sports wagering suitability reviews. Nonetheless, we do recommend several tweaks to 205 CMR 2.02(1)(a) and (2)(b) that make clear that prospective operators, with the permission of the IEB, may begin submitting materials for certain qualifiers earlier. This confirms that applicants have an option to provide more application materials earlier, while ensuring that the Commission and its staff maintain order over the sequencing and timing of applications.

For the Commission’s convenience, the outline of the regulation from the prior cover memo follows:

### **Section 2.02: Racing Meeting License Application**

Section 2.02(1) sets out the materials that each applicant must submit. Under 205 CMR 2.02(1)(a), an applicant who was not licensed in the prior year must submit a scoping survey and, as appropriate, BEDs, MJPHDs, and Mass. Supps. Every applicant must submit a racing meeting license application form and remit several fees.

Section 2.02(2) sets out the sequence of submissions for an applicant who was not licensed in the prior year. Practically, the scoping survey must be submitted before the BEDs, MJPHDs, and Mass. Supps., but other materials can be submitted when the applicant prefers. A subsequent subsection, 205 CMR 2.02(3)(c), ensures that applicants who submit scoping surveys or BEDs, MJPHDs, and Mass. Supps. too late to be actionable understand that they may be denied a license as a result.

Section 2.02(3) sets out the application requirements. Subsection 2.02(3)(a) lays out standard materials that every applicant must submit annually. Most are drawn directly from G.L. c. 128A. Subsection 2.02(3)(b) lays out additional requirements for an applicant who proposes to hold a race at a racetrack where the applicant has not previously held a race. This list should be largely familiar to the Commission from extensive discussions of the new-track application form. Subsection 2.02(3)(c), finally, lays out additional requirements for applicants who have never been found suitable or temporarily suitable, or who did not hold a license in the prior year. An applicant may be completely new, but it is also possible that an applicant previously found suitable will try to open a new track, or an applicant already operating at an existing track may never have been found suitable in accordance with this regulation.



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### **Section 2.03: Evaluation of Application and Decision**

Section 2.03 is modeled after 205 CMR 218, the primary sports wagering licensing regulation, but there are a few relevant differences:

- If the applicant submits materials in stages in accordance with 205 CMR 2.02(2), administrative sufficiency review takes place in the same stages.
- G.L. c. 128A, § 3 requires the Commission to hold at least one public meeting in the municipality where the racing meeting is to be held; this regulation incorporates that requirement at 205 CMR 2.03(4)(a).
- The list of factors for the Commission’s review is drawn from G.L. c. 128A, § 3(i), § 11C, and case law, and supplemented with factors developed in the sports wagering licensing process.
- The Commission must deliberate on license applications in an adjudicatory proceeding.
- Standard license conditions are laid out at 205 CMR 2.02(7)(c), instead of in a separate regulation.

### **Section 2.04: Suitability of New and Existing Licensees, and Qualifiers**

This section is modeled after 205 CMR 215. Under 205 CMR 2.04(1), an applicant or qualifier may be found suitable for five years on a showing by clear and convincing evidence. Under 205 CMR 2.04(2), an applicant or qualifier may be found “temporarily” suitable based on attestations and a briefer investigation. This dichotomy mirrors the durable/preliminary suitability standards in 205 CMR 215. However, because racing applicants return to the Commission every year, the “preliminary” suitability finding has been replaced with an annual finding of “temporary” suitability.

205 CMR 2.04(3)-(4) set out substantive suitability standards. These standards are based on the parallel standards for sports wagering licensing, but have been tweaked somewhat to account for the racing statutes’ requirements.

205 CMR 2.04(5)-(12) address the designation of qualifiers.

### **Section 2.08: Additional Information and Cooperation of Racing Meeting Applicants and Licensees**

This section closely tracks 205 CMR 212 and requires cooperation with the Commission and IEB throughout the application process, and after licensure.



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## **Section 2.09: Withdrawal of Application For License To Hold Or Conduct A Racing Meeting**

This section is largely modeled on 205 CMR 213. Note, however, that the list of different kinds of pending proceedings that trigger the good-cause standard for withdrawal is omitted because the Commission hears all license applications and qualifier suitability decisions directly.

### **Reserved Sections:**

The following sections are reserved for future rulemaking:

- Section 2.05: Advance Deposit Wagering; Licensure, Review and Authorization
- Section 2.06: Licensing, Registration, and Fees for Owners, Trainers, Stable Employees, Authorized Agents, Vendors and Racing Officials
- Section 2.07: Financial Payments, Outs, and Requests for Capital Improvement or Reimbursement



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205 CMR 2.00: RACING MEETING LICENSING

Section 2.01: Authority and Definitions

Section 2.02: Racing Meeting License Application

Section 2.03: Evaluation of Application and Decision

Section 2.04: Suitability of New and Existing Licensees, and Qualifiers

Section 2.05: Advance Deposit Wagering; Licensure, Review and Authorization (RESERVED)

Section 2.06: Licensing, Registration, and Fees for Owners, Trainers, Stable Employees,  
Authorized Agents, Vendors and Racing Officials (RESERVED)

Section 2.07: Financial Payments, Outs, and Requests for Capital Improvement or  
Reimbursement (RESERVED)

Section 2.08: Additional Information and Cooperation of Racing Meeting Applicants and  
Licensees

Section 2.09: Withdrawal of Application For License To Hold Or Conduct A Racing Meeting

2.01 Authority and Definitions

(1) Authority. 205 CMR 2.00 is issued pursuant to G.L. c. 128A, § 9, and G.L. c. 128C, § 8.

(2) Definitions. As used in 205 CMR 2.00, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise. Words and phrases not defined below shall have the meaning given to them in G.L. c. 128A, § 1 or G.L. c. 128C, § 1, 205 CMR 202.02, or 205 CMR 102.00, if any, unless the context clearly requires otherwise. In the event of any conflict between those provisions, any definition in G.L. c. 128A, § 1 shall be given priority, followed by G.L. c. 128C, § 1, 205 CMR 202.02, and 205 CMR 102.00, in that order, unless the context clearly requires otherwise.

Applicant means an applicant for a racing meeting license.

Application means an application for a racing meeting license.

Application deadline means the first day of October of the calendar year preceding the calendar year for which the application requests a license to be issued.

Authorized individual means, if the applicant is an individual, such individual; if two or more individuals or a partnership, one of such individuals or by a member of such partnership, as the case may be; if a trust, a trustee of such trust; and, if an association or corporation, by the president or vice president thereof.

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BED means a Business Entity Disclosure Form by an authorized individual as described in 205 CMR 111.02: Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies.

License means a racing meeting license.

Licensee means a racing meeting licensee. A licensee shall be considered a licensee through the full calendar year in which its license permits it to host racing meetings regardless of the date of its last scheduled racing meeting.

Mass. Supp. means Massachusetts Supplemental Form as described in 205 CMR 111.04.

MJPHD means a Multi-jurisdictional Personal History Form as described in 205 CMR 111.03: Multi-jurisdictional Personal History Form.

Scoping survey means an Operator and Vendor Scope of Licensing – Initial Survey.

Racing meeting license means a license to conduct a live racing meeting.

Qualifier means a person whose qualification must be established in evaluating the suitability of an applicant in accordance with the standards and criteria set forth in M.G.L. c. 128A and 205 CMR 2.04.

2.02 Racing Meeting License Application

(1) Required Materials. An applicant must submit a fully executed original application to the Commission on or before the application deadline. All application materials shall be submitted in accordance with the instructions included in the relevant form or online. The Commission shall have no obligation to accept or review an incomplete application. Applicants shall, at a minimum, submit the following completed materials as part of their application:

(a) If the applicant is not currently a licensee:

- (i) a scoping survey;
- (ii) For each designated (or, with the permission of the Bureau, anticipated) entity qualifier: a BED;
- (iii) For each designated (or, with the permission of the Bureau, anticipated) individual qualifier:

- (a) An MJPHD; and
- (b) A Mass. Supp.

(b) A racing meeting license application form, in accordance with 205 CMR 2.02 and consistent with M.G.L. c. 128A and M.G.L. c. 128C, signed and sworn to by an authorized individual;

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- (c) A \$300 licensing fee pursuant to M.G.L. c. 128A, § 4;
- (d) A certified check or bank draft, or electronic equivalent, payable to the Commission, weekly in advance for the full amount of the license fee required by G.L. c. 128A;
- (e) A bond payable to the Commission in the amount of \$125,000 with a surety or sureties approved by the Commission conditioned upon the payment of all sums which may become payable to the commission under this chapter.

(2) Sequence of submissions. An applicant who is not currently a licensee:

- (a) may submit the scoping survey prior to and separately from any other required materials; and

(b) may submit any BEDs, M~~D~~JPHDs, and Mass. Supps. required by 205 CMR 2.02(1)(a)(ii)-(iii);

i. -prior to and separately from the materials required under 205 CMR 2.02(1)(b)-(f); and

(b)ii. Either for all qualifiers at once, or, with the permission of the Bureau, on a per-qualifier basis.

- (c) An applicant who submits any forms prior to and separately from other application materials in accordance with 205 CMR 2.02(2)(a) or (b) must also submit an attestation signed and sworn to that the applicant intends in good faith to submit a fully executed original application on or before the application deadline, and acknowledging that if the applicant fails to do so without good cause, the Commission may charge the applicant for any administrative and investigatory costs incurred in evaluating those application forms the applicant did submit. Only one such attestation shall be required per application regardless of the volume or nature of forms submitted early.

(3) Racing Meeting License Application Form requirements.

- (a) For any applicant, the racing meeting license application form shall require the following:

- (i) The name of the applicant;
- (ii) The post office address of the applicant, and if a corporation or corporate entity, the name of the state under the laws of which it is incorporated or formed, the location of its principal place of business and the names and addresses of its directors and stockholders, members, or directors;
- (iii) The location of the racetrack where it is proposed to hold or conduct such meeting;
- (iv) An explanation of the ownership of the real property on which the race track is proposed to be constructed or operated, and the

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- applicant's rights to construct or operate the race track on said real property;
- (v) Documentation sufficient to demonstrate that the applicant has received:
    - (a) municipal approval pursuant to M.G.L. c. 128A, § 13A; and
    - (b) an affirmative county vote pursuant to M.G.L. c. 128A, § 14;
  - (vi) The calendar year in which the applicant anticipates conducting the meeting, and the specific days on which it intends or anticipates holding or conducting such a meeting;
  - (vii) The hours of each day between which it is intended to hold or conduct racing at such meeting subject to the restrictions described in M.G.L. c. 128A;
  - (viii) An attestation signed and sworn to that the applicant will comply, in case such license be issued, with all applicable laws and with all applicable rules and regulations prescribed by the Commission, and that the applicant shall have an affirmative obligation to abide by every statement made in the application to the Commission should it be awarded a license;
  - (ix) An attestation signed and sworn to that the applicant will comply, in case such license shall be issued, with all affirmative representations, promises or inducements made to governing bodies, government officials of the host and surrounding communities or local organizations and any mitigation agreements, formal or informal; and
  - (x) Such other information or certifications as the Commission may require.
- (b) For any applicant who proposes to hold a racing meeting at a race track where the applicant has not previously held a racing meeting, the racing meeting license application form shall also require the following:
- (i) A summary of the project and racing facilities including a description of the proposed financing and source(s) of capital;
  - (ii) Submission of feasibility, viability, economic impact/development studies including projected revenues, purses, handles, tax payments, attendance, and employment figures;
  - (iii) Submission of designs, traffic, and environmental impact studies, including information relative to the safety and security of patrons, employees, occupational licensees, and horses;
  - (iv) A detailed description of the race track that will be constructed and an indication of the type of grounds the horses will be raced upon, whether dirt, turf or synthetic, including a timeline for completion

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- and the name and qualifications of the entity or individual overseeing construction;
- (v) Information relative to the public interest and benefits associated with the conduct of the proposed racing meeting including the existence of, or the applicant's plan to execute, a purse agreement with a representative horsemen's organization; any support or opposition to the proposal has received from the host and nearby communities; and the applicant's plan to attract and employ a diverse workforce in both construction and operational phases of the proposal, including through use of vendors.
  - (vi) Information or a statement as to whether the applicant plans on entering into a Project Labor Agreement(s);
  - (vii) Information relative to the proposed pari-mutuel wagering plan for live racing, simulcasting, and advance account deposit wagering;
  - (viii) Information relative to the proposed responsible gaming initiatives to be offered on the premises;
  - (ix) Information relative to the applicant's plans to seek or not seek a Category 2 Sports Wagering license;
  - (x) Any agreements, written or otherwise, that the applicant has made or executed with racing governing bodies, the municipality where the applicant proposes to hold racing meetings, other municipalities, or any other entities; and
  - (xi) Such other information or certifications as the Commission may require.
- (c) For any applicant who is not currently a licensee, or who has not previously been found durably or temporarily suitable in accordance with this 205 CMR to hold a license, the racing meeting license application form shall also require the following:
- (xii) An attestation signed and sworn to that if the form described in 205 CMR 2.02(1)(a)(i) is not deemed administratively sufficient by May 1, the applicant acknowledges the Commission may not have adequate time to assess the applicant's suitability, and that this may result in denial of the application;
  - (xiii) An attestation signed and sworn to that if the forms described in 205 CMR 2.02(1)(a)(ii)-(iii) are not deemed administratively sufficient by August 1, the applicant acknowledges the Commission may not have adequate time to assess the applicant's suitability, and that this may result in denial of the application; and
  - (xiv) Such other information or certifications as the Commission may require.

2.03 Evaluation of Application and Decision

- (1) Pre-Application Consultation. The Commission or its designees may conduct one or more consultation meetings or information sessions with an applicant or prospective



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applicant to provide guidance on application procedures, including the requirements of G.L. c. 128A or 128C, or 205 CMR 2.00. In addition, the Commission may use other methods to respond to inquiries regarding the application process, such as publishing responses to questions submitted by any applicant.

- (2) Administrative Sufficiency Review. The Division of Licensing will review application materials for administrative sufficiency as they are submitted.
- (a) Administrative sufficiency review – how undertaken.
- (i) When determining whether the application materials to be reviewed at any stage are administratively sufficient, the Division of Licensing shall review the forms and determine whether all information or materials required to be provided in response to each question or request have been submitted.
- (ii) If any application materials to be reviewed in a stage are determined to be insufficient:
- (a) The Licensing Division shall notify the applicant in writing by email or first-class mail. The notification shall specify the deficiencies within the materials.
- (b) Until the application deadline passes, the applicant shall have the right to submit corrected materials to cure the deficiencies.
- (c) After the application deadline passes, the applicant must request leave from the Commission or its designee to submit corrected materials to cure the specified deficiencies, and must submit any corrected materials within the time allowed by the Commission or its designee.
- (d) The Commission or its designee shall not grant leave to submit proof of approvals required under G.L. c. 128A, §§ 13A and 14.
- (b) Positive determination of administrative sufficiency – significance. 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.
- (3) Review Procedures. In reviewing the merits of the application, the Commission may, at such times and in such order as the Commission deems appropriate, take some or all of the following actions:

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- (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 such professional consultants (including without limitation financial and accounting experts, legal experts, racing 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.

(4) Public Meetings Regarding Applications

- (a) Pursuant to G.L. c. 128A, § 3, the Commission shall not issue ~~the a~~ license without holding at least one public meeting in the municipality where the applicant proposes to hold a racing meeting.
- (b) The Commission may conduct one or more other meetings to:
- (i) receive public feedback on the application;
  - (ii) allow the applicant to make a presentation; and
  - (iii) allow the applicant to respond to questions or public comments.

(5) Evaluation of the Application by the Commission. Once an application is deemed administratively sufficient, regardless of whether the application deadline has passed, the Commission shall commence a substantive evaluation of its contents. The Commission may utilize any technical or expert assistance it deems necessary to aid in its review.

- (a) The Commission shall analyze the factors and considerations set out in 205 CMR 2.01, and G.L. c. 128A, § 3(i) in no particular order, and giving any particular weights, to any factor in order to make a determination as to whether a license awarded to the applicant would benefit the Commonwealth. These factors include but are not limited to:
- (i) Whether the application meets the requirements of G.L. c. 128A;
  - (ii) Whether the applicant has adequately answered the questions in the application;

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- (iii) Whether the application meets the factors set out in G.L. c. 128A, § 3(i):
  - (a) The applicant's financial ability to successfully operate a race track;
  - (b) The impact of the application on the maximization of state revenues;
  - (c) The suitability of the racing facilities for operation at the time of the year for which dates are assigned;
  - (d) The circumstance that large groups of spectators require safe and convenient facilities;
  - (e) The interest of members of the public in racing competition honestly managed and of good quality;
  - (f) The necessity of having and maintaining proper physical facilities for racing meetings; and
  - (g) The economic interest and investments of those who in good faith have provided and maintain such facilities;
- (iv) Whether the Applicant is financially responsible, able to meet obligations to the Commonwealth, has suitable and safe facilities for the service of patrons, and is likely to conduct racing in accordance with approved practices and in a manner consistent with the public safety, health, morals, and welfare, including the suitability of the Applicant and its leadership to hold or conduct a racing meeting;
- (v) The reputation for honest dealing, and the gaming, racing, or sports wagering history of the Applicant and its qualifiers;
- (vi) Whether granting the application would result in an undesirable concentration of ownership of racing facilities within the Commonwealth;
- (vii) Whether the application would have an adverse impact upon the integrity of the racing industry;
- (viii) The applicant's proposed measures related to responsible wagering, including:
  - (a) The Applicant's responsible wagering policies;
  - (b) The Applicant's advertising and promotional plans; and
  - (c) The Applicant's history of demonstrated commitment to responsible wagering;
- (ix) The Applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion, including:
  - (a) Within the applicant's workforce;
  - (b) Through the applicant's supplier spend; and
  - (c) In the applicant's corporate structure;

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- (x) any other relevant considerations the Commission deems appropriate, per M.G.L. c. 128A, § 2.
  - (b) The Commission shall deliberate on license applications in an adjudicatory proceeding pursuant to 205 CMR 101.01: *Hearings Before the Commission*.
- (6) Determinations on Applications.
- (a) After evaluating an application in accordance with 205 CMR 2.03(5), the Commission may:
    - (i) Award the applicant a license, subject to conditions in accordance with G.L. c. 128A and 128C, and 205 CMR; or
    - (ii) Deny the application for any of the reasons set out in G.L. c. 128A and 128C, and 205 CMR.
  - (b) The Commission shall not award a license without first having found the applicant durably suitable in accordance with 205 CMR 2.04(1) within the current or prior four calendar years, or having found the applicant temporarily suitable in accordance with 205 CMR 2.04(2) within the last calendar year; provided, the Commission may make either finding simultaneously with the decision to award a license in accordance with 205 CMR 2.03(6)(a)(i).
- (7) Provisions Applicable to All Licensing Determinations. 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 pursuant to G.L. c. 128A, or 128C.
- (a) 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.
  - (b) For purposes of 205 CMR and G.L. c. 128A, or 128C, the award of a Racing Meeting 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.
  - (c) License conditions.
    - (i) All licenses shall be issued subject to the following conditions:
      - (a) That the licensee comply with all terms and conditions of its license;
      - (b) That the licensee comply with G.L. c. 128A, c. 128C, and all rules and regulations of the Commission; and
      - (c) That the licensee, and its qualifiers, not become, or be found, unsuitable.

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- (ii) The Commission may impose any other appropriate condition on a license.

2.04 Suitability of New and Existing Licensees, and Qualifiers

(1) Durable suitability determinations.

- (a) An applicant or qualifier shall have the duty to establish its durable suitability by clear and convincing evidence.
- (b) No applicant shall be determined to be durably suitable in accordance with 205 CMR 2.04(1)(a) unless and until all qualifiers identified in 205 CMR 2.04(6) have been found by the Commission durably suitable in accordance with 205 CMR 2.04(1)(a) within the current or prior four calendar years.
- (c) Investigation. Before the Commission may determine that an applicant or qualifier is durably suitable in accordance with 205 CMR 2.04(1), the Bureau shall conduct an investigation into the qualifications and suitability of the applicant. 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.
- (d) The Commission shall make any finding of durable suitability in accordance with 205 CMR 2.04(1) after an adjudicatory proceeding pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.
- (e) After the proceedings under 205 CMR 2.04(1)(d), the Commission shall issue a written determination of durable suitability as follows:
  - (i) Negative Determination. If the Commission finds that an applicant or qualifier failed to meet its burden of demonstrating its durable suitability, the Commission, in its sole discretion, shall either:
    - (a) issue a negative determination of suitability; or
    - (b) request that the applicant or qualifier submit a certification in accordance with 205 CMR 2.04(2)(b) and, as appropriate, that the Bureau conduct an investigation in accordance with 205 CMR 2.04(2)(c), and thereafter consider whether the applicant or qualifier is temporarily suitable in accordance with 205 CMR 2.04(2).
  - (ii) Positive Determination. If the Commission finds that an applicant or qualifier has met its burden of demonstrating its durable suitability, the Commission shall issue a positive determination of durable suitability which may include conditions and restrictions.

(2) Temporary suitability determinations.

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- (a) Notwithstanding any other provision of 205 CMR 2.04, the Commission, in its sole discretion, may deem an applicant or qualifier temporarily suitable, until the end of the calendar year in which the applicant proposes to hold a racing meeting based on a certification pursuant to 205 CMR 2.04(2)(b) and an investigatory report pursuant to 205 CMR 2.04(2)(c).
  - (i) No applicant shall be determined to be temporarily suitable in accordance with this 205 CMR 2.04(2)(a) unless and until all qualifiers identified in 205 CMR 2.04(6) have been found durably suitable in accordance with 205 CMR 2.04(1)(b) or temporarily suitable in accordance with this 205 CMR 2.04(2)(a).
  - (ii) Any evaluation of whether an applicant or qualifier is temporarily suitable shall take place in a public meeting, unless the applicant or qualifier requests that the evaluation take place after an adjudicatory proceeding held pursuant to 205 CMR 1.01.
- (b) To be found temporarily suitable in accordance with 205 CMR 2.04(2), the applicant or qualifier must certify:
  - (i) that it understands it may be denied a license or have a 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 G.L. c. 128A and 205 CMR 2.04; and
  - (iii) an 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 G.L. c. 128A, and 205 CMR 2.04.
- (c) Before the Commission may determine that an applicant or qualifier is temporarily suitable in accordance with 205 CMR 2.04(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 2.04(2)(b) 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. The Bureau's report may be redacted consistent with the Massachusetts Public Records Law, M.G.L. c. 66, and other sources of law.
- (d) After evaluating whether the applicant or qualifier is temporarily suitable in accordance with 205 CMR 2.04(2)(d):
  - (i) If the Commission finds the applicant or qualifier temporarily suitable: the Commission shall issue a written determination of

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temporary 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 a person is suitable, the Commission shall evaluate and consider the overall reputation of the person, 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 person's integrity, honesty, good character and reputation;
- (b) the person's financial stability, integrity, and background;
- (c) whether the person has a history of compliance with racing or other gaming or sports wagering requirements in other jurisdictions;
- (d) whether the person, at the time of the request, is a defendant in litigation;
- (e) whether the person is ineligible to hold a license under 205 CMR 2.04(4), or M.G.L. c. 128A;
- (f) whether the person has been convicted of a crime of moral turpitude;
- (g) whether, and to what extent, the person has associated with members of organized crime and other persons of disreputable character;
- (h) whether the person has failed to demonstrate responsible business practices in any jurisdiction;
- (i) whether awarding a license to the applicant would have an adverse impact upon the integrity of the racing industry;
- (j) whether awarding a license to the applicant would have an adverse impact on the interest of members of the public in racing competition honestly managed and of good quality; and
- (k) the extent to which the person have cooperated with the Bureau during the review of the Racing Meeting 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 or IEB;
- (b) has had a license revoked by any governmental authority responsible for regulation of racing or associated pari-mutuel wagering activities or 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;

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- (e) has affiliates or close associates that would not qualify for a license, or whose relationship with the applicant may pose an injurious threat to the interests of the Commonwealth.

(5) Persons Required to be Qualified. The following persons shall be qualifiers for any application:

(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;
- (i) Each transferee of a member's interest;
- (ii) Any other holder of a beneficial or proprietary interest of 10% or more in the applicant;
- (iii) Each manager; 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 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



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influence over decisions concerning the applicant's operations in the Commonwealth.

- (6) 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 applicant.
- (7) Waivers. In addition to any other exception or exemption under 205 CMR 2.04, upon written petition, the Commission may waive the requirement to be qualified as a qualifier under 205 CMR 2.04(5)-(6) for:
- (a) 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 2.00, 3.00 and 4.00 respectively before taking any action that may influence or affect the affairs of the applicant or a holding, intermediary or subsidiary company; or
  - (b) 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.
- (8) Persons Deemed Suitable.
- (a) Any person may be deemed durably suitable for purposes of M.G.L. c. 128A and 205 CMR without an additional finding of suitability pursuant to CMR 2.04 if they were previously:
    - (i) qualified pursuant to M.G.L. c. 23K or 205 CMR 116.00; or
    - (ii) found suitable pursuant to 205 CMR 215.01(1).
  - (b) Any person may be deemed temporarily suitable for purposes of M.G.L. c. 128A and 205 CMR without an additional finding of suitability pursuant to CMR 2.04 if they were previously found preliminarily suitable pursuant to 205 CMR 215.01(2).
- (9) Qualification of New Qualifiers. No person requiring qualification pursuant to 205 CMR 2.04 may perform any duties or exercise any powers relating to the position that said qualifier is seeking to assume for a licensee unless the person notifies the Bureau

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in writing within 30 days of appointment to the position. Such notification shall be accompanied by an 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.

- (a) A person with reason to believe that their new position with an applicant or licensee may require qualification pursuant to 205 CMR 2.04 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 2.04(5) – (6) 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.
  - (b) 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 2.04(1)(c) whether the new qualifier meets the standards for suitability.
  - (c) 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.
- (10) Internal Review of Determinations. An applicant or qualifier may request review of any determination made by the Bureau in accordance with either 205 CMR 2.04(5)-(7) or 205 CMR 2.04(9) 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.
- (11) Unsuitable qualifiers. An unsuitable qualifier may not hold an interest in a license. A licensee's articles of organization or other document governing the sale or transfer of securities or other interests shall contain provisions in a form approved by the Commission stating that the sale, assignment, transfer, pledge or other disposition of any security issued by it is conditional and shall be ineffective if disapproved by the Commission. Further, a licensee shall have a mechanism approved by the Commission in place by which it may effectuate divestiture or redemption of securities, or a like process, in the event of a negative determination of suitability being issued to a person required to be qualified.
- (12) Transfers of interest in licenses and licensees. Prior to giving written approval to a sale, transfer, or conveyance of a beneficial or legal interest in a license or licensee

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in accordance with G.L. c. 128A, § 11C, the Commission must find the transferee durably or temporarily suitable in accordance with 205 CMR 2.04 as though the transferee was an applicant or qualifier for a new license.

REGULATORY AUTHORITY

M.G.L. c. 128A, §§ 2, 3(i), 5C; and M.G.L. c. 128C.

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2.05: Advance Deposit Wagering; Licensure, Review and Authorization (RESERVED)

2.06: Licensing, Registration, and Fees for Owners, Trainers, Stable Employees, Authorized Agents, Vendors and Racing Officials (RESERVED)

2.07: Financial Payments, Outs, and Requests for Capital Improvement or Reimbursement (RESERVED)

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2.08: Additional Information and Cooperation of Racing Meeting Applicants and Licensees

- (1) The Commission, the Bureau or their agents and employees may request additional information and documents from an applicant or its qualifiers, or any other person associated with the applicant whose licensure or registration is required under M.G.L. c. 128A and 128C or 205 CMR, throughout the application review process. Failure by the applicant, qualifier, or other person 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, qualifiers, or other person whose licensure or registration is required under M.G.L. c. 128A and 128C, or 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. 128A and 128C, and 205 CMR.
- (3) Applicants, licensees, registrants, and qualifiers, and other persons 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 2.08(1) and 2.08(2), to said information request.
- (4) All applicants, licensees, registrants, qualifiers and other persons shall have a continuing duty to provide all information and documents requested by the Commission, Bureau, and their agents and employees and to cooperate in any investigation or hearing conducted by the Commission, Bureau, and their agents and employees, as authorized by M.G.L. c. 23K section 7.
- (5) Once issued a positive determination of suitability, all licensees and qualifiers shall have a continuing duty to maintain suitability in accordance with 205 CMR 2.04. Each licensee or 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, after gaining knowledge of the following:
  - (a) Any denial, suspension or revocation by a governmental authority in any jurisdiction of a racing-, gaming, or sports-wagering-related license, registration, certification, permit or approval held by or applied for by the licensee or qualifier;
  - (b) Any discipline, including a fine or warning, related to racing, imposed upon the licensee or qualifier by any governmental authority in any jurisdiction;
  - (c) Any fine related to racing assessed on any entity owned or operated by the parent to the licensee by any governmental authority in any jurisdiction.
  - (d) Any arrest, indictment, charge or criminal conviction of any qualifier in any jurisdiction;

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- (e) Any complaints, allegations, or notice of investigation thereof made or known to be contemplated by a governmental authority against the racing meeting licensee, qualifier, or any racing entity owned or operated by the parent to the licensee, of which the licensee 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 licensee, qualifier, or racing entity owned or operated by the parent to the licensee, 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 licensee or qualifier, of which the licensee 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 licensee or qualifier, including by way of receipt of a subpoena, that the licensee 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 race track in any jurisdiction; however, this shall not include exclusions or barring of a qualifier which stem solely from the interest in, or position they hold with, the licensee;
- (i) The termination, suspension from employment, or other discipline of any qualifier or racing 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 licensee and the parent company of the licensee as determined by the Bureau. Additionally, the licensee and each qualifier shall provide notice of any pending legal proceeding which includes any allegation of fraudulent conduct by the licensee or a qualifier, that may reasonably threaten the economic viability of the licensee or a qualifier, or that alleges a pattern of improper conduct by the licensee or a qualifier over a sustained period of time;
- (k) Any significant financial event related to a licensee or entity qualifier. For purposes of 205 CMR 2.08(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 Racing Meeting Licensee or qualifier;

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- (m) A change in accounting firm engaged to perform attestation and/or assurance services for the licensee or qualifier; and
  - (n) Issuance of a delisting notice from a United States or international stock exchange relative to the licensee 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.

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2.09 Withdrawal of Application For License To Hold Or Conduct A New Racing Meeting

- (1) Except as provided in 205 CMR 2.09(2), a written notice of withdrawal of an application may be filed by an applicant or qualifier at any time prior to final Commission action thereon.
- (2) Withdrawal requests submitted in accordance with 205 CMR 2.09(2) shall be permitted without the need for Commission approval except that if a hearing on suitability, temporary suitability, or an application has been requested by a party or directed by the Bureau or Commission, no withdrawal will be allowed without express Commission approval upon a finding of good cause:
- (3) If the Commission agrees to grant withdrawal under 205 CMR 2.09(2), the Commission may condition that withdrawal with appropriate terms it deems necessary, including, but not limited to, a period of time within which the applicant or qualifier may not re-apply.
- (4) The provisions of 205 CMR 111.05(4) governing the surrender of credentials shall govern the surrender of any credential issued under M.G.L. c. 128A and 128C, or the sections of 205 CMR governing racing.





## **SMALL BUSINESS IMPACT STATEMENT**

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2, relative to the proposed adoption of **205 CMR 2, RACING MEETING LICENSING**.

This regulation is being promulgated as part of the process of updating regulations governing live racing in the Commonwealth. It sets forth the application and suitability review process for racing meeting licenses.

The proposed 205 CMR 2 applies to prospective and current race track operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

Small business are unlikely to be subject to this regulation.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation. This regulation governs prospective and current race track operators, none of which will be or are small businesses.

3. State the appropriateness of performance standards versus design standards:

The standards set forth are compliance requirements, akin to performance standards.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

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



Massachusetts Gaming Commission

This regulation, which clarifies the Commission’s application review process for race track operators, will support the formation of small businesses supporting race track operations in the Commonwealth.

Massachusetts Gaming Commission  
By:

/s/ Caitlin Monahan  
Caitlin W. Monahan, Deputy General Counsel

Dated: October 13, 2023



Massachusetts Gaming Commission



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November 3, 2023

**By Email**

Massachusetts Gaming Commission  
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Boston, MA 02110  
mgccomments@massgaming.gov

Re: Comments on Draft 205 CMR 2.00, Racing Regulatory Framework

To the Commission,

We write on behalf of our client, Baystate Racing LLC (“Baystate”), in response to the Commission’s request for public comments on draft 205 CMR. 2.00, Racing Regulatory Framework (the “Draft Regulations”). Baystate intends to file a horse racing application in the near future and welcomes this opportunity to share its thoughts on the Draft Regulations with the Commission.

Baystate appreciates that the Draft Regulations represent an effort to create clear rules of the road for potential horse racing applicants, as that clarity will benefit potential operators, the Commission, and the public. As we have noted in the past, Baystate believes that the Commonwealth stands to benefit from robust competition within the racing industry, including by new entrants such as Baystate. That being the case, Baystate emphasizes that it is important to strike the right balance between avoiding creating unnecessary barriers to potential applicants while also preserving the Commission’s ability meaningfully to evaluate applicants and ensure all legal requirements are satisfied.

Baystate believes that, in creating a forty-five day window for the Commission to act on horse racing applications in G.L. c. 128A, § 2, the Legislature intended to create a short, well-defined process to encourage potential horse racing applicants because of the economic benefits that horse racing brings to the Commonwealth. In implementing that process through draft 205 CMR 2.02(3)(c) – which essentially requires applicants to submit scoping surveys by May 1 and disclosure forms by August 1 in order to receive a licensing decision by the Commission by November 15<sup>1</sup> – Baystate understands that the Commission wishes to ensure

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<sup>1</sup> We acknowledge that 205 CMR 2.02(3)(c) does not formally create a requirement, but rather provides that failure to follow the deadlines “may result in denial of the application” if the Commission does “not have adequate time to assess” the applicant’s submissions. That

that it has adequate time to conduct suitability investigations while also adhering to statutory deadlines. But Baystate is concerned that the Draft Regulations create rigid timelines and extend the application period much longer than the Legislature intended, creating burdens for horse racing applicants that the Legislature did not intend and that may not accord with the business realities that applicants face.

Notably, the deadlines contained in G.L. c. 128A, § 2 are intended to create an outer guardrail for the submission of applications, as opposed to creating a single deadline for all application submissions and a single deadline for the Commission to act on those submissions. Specifically, G.L. c. 128A, § 2 provides that applications “shall be filed *on or before* the first day of October” and that “the commission shall grant or dismiss such application *not later than* the fifteenth day of November” (emphasis added). In other words, the statute does not mandate that review of applications *must* take place between October 1 and November 15, but rather only that an application “preceding the calendar year for which [such] application requests a license to be issued” must be reviewed and acted upon by November 15 if it is submitted by October 1.

Thus, nothing in the statute prevents an applicant from submitting an application well ahead of October 1 nor the Commission from issuing a license well ahead of November 15. Similarly, the statute does not require the Commission to create universally applicable deadlines for all applications in assessing applicant suitability. Baystate believes these statutory flexibilities should be deployed in favor of encouraging potential applicants, which likely need to receive a horse racing license from the Commission well before horse racing can be conducted on their site. This is because applicants face the burden that financing and similar commitments likely hinge on the award of a license and major activities such as construction and permitting at the site are likely to commence only after Commission approval is received.

As such, creating rigid timelines for submission of suitability materials and review of applications keyed to a single round of review in October may have a practical effect of inhibiting applicants. In addition, creating a six month application period likely places greater burdens on applicants than the Legislature intended and which applicants may have difficulty addressing in view of the business realities they face. Baystate appreciates that the Commission has drafted the Draft Regulations without knowing exactly how many applications the Commission may receive and the Draft Regulations thus reflect an understandable desire to give the Commission adequate time to review applications ahead of November 15. But Baystate emphasizes that there are other tools available to the Commission to reduce the uncertainty it faces, such as pre-application consultations (as provided for by draft 205 CMR 2.03(1)) or a process similar to that used in the sports wagering context, in which the Commission actively sought information from potential applicants as to whether they intended to apply ahead of requiring suitability materials.

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said, given the interests of clarity and business certainty for potential operators, injecting the possibility that an application may be denied for deadline-based reasons after a certain date has the same practical effect as imposing a deadline.

Were the Commission to employ similar tools here, it could implement a more flexible process that -- as opposed to creating a single set of deadlines, a single application window and a six month review process -- would permit the Commission to review applications on a rolling basis and without imposing deadlines related to suitability that may not be necessary in order for the Commission to complete its work in a timely fashion. With that in mind, Baystate believes that the Commission should:

- (1) amend the draft 205 CMR 2.02(2) to clarify that new applicants may submit applications prior to October 1;
- (2) replace the timelines provided for in 205 CMR 2.02(3)(c) with a requirement that an applicant must follow the provisions of 205 CMR 2.08 in relation to providing additional information to the Commission;<sup>2</sup> and
- (3) amend the draft 205 CMR 2.03(6) to create a forty-five day window for review of an administratively complete application even when an application is submitted prior to October 1.

Baystate believes that, in the aggregate, these changes can help to create an application process that is responsive to the needs of potential applicants while still permitting the Commission to conduct meaningful suitability and application review.

Again, Baystate appreciates the opportunity to comment on the development of the Draft Regulations. Please do not hesitate to reach out with any questions the Commission may have.

Sincerely,



Kevin C. Conroy

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<sup>2</sup> In particular, draft 205 CMR 2.08(1-3) requires applicants to comply with requests for additional information in a timely fashion and provides that failure to do so may be grounds to deny an application. In view of these provisions, the deadlines contained in draft 205 CMR 2.03(6) are not necessary as applicants will be required to respond promptly to the Commission's requests in any event, including requests of the Investigation and Enforcement Bureau that relate to suitability. Similarly, the Commission may use the scoping survey within a pre-application consultation described by draft 205 CMR 2.03(1) to create deadlines for suitability materials that are keyed to a particular applicant as opposed to being universally applicable.



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

**FROM:** Crystal Beauchemin, Sports Wagering Business Manager  
Bruce Band, Director of Sports Wagering

**DATE:** November 8, 2023      **COMMISSION MEETING:** November 16, 2023

**RE:** Operator Requests for Temporary Waivers from Certain Provisions of 205  
CMR 257 and Implementation Details

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**EXECUTIVE SUMMARY:**

On August 8, 2023, the Commission voted to finalize the draft of [205 CMR 257: Sports Wagering Data Privacy](#), and to begin the formal regulation process. This regulation went into effect September 1, 2023, with a uniform waiver granted through November 17, 2023.

As requested, the operators have submitted details regarding their intentions for implementation of the various components of 205 CMR 257, alongside waiver requests outlining items where additional time is requested and reasoning for the request.

Of note, after the informational round table meeting held on this topic on September 19<sup>th</sup>, the legal team distributed answers to questions which were raised by the operators. That guidance has been included. The operators have articulated that their waiver responses are reliant on this guidance.

We note that many operators requested confirmation and formalized clarity related to the definition of “necessary to operate,” as the answer to this question impacts the way the operators are viewing their technological revisions and impacts both implementation, and timelines.

The primary components of this regulation which waivers have been requested for are 257.02, 257.02 (5), 257.03 and 257.03 (4), 257.04 and 257.05.

**SUPPORTING DOCUMENTS:**

The operators have included significant detail, timelines and reporting elements in their waiver requests, much beyond what is summarized in this memo. The full waiver requests from each operator are included in the packet.

In addition, we have compiled two charts, included in the packet, which summarize the specific regulations which waivers have been requested, and the timelines associated. One gives an overview of the waiver requests by operator and the other provides an overview by regulation section.

## **CONCLUSION:**

The Sports Wagering team and legal counsel have worked in tandem to review these waivers. As it is clear that a majority of the waiver requests came in for particular sections of the regulations, our recommendation is to guide the Commission through the requests by reviewing each of those sections as a whole, and identifying the general challenges expressed by the operators, with an overview of the requested date ranges for waivers. We have included the full regulation text on the following page for 205 CMR 257 of the packet to reference as we walk through these sections.

In some instances, we recommend a uniform waiver date to ensure fairness for both the operators (as far as implementation timelines) and for consumer clarity. This approach is also most manageable and efficient for the sports wagering team from a compliance perspective. In a couple of instances, we have identified that a different approach may be necessary. We will present our recommendation and considerations for each section of the regulation, and defer to the Commissioners' determinations.

## Responses to questions posed by Sports Wagering Operators regarding 205 CMR 257 Data Privacy

- If a patron provides consent to use PII, can that information be shared with third-party vendors?

Under 205 CMR 257.03(1), Sports Wagering Operators are permitted to share a patron's PII/CI "as necessary to operate." The Commission interprets "as necessary to operate" to include all reasonable, legitimate, business purposes. If an Operator seeks to share a patron's PII/CI with a third-party vendor for a reasonable, legitimate, business purpose, then 205 CMR 257.03(1) allows an Operator to do so, even without the express consent of a patron.

If an Operator seeks to use a patron's PII/CI for purposes beyond those "necessary to operate," including those uses that require the sharing of a patron's PII/CI with a third-party vendor, under 205 CMR 257.02(2), an Operator is required to obtain the patron's consent before it may do so.

- How do operators deal with threatened or reasonably anticipated litigation; are operators really not permitted to use PII to defend themselves prior to suit?

Under 205 CMR 257.02(1), Sports Wagering Operators are permitted to use patron PII/CI "as necessary to operate." The Commission interprets "as necessary to operate" to include all reasonable, legitimate, business purposes, including defending against legal claims.

- Does the Commission intend to make a database of users not transferable in M&A transactions?

Such a transfer would be allowed if the transfer of patron PII/CI in an M&A transaction is a use "necessary to operate" a Sports Wagering Area, Sports Wagering Facility, or Sports Wagering Platform, in which case such a transfer is permissible under 205 CMR 257.02(1). Since business transactions involving mergers or acquisitions can have a legitimate basis, sharing data would be legitimate in those instances.

- How are operators supposed to encrypt publicly available PII?

Sports Wagering Operators are required under 205 CMR 257.03(4) and 257.05(1)(b) to encrypt PII and CI within its possession, custody, or control. To the extent that patron PII and CI is publicly available on other platforms not controlled by the Operator, the Operator is not obligated under 205 CMR 257.00 to encrypt that PII or CI.

- Are there possible exceptions to using social platform data without specific, express consent?

If the use of social platform data is "necessary to operate," a Sports Wagering Operator may use such data without the specific, express consent of a patron under 205 CMR 257.02(1).

If the use of social platform data is not "necessary to operate," then an Operator is required, under 205 CMR 257.02(2)(a) to obtain the patron's consent, which must be "clear, conspicuous, and received apart from any other agreement or approval." Consent cannot be provided through the "acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information." However, consent can be given by category of use (e.g., "social media promotions") rather than specific instances of use.



- Will reports provided by third-party forensic examiners in the event of a security incident be available to the public?

Such a determination will be made on a fact-specific, case-by-case basis. If there is a security incident that requires public disclosure, the Commission may consider whether a third-party forensic examiner's report should be disclosed to the public following input from the affected Sports Wagering Operator. The regulation was drafted specifically to require the Commission to *seek* the report, rather than automatically receiving it, to allow for these issues to be raised and addressed before the Commission takes possession of potentially sensitive information.

- What does "necessary" to operate wagering platform mean?

The Commission interprets "necessary to operate" to include all reasonable, legitimate, business purposes.

- What does "sharing" with a third party mean?

The Commission interprets "sharing" to mean transmission, routing, messaging, disclosure, duplication, replay or other means of communication.

- What does "reasonably expected to make the wagering platform more addictive" mean?

The Commission interprets "reasonably expected to make the wagering platform more addictive" to mean reasonably expected to lead to an increase in engagement with the wagering platform, including in time or money spent on the wagering platform, in a manner that makes it more difficult for the patron to engage in responsible gaming behavior.

- Is anonymization/aggregation of records in lieu of full deletion acceptable?

Operators should consult with their IT teams and legal counsel as to whether anonymized data meets the definition of PII/CI in the first instance.

If a patron's PII/CI is anonymized or aggregated prior to a patron's request to delete their PII/CI and there is no way for a Sports Wagering Operator to connect anonymized or aggregated data back to a particular patron, then deletion is not necessary because anonymization or aggregation has in effect, accomplished the goals of deletion.

If, however, a patron's PII/CI is not anonymized or aggregated prior to a patron's request to delete their PII/CI and an Operator is able to trace PII/CI to a particular patron and the conditions of 205 CMR 257.04(3) are met, then an Operator is required to grant a request to anonymize or delete the PII/CI.

Update: October 27, 2023

- Are there any typical uses of data by operators for which MGC expects consent will be needed?

Under 205 CMR 257.03(1), Sports Wagering Operators are permitted to share a patron's PII/CI "as necessary to operate." The Commission interprets "as necessary to operate" to include all reasonable, legitimate, business purposes. If an Operator seeks to use a patron's PII/CI for purposes beyond those "necessary to operate," an Operator is required to obtain the patron's consent before it may do so.

What is beyond purposes “necessary to operate” is a fact-specific determination to be made by the Operator. It may be the case that for some Operators no consents will be needed because the Operator is limiting their uses of data to their Sports Wagering operations.

Operators, however, can reasonably expect that if they seek to share a patron’s PII/CI with a third-party for a limited purpose beyond those specifically related to operating a Sports Wagering Area, Sports Wagering Facility, or Sports Wagering Platform, a specific consent would be required. This might include, for example, linking a player’s account to a third-party rewards system provided by a third-party.

- Is it acceptable to interpret 205 CMR 257.02(3)(a) to prohibit promotions based on (a) dormancy as defined in 205 CMR 248.19(1) and (b) a period of non-use based on the time since the patron’s last wager?

Yes. Under this provision, Operators may not use their knowledge that a patron has not placed a wager within a specific period of time to push promotional offers or advertisements to that patron. This applies to periods of time long enough to constitute dormancy or abandonment of accounts under 205 CMR 248.19(1) as well as shorter periods of non-use. This provision does not prohibit promotions based on known wagers that may be intermittent (e.g., on particular sporting events that happen seasonally). Further, the prohibition in 205 CMR 257.02(3)(a) is against promotions and promotional offers, and does not prohibit messages solely about a patron’s account balance and transactional messages to close an account.

- What does MGC expect Operators will submit to comply with the requirement in 205 CMR 238.02(7)(m) that Operators describe their use of computerized algorithms, automated decision-making, machine learning, artificial intelligence, or any similar system?

The Gaming Commission seeks to understand how operators are using computerized algorithms, automated decision-making, machine learning, artificial intelligence, and similar systems that significantly affect patrons. The Commission is not looking for a summary of all automated processes that are used to operate the Sports Wagering Operation that do not affect the patron interaction (including for example fraud detection systems or internal accounting processes). Operators should also include in their explanations how their staff is expected to use the systems in place. For example, if an automated system flags a certain account for potential promotions, the Operator should identify what happens next and whether automated or human decision-making is employed to take the next steps.

205 CMR 257.00: SPORTS WAGERING DATA PRIVACY

Section

- 257.01: Definitions
- 257.02: Data Use and Retention
- 257.03: Data Sharing
- 257.04: Patron Access
- 257.05: Data Program Responsibilities
- 257.06: Data Breaches

257.01: Definitions

As used in 205 CMR 257.00, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

Data Breach means Breach of Security as that phrase is defined in M.G.L. c. 93H, § 1.

Confidential Information means information related to a Sports Wagering Account, the placing of any Wager or any other sensitive information related to the operation of Sports Wagering including the amount credited to, debited from, withdrawn from, or present in any particular Sports Wagering Account; the amount of money Wagered by a particular patron on any event or series of events; the unique patron ID or username and authentication credentials that identify the patron; the identities of particular Sporting Events on which the patron is Wagering or has Wagered, or the location from which the patron is Wagering, has Wagered, or has accessed their Sports Wagering Account. Confidential Information may also include Personally Identifiable Information.

Personally Identifiable Information means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular patron, individual or household. Personally Identifiable Information includes, but is not limited to, Personal Information as that phrase is defined in M.G.L. c. 93H and 201 CMR 17.00: *Standards for the Protection of Personal Information of Residents of the Commonwealth*. Personally Identifiable Information may also include Confidential Information.

257.02: Data Use and Retention

(1) A Sports Wagering Operator shall only use Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(2) If a Sports Wagering Operator seeks to use a patron's Confidential Information or Personally Identifiable Information for purposes beyond those specified in 205 CMR 257.02(1), a Sports Wagering Operator shall obtain the patron's consent, which may be withdrawn at any time.

(a) Such consent must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information in the same document shall not constitute adequate consent, nor shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmative indication of consent.

(b) Consent shall not be deemed to be a waiver of any of the patron's other rights.

(c) The option to withdraw such consent must be clearly and conspicuously available to the patron on the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

(3) A Sports Wagering Operator may not use a patron's Personally Identifiable Information or Confidential Information, or any information derived from it, to promote or encourage specific wagers or promotional offers based on:

257.02: continued

- (a) a period of dormancy or non-use of a Sports Wagering Platform;
- (b) the wagers made or promotional offers accepted by other patrons with a known or predicted social connection to the patron;
- (c) the communications of the patron with any third party other than the Operator;
- (d) the patron's actual or predicted:
  - 1. income, debt, net worth, credit history, or status as beneficiary of governmental programs;
  - 2. medical status or conditions; or
  - 3. occupation.
- (e) Any computerized algorithm, automated decision-making, machine learning, artificial intelligence, or similar system that is known or reasonably expected to make the gaming or sports wagering platform more addictive.
- (f) Engagement or utilization of play management options, including type of limit, frequency of engagement or utilization of play management options, and frequency of changing limits;
- (g) Engagement or utilization of cooling-off options, including duration of cooling-off period, frequency of engagement or utilization of cooling-off options, and frequency of changing cooling-off periods;
- (h) Engagement or utilization of any measure in addition to those described in 205 CMR 257.02(3)(f) and (g) intended to promote responsible gaming.

(4) A Sports Wagering Operator shall only retain a patron's Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(5) A Sports Wagering Operator shall collect and aggregate patrons' Confidential Information and Personally Identifiable Information to analyze patron behavior for the purposes of identifying and developing programs and interventions to promote responsible gaming and support problem gamblers, and to monitor and deter Sports Wagering in violation of M.G.L. c. 23N and 205 CMR. The Sports Wagering Operator shall provide a report to the Commission at least every six months on the Sports Wagering Operator's compliance with 205 CMR 257.02(5), including the trends observed in this data and the Sports wagering Operator's efforts to mitigate potential addictive behavior.

257.03: Data Sharing

(1) A Sports Wagering Operator shall not share a patron's Confidential Information or Personally Identifiable Information with any third party except as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(2) If a Sports Wagering Operator shares a patron's Confidential Information or Personally Identifiable Information pursuant to 257.03(1), the Operator shall take commercially reasonable measures to ensure the party receiving a patron's Confidential Information or Personally Identifiable Information keeps such data private and confidential, except as required to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity. The party receiving such data shall only use a patron's Confidential Information or Personally Identifiable Information for the purpose(s) for which the data was shared.

257.03: continued

(3) If a Sports Wagering Operator deems it necessary to share a patron's Confidential Information or Personally Identifiable Information with a Sports Wagering Vendor, Sports Wagering Subcontractor, or Sports Wagering Registrant in order to operate its Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, a Sports Wagering Operator shall enter into a written agreement with the Sports Wagering Vendor, Sports Wagering Subcontractor or Sports Wagering Registrant, which shall include, at a minimum, the following obligations:

- (a) The protection of all Confidential Information or Personally Identifiable Information that may come into the third party's custody or control against a Data Breach;
- (b) The implementation and maintenance of a comprehensive data-security program for the protection of Confidential Information and Personally Identifiable Information, which shall include, at a minimum, the following:
  - 1. A security policy for employees relating to the storage, access and transportation of Confidential Information or Personally Identifiable Information;
  - 2. Restrictions on access to Personally Identifying Information and Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;
  - 3. A process for reviewing data security policies and measures at least annually; and
  - 4. An active and ongoing employee security awareness program for all employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law.
- (c) The implementation, maintenance, and update of security and breach investigation and incident response procedures that are reasonably designed to protect Confidential Information and Personally Identifiable Information from unauthorized access, use, modification, disclosure, manipulation or destruction; and
- (d) A requirement that the maintenance of all Confidential Information and Personally Identifiable Information by a Vendor, Subcontractor or Registrant must meet the standards provided in 205 CMR 257.03.

(4) Sports Wagering Operators shall encrypt or hash and protect, including through the use of multi-factor authentication, from incomplete transmission, misrouting, unauthorized message modification, disclosure, duplication or replay all Confidential Information and Personally Identifiable Information.

257.04: Patron Access

(1) Patrons shall be provided with a method to make the requests in 205 CMR 257.04(1)(a) through (e). The request must be clearly and conspicuously available to the patron online through the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm their request more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

- (a) A description as to how their Confidential Information or Personally Identifiable Information is being used, including confirmation that such Confidential Information or Personally Identifiable Information is being used in accordance with 205 CMR 257.00;
- (b) Access to a copy of their Confidential Information or Personally Identifiable Information maintained by the Operator or a Vendor, Subcontractor, or Registrant of the Operator;
- (c) Updates to their Confidential Information or Personally Identifiable Information;
- (d) The imposition of additional restriction on the use of their Confidential Information or Personally Identifiable Information for particular uses; and
- (e) That their Confidential Information or Personally Identifiable Information be erased when it is no longer required to be retained by applicable law or Court order.

(2) A Sports Wagering Operator shall provide a written response to a request submitted pursuant to 205 CMR 257.04(1) that either grants or denies the request.

257.04: continued

(a) If the Sports Wagering Operator grants the patron's request to access a copy of their Personally Identifiable Information, the Sports Wagering Operator shall provide the patron their Confidential Information or Personally Identifiable Information in a structured, commonly used and machine readable format.

(b) If the Sports Wagering Operator denies the request, the Sports Wagering Operator shall provide in its written response specific reason(s) supporting the denial and directions on how the patron may file a complaint regarding the denial with the Commission.

(3) A Sports Wagering Operator shall grant the patron's request to impose a restriction or erase their Confidential Information or Personally Identifiable Information if it is no longer necessary to retain the patron's Confidential Information or Personally Identifiable Information (or to retain the patron's Confidential Information or Personally Identifiable Information without the requested restriction) to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes; and

(a) It is no longer necessary to retain the patron's Confidential Information or Personally Identifiable Information to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity;

(b) The patron withdraws their consent to the Sports Wagering Operator's retention of their Confidential Information or Personally Identifiable Information;

(c) There is no overriding legal interest to retaining the patron's Confidential Information or Personally Identifiable Information;

(d) The patron's Confidential Information or Personally Identifiable Information was used in violation of 205 CMR 257.00; or

(e) Restriction or erasure is necessary to comply with an order from the Commission or a court.

(4) If the Sports Wagering Operator grants the patron's request to erase their Confidential Information or Personally Identifiable Information, the Sports Wagering Operator shall erase the patron's Personally Identifiable Information or Confidential from all storage media it is currently using to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, including HDD, SDD, flash, mobile, cloud, virtual, RAID, LUN, hard disks, solid state memory, and other devices. The Sports Wagering Operator shall also request commercially reasonable confirmation of deletion from any Vendor, Registrant, or Subcontractor who received the patron's Confidential Information or Personally Identifiable Information from the Sports Wagering Operator. Notwithstanding, the foregoing, the Sports Wagering Operator shall not erase a patron's Confidential Information or Personally Identifiable Information on backup or storage media used to ensure the integrity of the Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform from technology failure or to comply with its data retention schedule or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity.

(5) An Operator, or a Vendor, Registrant or Subcontractor of an Operator shall not require a Patron to enter into an agreement waiving any of the Patron's rights under 205 CMR 257.04.

257.05: Data Program Responsibilities

(1) A Sports Wagering Operator shall develop, implement and maintain comprehensive administrative, technical and physical data privacy and security policies appropriate to the size and scope of business and addressing, at a minimum:

(a) Practices to protect the confidentiality, integrity and accessibility of Confidential Information or Personally Identifiable Information;

(b) The secure storage, access and transportation of Confidential Information or Personally Identifiable Information, including the use of encryption and multi-factor authentication;

257.05: continued

- (c) The secure and timely disposal of Confidential Information or Personally Identifiable Information, including data retention policies;
- (d) Employee training on data privacy and cybersecurity for employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law;
- (e) Restrictions on access to Personally Identifying Information or Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;
- (f) Reasonable monitoring of systems, for unauthorized use of or access to Confidential Information or Personally Identifying Information;
- (g) Reasonably up-to-date versions of system security agent software which must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis;
- (h) Cybersecurity insurance, which shall include, at a minimum, coverage for data compromise response, identity recovery, computer attack, cyber extortion and network security;
- (i) Data Breach investigation and incident response procedures;
- (j) Imposing disciplinary measures for violations of Confidential Information and Personally Identifiable Information policies;
- (k) Active oversight and auditing of compliance by Vendors, Registrants, or Subcontractors with 205 CMR 257.03(3) and with the Operator's Confidential Information and Personally Identifying Information policies.
- (l) Quarterly information system audits; and
- (m) A process for reviewing and, if necessary, updating data privacy policies at least annually.

(2) A Sports Wagering Operator shall maintain on its website and Sports Wagering Platform a readily accessible copy of a written policy explaining to a patron the Confidential Information and Personally Identifiable Information that is required to be collected by the Sports Wagering Operator, the purpose for which Confidential Information or Personally Identifiable Information is being collected, the conditions under which a patron's Confidential Information or Personally Identifiable Information may be disclosed, and the measures implemented to otherwise protect a patron's Confidential Information or Personally Identifiable Information. A Sports Wagering Operator shall require a patron to agree to the policy prior to collecting any Confidential Information or Personally Identifiable Information, and require a patron to agree to any material updates. Agreement to this policy shall not constitute required consent for any additional uses of information.

(3) A Sports Wagering Operator, Sports Wagering Vendor, Sports Wagering Subcontractor, Sports Wagering Registrant, or Person to whom an Occupational License is issued shall comply with all applicable state and federal requirements for data security, including M.G.L. c. 93A, M.G.L. c. 93H, 940 CMR 3.00: *General Regulations*, 940 CMR 6.00: *Retail Advertising* and 201 CMR 17.00: *Standards for the Protection of Personal Information of Residents of the Commonwealth*.

257.06: Data Breaches

(1) In the event of a suspected Data Breach involving a patron's Confidential Information or Personally Identifiable Information, a Sports Wagering Operator shall immediately notify the Commission and commence an investigation of the suspected Data Breach, which shall be commenced no less than five days from the discovery of the suspected breach, and completed as soon as reasonably practicable thereafter.

(2) Following completion of the investigation specified pursuant to 205 CMR 257.06(1), the Sports Wagering Operator shall submit a written report to the Commission describing the suspected Data Breach and stating whether any patron's Confidential Information or Personally Identifying Information was subjected to unauthorized access. Unless the Sports Wagering

257.06: continued

Operator shows that unauthorized access did not occur, the Sports Wagering Operator's written report shall also detail the Operator's plan to remediate the Data Breach, mitigate its effects, and prevent Data Breaches of a similar nature from occurring in the future.

(3) Upon request by the Commission, the Sports Wagering Operator shall provide a report from a qualified third-party forensic examiner, the cost of which shall be borne by the Sports Wagering Operator being examined.

(4) In addition to the other provisions of 205 CMR 257.06, the Sports Wagering Operator shall be required to comply with any other legal requirements applicable to such Data Breaches or suspected Data Breaches, including its obligations pursuant to M.G.L. c. 93H and 201 CMR 17.00: *Standards for the Protection of Personal Information of Residents of the Commonwealth*.

#### REGULATORY AUTHORITY

205 CMR 257.00: M.G.L. c. 23N, § 4.





November 1, 2023

Bruce Band  
Sports Wagering Division Director  
**Massachusetts Gaming Commission**  
101 Federal Street  
Boston MA 02110

**RE: BetMGM Updated Waiver Request - 205 CMR 257 and 205 CMR 238.02 (l) and (m)**

Thank you for the opportunity to comment on 205 CMR 257 - Data Privacy (the "Regulation"). BetMGM appreciates the additional guidance shared by MGC on October 20 and October 27 (the "Additional Guidance"), which addresses many of BetMGM's questions regarding implementation of the Regulation. BetMGM is in substantial compliance with most of the provisions of the regulation at this time. Based on the Additional Guidance, BetMGM requests narrow waivers and one additional request regarding the language of the regulation.<sup>1</sup>

BetMGM submits the following waiver requests.

- 1. Patron Access – Ability to Limit for Particular Uses in 257.04(1)(d)** - BetMGM requests a permanent waiver and intends to comply with this regulation by permitting patrons to opt out of different types of marketing and cookie collection, but not other uses BetMGM performs to operate its platform or comply with applicable laws (e.g., AML, RG).
- 2. Information Security Protections in 257.03(4) and 257.05(1)(b)** - BetMGM requests a permanent waiver to the extent that 205 CMR 257.03(4) and 257.05(1)(b) require all patron PII and CI to be hashed or encrypted.
- 3. Vendor contract requirements in 257.03(3)** - BetMGM requests a temporary waiver from the specific language in vendor contracts required by 257.03(3) (Data Sharing). BetMGM requests the following phased timeline for implementation:
  - a. BetMGM will begin including this language in applicable new contracts that are initiated after November 17, 2023.
  - b. By February 1, 2024, applicable executed BetMGM contracts will include the language requested in 257.03(3).
  - c. For applicable ongoing relationships, BetMGM will ensure an updated DPA will be included at renewal or renegotiation.

Alternately, BetMGM requests that MGC approve continued use of BetMGM's current template Data Protection Addendum, which complies with all applicable state-level privacy laws.

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<sup>1</sup> If this understanding is not correct and the MGC issues different advice or changes this definition in the future, BetMGM requests additional time to offer an updated implementation plan to ensure compliance.



- 4. Internal Controls – Algorithms and automated decision-making in 238.02(7)(l) and (m) -** BetMGM requests a temporary waiver of 205 CMR 238.02(7)(m) until January 1, 2024 and will provide an updated Internal Control document to MGC at that time.

In addition, BetMGM also requests that the definition of “necessary” included in the Additional Guidance be added to the Regulation directly. This will clarify – for existing operators, future operators, patrons, future Commissioners and staff of the Commission – the framework under which operators comply with the Regulation. BetMGM proposes that the Commission add:

“As necessary to operate” means include all reasonable, legitimate, business purposes.

to the Definitions section of 205 CMR 257.01. This will also prevent third parties who have not received the Additional Guidance from bringing lawsuits or consumer protection challenges against operators who are following the MGC’s instructions.

BetMGM will provide regular updates to the MGC to address compliance with these issues.

Thank you for your consideration. If you require any more details, BetMGM is happy to provide them.

Respectfully,

/s/ Sarah Brennan

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Sarah Brennan  
Senior Director, Compliance, BetMGM



## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** BetMGM

**NAME OF INDIVIDUAL COMPILING REQUEST:** Sarah Brennan

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Senior Director, Compliance

**CONTACT EMAIL ADDRESS:** [sarah.brennan@betmgm.com](mailto:sarah.brennan@betmgm.com)

**CONTACT PHONE NUMBER:** 732-782-5125

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**

[alexis.cocco@betmgm.com](mailto:alexis.cocco@betmgm.com), [robvn.bowers@betmgm.com](mailto:robvn.bowers@betmgm.com)

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:** 205 CMR 257.00: Sports wagering data privacy

**REGULATION SECTION TITLE:** 257.04(1)(d)

**REGULATION LANGUAGE/TEXT:**

(d) The imposition of additional restriction on the use of their Confidential Information or Personally Identifiable Information for particular uses; and

### REASON FOR REQUEST OF WAIVER

**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:** Permanently.

*Per 205 CMR 102.03(4)(b)*

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

BetMGM would not be able to operate certain necessary functions of a Sports Wagering Platform.

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**



BetMGM would not fully comply with section 205 CMR 257 Sports Wagering Data Privacy and/or would not be able to perform necessary Sports Wagering Platform functions.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

BetMGM hosts a portal through which Massachusetts residents (and residents of other states with applicable privacy rights) can submit requests for Access (categories or actual information), Correction, Deletion (when the information is no longer legally required to be retained) and to Opt-out of Marketing. BetMGM has provided these rights to Massachusetts residents since July 2023, when the Regulation was proposed. BetMGM includes a comment box in the submission form for patrons who have specific concerns to share that information with the BetMGM privacy team, who then review it and determine how to implement and/or respond to the request.

BetMGM offers patrons control over their data in additional ways. The Communication Preferences screen in a patron’s Account Settings provides all BetMGM patrons with the ability to opt out of specific types of advertising, such as email and direct mail. BetMGM’s marketing emails contain an unsubscribe link for easy removal from BetMGM’s email lists. BetMGM’s website includes a Cookie Settings link to permit website visitors to limit the use of selected cookies. BetMGM is also developing a method for patrons (who will have opted in) to remove the link between BetMGM rewards and third party rewards partnership programs as part of that program launch.

BetMGM, however, is not able to provide patrons with the ability to restrict all additional uses as potentially required by 257.04(1)(d) (“The imposition of additional restriction on the use of their Confidential Information or Personally Identifiable Information for particular uses...”). Providing patrons with the unfettered ability to restrict use of their data could lead to significant negative effects, hampering BetMGM’s responsibilities to use data for fundamental programs such as Anti-Money Laundering compliance and Responsible Gambling programs. BetMGM intends to comply with this regulation by permitting patrons to opt out of different types of marketing and control cookies through its website cookie banners, but not other uses BetMGM performs to operate its platform or comply with applicable laws. If MGC requests that operators permit patrons to place additional restrictions, BetMGM requests that those specific restrictions be identified in the regulations.

**DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** BetMGM

**NAME OF INDIVIDUAL COMPILING REQUEST:** Sarah Brennan

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Senior Director, Compliance

**CONTACT EMAIL ADDRESS:** [sarah.brennan@betmgm.com](mailto:sarah.brennan@betmgm.com)

**CONTACT PHONE NUMBER:** 732-782-5125

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**

[alexis.cocco@betmgm.com](mailto:alexis.cocco@betmgm.com), [robvn.bowers@betmgm.com](mailto:robvn.bowers@betmgm.com)

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:** 205 CMR 257.00: Sports wagering data privacy

**REGULATION SECTION TITLE:** 257.03(4) and 257.05(1)(b)

**REGULATION LANGUAGE/TEXT:**

257.03(4)

(4) Sports Wagering Operators shall encrypt or hash and protect, including through the use of multi-factor authentication, from incomplete transmission, misrouting, unauthorized message modification, disclosure, duplication or replay all Confidential Information and Personally Identifiable Information.

257.05(1)(b)

(b) The secure storage, access and transportation of Confidential Information or Personally Identifiable Information, including the use of encryption and multi-factor authentication;

### REASON FOR REQUEST OF WAIVER

**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:** Permanent



*Per 205 CMR 102.03(4)(b)*

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

These changes require significant technical and product development, and the variance will not adversely affect the public interest.

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

BetMGM would not fully comply with section 205 CMR 257 Sports Wagering Data Privacy.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

BetMGM requests a waiver to the extent that 205 CMR 257.03(4) and 257.05(1)(b) require all patron PII and CI to be hashed or encrypted. BetMGM has a comprehensive information security program that includes appropriate physical, technical, administrative and organizational measures appropriate to the sensitivity of the patron data in its custody and control. BetMGM's information security program complies with ISO 27001, GLI 33, and PCI DSS (when financial data is processed). BetMGM's information security program includes hashing and encryption, but some data is protected in different other methods such as data obfuscation, dual-factor authentication, VPNs, firewalls and access controls. BetMGM has submitted relevant information to MGC staff to demonstrate these protections and requests that MGC permit BetMGM to continue meeting those standards instead of requiring encryption and/or hashing for any "information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular patron, individual or household." Additionally, BetMGM undergoes a yearly external penetration test, the results of which are submitted to the Commission as a closed record. This submission also provides the Commission visibility into finding and mitigating controls in place to address security concerns.

Due to the sensitivity of this specific cybersecurity information and the public nature of this document, BetMGM requests a further, private discussion on this provision with MGC should MGC require further information from BetMGM to understand or grant this request.

**DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** BetMGM

**NAME OF INDIVIDUAL COMPILING REQUEST:** Sarah Brennan

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Senior Director, Compliance

**CONTACT EMAIL ADDRESS:** [sarah.brennan@betmgm.com](mailto:sarah.brennan@betmgm.com)

**CONTACT PHONE NUMBER:** 732-782-5125

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**

[alexis.cocco@betmgm.com](mailto:alexis.cocco@betmgm.com), [robvn.bowers@betmgm.com](mailto:robvn.bowers@betmgm.com)

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:** 205 CMR 257.00: Sports wagering data privacy

**REGULATION SECTION TITLE:** 257.03(3)

**REGULATION LANGUAGE/TEXT:**

(3) If a Sports Wagering Operator deems it necessary to share a patron's Confidential Information or Personally Identifiable Information with a Sports Wagering Vendor, Sports Wagering Subcontractor, or Sports Wagering Registrant in order to operate its Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, a Sports Wagering Operator shall enter into a written agreement with the Sports Wagering Vendor, Sports Wagering Subcontractor or Sports Wagering Registrant, which shall include, at a minimum, the following obligations:

(a) The protection of all Confidential Information or Personally Identifiable Information that may come into the third party's custody or control against a Data Breach;

(b) The implementation and maintenance of a comprehensive data-security program for the protection of Confidential Information and Personally Identifiable Information, which shall include, at a minimum, the following:

1. A security policy for employees relating to the storage, access and transportation of Confidential Information or Personally Identifiable Information;

2. Restrictions on access to Personally Identifying Information and Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;



3. A process for reviewing data security policies and measures at least annually; and
  4. An active and ongoing employee security awareness program for all employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law.
- (c) The implementation, maintenance, and update of security and breach investigation and incident response procedures that are reasonably designed to protect Confidential Information and Personally Identifiable Information from unauthorized access, use, modification, disclosure, manipulation or destruction; and
- (d) A requirement that the maintenance of all Confidential Information and Personally Identifiable Information by a Vendor, Subcontractor or Registrant must meet the standards provided in 205 CMR 257.03.

### REASON FOR REQUEST OF WAIVER

**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:** Please see below for timeline of implementation.

*Per 205 CMR 102.03(4)(b)*

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

These changes require significant implementation efforts, including reliance on third parties, and a waiver will not adversely affect the public interest.

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

BetMGM would not fully comply with section 205 CMR 257 Sports Wagering Data Privacy.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

BetMGM's current template Data Protection Addendum ("DPA") includes language that generally encompasses the provisions required by 257.03(3), and appropriately protects patron data. BetMGM's DPA requires a comprehensive data security program and appropriate employee training, but it does not currently include certain specific language MGC included in the regulations (such as "reviewing data security policies and measures at least annually" and training regarding "applicable civil and criminal penalties for noncompliance").

Accordingly, BetMGM requests a waiver from the specific language in vendor contracts required by 257.03(3) (Data Sharing). BetMGM requests this timeline for implementation:

- BetMGM's template Data Protection Addendum will be revised to include the language requested in 257.03 (Data Sharing) by November 17, 2023.
- BetMGM will begin including the updated DPA to applicable new contracts that are initiated after November 17, 2023.
- By February 1, 2024, applicable executed BetMGM contracts will include the language requested in 257.03(3).
- For applicable ongoing relationships, BetMGM will ensure an updated DPA will be included at renewal or renegotiation.

Alternately, BetMGM requests that MGC approve continued use of BetMGM's current DPA, which complies with all applicable state-level privacy laws.





## DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** BetMGM

**NAME OF INDIVIDUAL COMPILING REQUEST:** Sarah Brennan

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Senior Director, Compliance

**CONTACT EMAIL ADDRESS:** [sarah.brennan@betmgm.com](mailto:sarah.brennan@betmgm.com)

**CONTACT PHONE NUMBER:** 732-782-5125

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**

[alexis.cocco@betmgm.com](mailto:alexis.cocco@betmgm.com), [robvn.bowers@betmgm.com](mailto:robvn.bowers@betmgm.com)

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:** 205 CMR 238

**REGULATION SECTION TITLE:** 238.02(7)(l) and (m)

**REGULATION LANGUAGE/TEXT:**

(l) A plan, as required by 205 CMR 257.00: Data Privacy, to safeguard Confidential Information and Personally Identifiable Information and to ensure compliance with the requirements of 205 CMR 257.00, M.G.L. c. 93H, M.G.L. c. 93I, 201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth, and any other applicable law, regulation or order of a governmental body regarding data privacy and security; and

(m) A description of the Operator's use of computerized algorithms, automated decision-making, machine learning, artificial intelligence, or any similar system, which shall include, at a minimum a description of permissible and impermissible uses of such practices and capabilities, the purposes for which they are used and the types of input and output data and an accounting of the source of each, and a description of how the Operator may use such systems to minimize risky play behavior



## REASON FOR REQUEST OF WAIVER

**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:** January 1, 2024

*Per 205 CMR 102.03(4)(b)*

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

On October 27, MGC provided additional guidance regarding this provision and BetMGM requires additional time to compile the information requested and incorporate it into its internal controls.

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

BetMGM would not fully comply with the adopted 205 CMR 257 Sports Wagering Data Privacy regulation.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

BetMGM requests a temporary waiver of 205 CMR 238.02(7)(m), which requests the identification of “computerized algorithms, automated decision-making, machine learning, artificial intelligence, and similar systems.” The Commission provided, as part of the Additional Guidance on October 27, information clarifying MGC’s expectations for this provision. BetMGM requests a waiver until January 1, 2024 so that it can properly assess and investigate these uses and will provide an updated Internal Control document to MGC at that time.

## DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





November 1, 2023

Massachusetts Gaming Commission  
101 Federal Street  
Boston, MA 02110  
Email: [bruce.band@massgaming.gov](mailto:bruce.band@massgaming.gov)

Dear Mr. Band,

American Wagering, Inc. (“Caesars Sportsbook”) respectfully requests a waiver of enforcement of certain provisions of Massachusetts’ new Sports Wagering Data Privacy regulation (205 CMR 257) (the “Privacy Regulation”). The grounds for this waiver request are set forth below, and the completed waiver request form is attached. For ease of reading, we will refer to patron Confidential Information and Personally Identifiable Information (collectively, as these terms are defined in the Privacy Regulation) as “patron data” throughout.

To prepare for this waiver request, Caesars Sportsbook assembled a large, cross-functional project team to closely review the Privacy Regulation requirements. For the identified areas of non-compliance, the team determined the level of effort and time required to achieve compliance given current business priorities. Based on these project findings, Caesars Sportsbook is requesting (1) a waiver of enforcement of certain vendor contract requirements until June 30, 2024, and (2) a waiver of enforcement of the patron data usage/sharing opt-in requirement and the responsible gaming analytics requirement until December 31, 2024. Additional supporting information for these requests can be found on the attached “Waiver Requests and Project Details” document.

In preparing this waiver request, Caesars Sportsbook has relied on the guidance provided by the Massachusetts Gaming Commission (“Commission”) on October 20, 2023 (as updated on October 27, 2023), which advises that the use of patron data for “reasonable, legitimate, business purposes” in connection with the operation of a sports wagering service meets the “necessary to operate” standard in the Privacy Regulation and therefore does not require an opt-in from the patron. Accordingly, Caesars Sportsbook has concluded that most current uses of Massachusetts patron data are “necessary to operate” the service. If the Commission later clarifies that ordinary course marketing uses of patron data are not “necessary to operate” the service, Caesars Sportsbook may need to request a waiver for additional time to develop opt-in/opt-out mechanisms for those marketing uses.

Our Privacy Regulation project team will begin remediation work in earnest as soon as the Commission issues its waiver decision. Caesars Sportsbook intends to provide the Commission



with quarterly updates on progress beginning on March 31, 2024 (unless more frequent updates are requested by the Commission).

Respectfully submitted,

/s/ CHRIS WILLARD

Chris Willard  
VP and Chief Corporate Counsel, Marketing and Privacy

Cc: [crystal.beauchemin@massgaming.gov](mailto:crystal.beauchemin@massgaming.gov)



### **Waiver Requests and Project Details**

Caesars Sportsbook can comply with the following sections of the Privacy Regulation as of **November 20, 2023**:

1. 257.02 (3)
2. 257.02 (4)
3. 257.03 (2)
4. 257.03 (4)
5. 257.04 (1), excluding subsection (d)
6. 257.04 (2)
7. 257.04 (3)
8. 257.04 (4)
9. 257.04 (5)
10. 257.05 (1)
11. 257.05 (2)
12. 257.05 (3)
13. 257.06 (1)-(3), with respect to Data Breaches occurring after November 20, 2023
14. 257.06 (4)

Caesars Sportsbook requests a waiver of enforcement until **June 30, 2024**, for the following section of the Privacy Regulation:

<b>Section(s)</b>	<b>Reason for Waiver Request</b>
257.03 (3)	<p>This section requires operators to enter into written agreements with all third parties who receive patron data. These agreements must include minimum security controls, as specified in this section.</p> <p>While our vendor agreements currently contain vendor data security obligations, the Privacy Regulation mandates very specific contractual language that is not present in all current agreements. Caesars Sportsbook requests this additional time to negotiate amendments with vendors to address these requirements.</p>



Caesars Sportsbook requests a waiver of enforcement until **December 31, 2024**, for the following sections of the Privacy Regulation:

Section(s)	Reason for Waiver Request
<p>257.02 (1)-(2); 257.03 (1)</p>	<p>These sections require operators to collect an express opt-in from a patron before using or sharing patron data for any purpose other than those uses that are “necessary to operate” the gaming service.</p> <p>Caesars Rewards is the loyalty program for all Caesars Entertainment-affiliated companies. Currently, all new Caesars Sportsbook patrons in Massachusetts who are not Caesars Rewards members are registered for the loyalty program when they sign up for a Caesars Sportsbook account. If a Massachusetts patron is already a Caesars Rewards member when registering for a Caesars Sportsbook account, Caesars Sportsbook automatically links that patron’s Caesars Rewards account to their Massachusetts sports betting account at registration.</p> <p>To the extent the Privacy Regulation requires collecting an opt-in from a patron to use and share patron data to enroll the patron in an affiliated loyalty program, Caesars Sportsbook requests this additional time to build and test this new functionality. To determine the level of effort required to make this change, the project team for implementing the Privacy Regulation interviewed the loyalty program and product teams, who advised that removing automatic enrollment will have material downstream impacts on patron marketing journeys and responsible gaming program administration. (Caesars Entertainment leverages the Caesars Rewards platform to manage its enterprise-wide self-exclusion program.) These impacts need to be fully assessed and alternative processes developed. In addition, these teams identified a number of complicated registration edge cases that will require additional discovery, planning and development efforts to find appropriate solutions before we can offer this opt-in mechanism for Caesars Rewards.</p>
<p>257.02 (5)</p>	<p>This section requires operators to collect and aggregate patron data to analyze patron behavior for the purposes of identifying and developing programs and interventions to promote responsible gaming and support problem gamblers, and to monitor and deter sports wagering in violation of G.L. c. 23N and 205 CMR.</p> <p>Currently, Caesars Sportsbook can analyze patron data against predetermined activity thresholds and provide communications to patrons based on the patrons’ behavior against those thresholds. Our</p>

<b>Section(s)</b>	<b>Reason for Waiver Request</b>
	<p>understanding is that this form of review may not meet the intent of this new regulation. Designing an iterative, AI inflected analytics program, if that is required by the Privacy Regulation, would involve extensive planning, development, and testing efforts, and may also require engaging third party experts on AI and problem gambling. Caesars Sportsbook is requesting this additional time to fully scope out and develop a program that will meet or exceed the Commission’s expectations.</p>
257.04 (1)(d)	<p>This section requires operators to provide a mechanism to allow patrons to impose additional restrictions on the use of their patron data—in other words, to opt out of any uses that are not necessary to operate the service.</p> <p>Until the optional Caesars Rewards enrollment mechanism described above is implemented, if required, new patrons are unable to restrict the sharing of patron data with the operator of Caesars Rewards at registration. However, all Caesars Rewards members can deactivate their Caesars Rewards account at any time by filling out a deactivation request form, which is available on the Caesars Entertainment privacy requests webpage. In addition, Caesars Sportsbook currently allows Massachusetts residents to exercise rights that are available to residents of other states with comprehensive privacy laws, including the right to opt out of the sale of their information and the right to opt out of any sharing of data for targeted advertising purposes.</p>





## MASSACHUSETTS GAMING COMMISSION **WAIVER/VARIANCE REQUEST FORM**

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** American Wagering, Inc.

**NAME OF INDIVIDUAL COMPILING REQUEST:** Chris Willard

**TITLE OF INDIVIDUAL COMPILING REQUEST:** VP and Chief Corporate Counsel, Marketing and Privacy

**CONTACT EMAIL ADDRESS:** cwillard@caesars.com

**CONTACT PHONE NUMBER:** 702-407-6064

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**  
curtis.lane@caesars.com

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:** 205 CMR 257

**REGULATION SECTION TITLE:** Sports Wagering Data Privacy

**REGULATION LANGUAGE/TEXT:** Specific paragraphs identified in attached letter.

### REASON FOR REQUEST OF WAIVER

**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:** Please see attached letter.

*Per 205 CMR 102.03(4)(b)*

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:** Please see attached letter.



*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:** Please see attached letter.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:** Please see attached letter.

### **DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.



**Betr Project Plan For the Temporary Waiver of 205 CMR 257.02(2)(a) -(c) and 205 CMR 257.04(1)(a)-(e)**

Betr is requesting a temporary waiver for the following specific sections 205 CMR 257.02(2)(a) -(c); 205 CMR 257.04(1)(a)-(e):

**Regulation Section Title:**

Data Use and Retention; Patron Access

**Regulation Language/Text:**

**257.02: Data Use and Retention**

(2) If a Sports Wagering Operator seeks to use a patron's Confidential Information or Personally Identifiable Information for purposes beyond those specified in 257.02(1), a Sports Wagering Operator shall obtain the patron's consent, which may be withdrawn at any time.

- a) Such consent must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information in the same document shall not constitute adequate consent, nor shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmative indication of consent.
- b) Consent shall not be deemed to be a waiver of any of the patron's other rights.
- c) The option to withdraw such consent must be clearly and conspicuously available to the patron on the withdrawal of consent more than once, and no intervening pages or offers will be presented to the patron before such confirmation is presented to the patron. Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm.

**257.04: Patron Access**

- 1) Patrons shall be provided with a method to make the requests in 205 CMR 257.04(1)(a)-(e). The request must be clearly and conspicuously available to the patron online through the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm their request more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.
  - a) A description as to how their Confidential Information or Personally Identifiable Information is being used, including confirmation that such Confidential Information or

Personally Identifiable Information is being used in accordance with this Section 205 CMR 257;

- b) Access to a copy of their Confidential Information or Personally Identifiable Information maintained by the Operator or a Vendor, Subcontractor, or Registrant of the Operator;
- c) Updates to their Confidential Information or Personally Identifiable Information;
- d) The imposition of additional restriction on the use of their Confidential Information or Personally Identifiable Information for particular uses; and
- e) That their Confidential Information or Personally Identifiable Information be erased when it is no longer required to be retained by applicable law or Court order.

### **Betr Project Plan:**

**Note:** While creating the Project Plan, we found additional technical complexity which requires more time. In addition to the holiday season which impacts the velocity of work and number of team members available to complete the project. Also, our team operates on sprints which means we deliver projects in 2 week blocks, this flows into our app release process. App store acceptance is out of our control. We can have the app submitted by the desired date but there could always be an issue from the store side resulting in an additional delay.

In order to meet the elements of 205 CMR 257.02 (2)(a) - (c) and 205 CMR 257.04 (1)(a) - (e), Betr has to take the following steps:

1. Create a consent event which flows into our data warehouse – approximate project completion time frame – Approximately 42 days.
2. From the data warehouse the data event flowing to the CRM system – approximate project completion time frame – Approximately 42 days.
3. Have CRM data of opting out flow into the data warehouse to be surfaced to the front end – approximate project completion time frame – Approximately 28 days.
4. Add consent attribute to the front end through an API – approximate project completion time frame – Approximately 28 days.
5. Create the front-end experience where a user can set consent preferences at account creation or change preferences in the account settings – approximate project completion time frame – Approximately 14 days.
6. Testing – approximate project completion time frame – Approximately 14 days
7. Submit app to the play store and app store for approval and release – approximate project completion time frame – May 7th, 2024.



## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 10/31/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** Betr Holdings, Inc. ("Betr")

**NAME OF INDIVIDUAL COMPILING REQUEST:** Robert Warren

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Compliance Lead

**CONTACT EMAIL ADDRESS:** robert.warren@betr.app

**CONTACT PHONE NUMBER:** (202) 423-8578

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**  
N/A

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:**

205 CMR 257.02(2)(a)-(c); 205 CMR 257.04(1)(a)-(e)

**REGULATION SECTION TITLE:**

Data Use and Retention; Patron Access

**REGULATION LANGUAGE/TEXT:**

257.02: Data Use and Retention

- (2) If a Sports Wagering Operator seeks to use a patron's Confidential Information or Personally Identifiable Information for purposes beyond those specified in 257.02(1), a Sports Wagering Operator shall obtain the patron's consent, which may be withdrawn at any time.
- (a) Such consent must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information in the same document shall not constitute adequate consent, nor shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmative indication of consent.
- (b) Consent shall not be deemed to be a waiver of any of the patron's other rights.
- (c) The option to withdraw such consent must be clearly and conspicuously available to the patron on the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm



withdrawal of consent more than once, and no intervening pages or offers will be presented to the patron before such confirmation is presented to the patron.

**257.04: Patron Access**

(1) Patrons shall be provided with a method to make the requests in 205 CMR 257.04(1)(a)-(e). The request must be clearly and conspicuously available to the patron online through the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm their request more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

- (a) A description as to how their Confidential Information or Personally Identifiable Information is being used, including confirmation that such Confidential Information or Personally Identifiable Information is being used in accordance with this Section 205 CMR 257;
- (b) Access to a copy of their Confidential Information or Personally Identifiable Information maintained by the Operator or a Vendor, Subcontractor, or Registrant of the Operator;
- (c) Updates to their Confidential Information or Personally Identifiable Information;
- (d) The imposition of additional restriction on the use of their Confidential Information or Personally Identifiable Information for particular uses; and
- (e) That their Confidential Information or Personally Identifiable Information be erased when it is no longer required to be retained by applicable law or Court order.

**REASON FOR REQUEST OF WAIVER**

**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:**

November 7, 2023 – May 7, 2024 (or 182 days).

*Per 205 CMR 102.03(4)(b)*

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

I, Robert Warren, as Compliance Lead of Betr, hereby submit a request to the Massachusetts Gaming Commission requesting a temporary waiver of regulation 205 CMR 257.02(2)(a)-(c) and 205 CMR 257.04(1)(a)-(e), so that our software engineers, product team, and legal team can implement within the Betr mobile application (the "App"), a clear and conspicuous consent form asking patrons to consent to Betr's use of their Confidential Information or Personally Identifiable Information for purposes beyond those specified in 257.02(1), as well as implement a form within the App where patrons may, at any time, withdraw their consent of Betr's use of patron Confidential Information or Personally Identifiable Information or otherwise make any request specified in 257.04(1).

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

Due to technical and coding developments required and implementation processes, a denial of our waiver request will force Betr to suspend its operations entirely for months.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

N/A



## **DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.



November 1, 2023

Via E-Mail to [bruce.band@massgaming.gov](mailto:bruce.band@massgaming.gov)

Mr. Bruce Band  
Director, Sports Wagering Division  
Massachusetts Gaming Commission  
101 Federal St., 12th Floor  
Boston, MA 02110

**RE: 205 CMR 257: SPORTS WAGERING DATA PRIVACY**

In response to the expiring waiver period for 205 CMR 257: Sports Wagering Data Privacy, DraftKings Inc. ("DraftKings") submits to the Massachusetts Gaming Commission ("the Commission") this cover letter and the following additional waiver request for the Commission's consideration.

DraftKings' approach to this waiver request has been to scope the compliance requirements to determine the least amount of time it would take to identify issues, build capabilities, and test and deploy solutions for compliance. This process has involved many internal teams and mapping of relevant data throughout the DraftKings sports wagering platform, and has been underway for several months (since before 205 CMR 257 was adopted).

The waiver request is the result of that scoping process, and is largely based on guidance issued by the Commission on October 20, 2023 (as updated on October 27, 2023). This waiver request is built upon that guidance, specifically clarifications around the meaning of "necessary to operate a ... sports wagering platform" as contemplating "all reasonable, legitimate, business purposes" including marketing and analytics limited to sports wagering operations. If that guidance is further altered or revised, DraftKings will request additional waiver time on relevant provisions.

DraftKings has identified a lack of consensus among operators as to the effect of that guidance. Differences in interpretation combined with the nuances of operators' individual platforms may result in waiver requests that vary widely in time and scope. We would suggest that the Commission err on the side of providing additional waiver time where interpretation is a matter of discussion, with the understanding that operators are to come into compliance as soon as reasonably possible.

DraftKings respectfully requests that the Commission amend the regulations to clearly reflect the Commission's guidance to remove remaining ambiguity. Without changes to the regulatory language, operators risk being held liable for reasonable and legitimate business practices that the Commission intends to allow. DraftKings would also request that the Commission consider amending the regulations to make them commercially reasonable to implement, and to clarify some outstanding questions (e.g. the impossibility of encrypting or hashing certain PII). DraftKings would be happy to continue to collaborate with the Commission in creating clarity and certainty for operators.



### **PROJECT PLAN:**

Over the past several weeks DraftKings has held multiple internal discussions and with appropriate MGC representatives to ensure a plan is in place to reach full compliance with CMR 257. Of the areas that are being requested for a waiver we've provided details into the work necessary to reach our understanding of full compliance within the waiver request. Should our request be approved, DraftKings will work with the necessary internal stakeholders to ensure requirements and implementation dates are clearly communicated so that appropriate engineering work can be prioritized in order to reach compliance by the approved waiver expiration date. DraftKings will provide periodic updates to Commission staff as outlined below.

### **SUMMARY OF TIMELINES AND WAIVER DATES REQUESTED:**

257.02(1-2): Data Use and Retention - July 1, 2024  
257.02(3): Data Use and Retention - December 1, 2024  
257.02(5): Data Use and Retention - January 15, 2024  
257.03(1): Data Sharing - July 1, 2024  
257.03(4): Data Sharing - Depending on further clarification from MGC, either December 1, 2024, June 1, 2025, or not feasible to implement as promulgated  
257.05(k): Data Program Responsibilities - December 1, 2024

DraftKings is NOT requesting a waiver for 257.02(4): Data Use and Retention; 257.04: Patron Access; 257.03(2)-(3): Data Sharing; 257.05 (1)(A-L), (2)-(3): Data Program Responsibilities; or 257.06: Data Breaches. DraftKings believes that its current controls, programs, and processes meet the applicable regulatory requirements of said sections.

### **REPORTING UPDATES TO THE COMMISSION:**

DraftKings Regulatory Operations team will provide periodic updates to the Commission regarding the status of all waiver requests granted related to 205 CMR 257. DraftKings will provide quarterly updates on all waiver requests granted for a period longer than twelve months and monthly updates on requests granted for a period of 12 months or less. Updates will be presented via email to the Sports Wagering Division and provide an overall status update on required project deliverables and timelines, as necessary.

Sincerely,  
DraftKings Inc.



## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE: 11/1/2023**

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): Crown MA Gaming LLC / DraftKings**

**NAME OF INDIVIDUAL COMPILING REQUEST: Kevin Nelson**

**TITLE OF INDIVIDUAL COMPILING REQUEST: Senior Manager, Regulatory Operations**

**CONTACT EMAIL ADDRESS: Knelson@draftkings.com**

**CONTACT PHONE NUMBER: 518 – 727 - 4624**

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:**

**REGULATION SECTION TITLE:**

**257.02: Data Use and Retention**

**257.03: Data Sharing**

**257.05: Data Program Responsibilities (1)(K)**

DraftKings is NOT requesting a waiver for 257.02(4): Data Use and Retention; 257.04: Patron Access; 257.03(2)-(3): Data Sharing; 257.05 (1)(A-L), (2)-(3): Data Program Responsibilities; or 257.06: Data Breaches. DraftKings believes that its current controls, programs, and processes meet the applicable regulatory requirements of said sections.

**REGULATION LANGUAGE/TEXT:**

257.02: Data Use and Retention

(1) A Sports Wagering Operator shall only use Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors,



to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(2) If a Sports Wagering Operator seeks to use a patron's Confidential Information or Personally Identifiable Information for purposes beyond those specified in 257.02(1), a Sports Wagering Operator shall obtain the patron's consent, which may be withdrawn at any time.

(a) Such consent must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information in the same document shall not constitute adequate consent, nor shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmative indication of consent.

(b) Consent shall not be deemed to be a waiver of any of the patron's other Rights.

(c) The option to withdraw such consent must be clearly and conspicuously available to the patron on the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

(3) A Sports Wagering Operator may not use a patron's Personally Identifiable Information or Confidential Information, or any information derived from it, to promote or encourage specific wagers or promotional offers based on:

(a) a period of dormancy or non-use of a Sports Wagering Platform;

(c) the communications of the patron with any third party other than the Operator;

(d) the patron's actual or predicted. i. income, debt, net worth, credit history, or status as beneficiary of governmental programs; ii. medical status or conditions; or iii. occupation.

(e) Any computerized algorithm, automated decision-making, machine learning, artificial intelligence, or similar system that is known or reasonably expected to make the gaming platform more addictive;

(5) A Sports Wagering Operator shall collect and aggregate patrons' Confidential Information and Personally Identifiable Information to analyze patron behavior for the purposes of identifying and developing programs and interventions to promote responsible gaming and support problem gamblers, and to monitor and deter Sports Wagering in violation of G.L. c. 23N and 205 CMR. The Sports Wagering Operator shall provide a report to the Commission at least every six months on the Sports Wagering Operator's compliance with this subsection, including the trends observed in this data and the Sports wagering Operator's efforts to mitigate potential addictive behavior.

#### 257.03: Data Sharing

(1) A Sports Wagering Operator shall not share a patron's Confidential Information or Personally Identifiable Information with any third party except as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(4) Sports Wagering Operators shall encrypt or hash and protect, including through the use of multi-factor authentication, from incomplete transmission, misrouting, unauthorized message modification, disclosure, duplication or replay all Confidential Information and Personally Identifiable Information.

#### 257.05: Data Program Responsibilities (1)(K)



(1) A Sports Wagering Operator shall develop, implement and maintain comprehensive administrative, technical and physical data privacy and security policies appropriate to the size and scope of business and addressing, at a minimum:

...

(k) Active oversight and auditing of compliance by Vendors, Registrants, or Subcontractors with 257.03(3) and with the Operator's Confidential Information and Personally Identifying Information policies.

### REASON FOR REQUEST OF WAIVER

#### **DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:**

- 257.02(1-2): Data Use and Retention - July 1, 2024
- 257.02(3): Data Use and Retention - December 1, 2024
- 257.02(5): Data Use and Retention - January 15, 2024
- 257.03(1): Data Sharing - July 1, 2024
- 257.03(4): Data Sharing - Depending on further clarification from MGC, either December 1, 2024, June 1, 2025, or not feasible to implement as promulgated
- 257.05(k): Data Program Responsibilities - December 1, 2024

*Per 205 CMR 102.03(4)(b)*

#### **PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

##### **257.02(1-2) -Data Use and Retention - July 1, 2024**

Complying with this novel regulation requires DraftKings to analyze which of its various Personally Identifiable Information ("PII") processing activities would fall outside the permissible purposes prescribed under 257.02(1), i.e., those business purposes that are "necessary" or "reasonable and legitimate", as per interpretive guidance the Commission issued to DraftKings on the 20th and 27th of October 2023 (the "October 2023 Guidance") to operate the Sports Wagering Platform, comply with applicable law, detect and prevent security incidents and harmful or illegal activity, defend against legal claims, and fulfill other reasonable safety and security purposes. Once those business purposes are identified, DraftKings will be required to engage in cross-departmental collaboration involving dozens of internal stakeholders to perform extensive mapping of the PII categories processed to the first- and third-party systems used to process them. Next, the company must build a new suite of freely revocable opt-in consent prompts and opt-out mechanisms, ensure they are connected to a diverse range of back-end systems, change our default position to not processing such data absent opt-in consent, and engage in extensive testing of the referenced development work. Such implementation work would require a substantial redesign of how we process PII for numerous business purposes, as well as a rebuild of the DraftKings registration and consent agreement workflow. DraftKings requests a waiver from the referenced regulations until July 1, 2024. In light of the "October 2023 Guidance" that has substantially narrowed the scope of 257.02(1)-(2), DraftKings needs to re-scope required work. If scoping impacts this waiver request, DraftKings will present additional information to the Commission.

##### **257.02(3) - Data Use and Retention - December 1, 2024**

This novel regulation requires operators not to target users with personalized promotions utilizing various categories of PII or Confidential Information ("CI") (e.g., a patron's period of dormancy or non-use of the Sports Wagering Platform, income, net worth, occupation, and communications with third parties) or



technology (e.g., algorithms, automated decision-making, machine learning or AI) known or reasonably expected to make the Sports Wagering Platform more addictive. This unique requirement will require DraftKings to update internal tooling, databases, marketing and promotional campaigns in addition to building applicable employee training, monitoring procedures, and updating access controls that would be unique to one jurisdiction. Marketing platform engineering teams will be required to launch a comprehensive audit of existing promotional activities that may fall in scope and perform work to ensure applicable patron PII is not leveraged in existing and future promotions, which may take 3 months. The marketing team will need to modify how they interact with certain players, develop training and controls to prevent outreach that may result in collection and use of prohibited PII and CI, which we estimate could take six months. This could also raise responsible gaming concerns, because it could limit the ability to review data useful in determining whether a certain patron qualifies for certain promotions. Horizontal analytics personnel will need to engage with engineering and IT resources to implement new roles based access controls to ensure that prohibited PII and CI categories and technology will not be used for impermissible promotional activities, which may take 2 or more months. Sports marketing and automation teams may need to spin up an entirely separate CRM program for Massachusetts only and conduct a full audit of automated promotions and current executional processes that may fall in scope of this requirement to ensure they are not presented to Massachusetts patrons, which would entail an evaluation of hundreds of different campaigns and will take approximately 6 months. Data science teams would need to engage in novel segmentation of existing services to operate on a per jurisdiction level, build new infrastructure to run on new geolocation-based flags, and audit frameworks to verify adherence to controls, all of which is likely to take 12+ months. DraftKings thus seeks a waiver from the referenced regulations until December 1, 2024.

#### **257.02(5) - Data Use and Retention - January 15, 2024**

This regulation requires operators to implement a process to collect and aggregate patrons' PII and CI to analyze behavior for purposes of identifying and developing programs and interventions to promote responsible gaming. DraftKings estimates this work to be completed January 15, 2024, as it requires building a new alerting system, working with MGC staff on implementation, and testing and deploying the appropriate functionality.

#### **257.03(1) - Data Sharing - July 1, 2024**

Based on the wording of this regulation in light of the October 2023 Guidance, DraftKings expects full implementation of the referenced regulation will take approximately 7 months. Complying with this regulation requires DraftKings to audit data sharing agreements with scores of vendors and partners to determine which fall outside of the permitted purposes prescribed by 257.02(1). The company will then need to subject such third-party data sharing arrangements to DraftKings' proprietary consent management filtering tool and change the settings to prohibit sharing absent opt-in consent from Massachusetts patrons, which work will be dependent on the development work to create new opt-in consent flows required pursuant to 257.02(2). DraftKings will likely also have to change its third-party consent management platform used on DraftKings' website to require opt-in consent for patrons located in Massachusetts only, unlike all other jurisdictions in North America.

#### **257.03(4) - Data Sharing - December 1, 2024 / June 1, 2025 / Not feasible to implement as promulgated**

DraftKings' timeline for compliance with the referenced regulation depends on how it is meant to be interpreted and applied. First, encrypting/hashing all PII and CI (including relatively non-sensitive types, e.g., IP address, device ID, username) while "at rest" and "in transit" would take between 2-2.5 years to implement. Next, encrypting/hashing all PII and CI while only "at rest" would require significantly less development work and could potentially be completed within 12 months. Requiring all such data to be encrypted/hashed as the



regulation is currently written is not possible to implement, as it would require all locally stored PII on a patron's device to be encrypted. In addition, communication with third parties would become impossible as they would need an ability to decrypt this information to provide required services. Even after several years of development work, DraftKings is skeptical as to whether it would be left with a usable platform were this regulation to remain as currently drafted.

The regulation impacts a large portion of DraftKings' databases, services, and other systems and would require data pipelines and storage systems to be rebuilt to filter a wide range of data that is not within the definition of PII in any other North America jurisdiction's data breach reporting statutes. Numerous systems, including backup systems, would need to be refactored to support an encryption and decryption mechanism. Considering the broad definition of PII in the rules, lots of data would be subject to encryption or hashing requirements and the large amount of services would be impacted, requiring significant development work in addition to a wide-scale testing initiative. Initiatives of this magnitude would also impact overall database latency and platform performance which could lead to a severely degraded offering of our wagering platform. DraftKings is willing to provide the Commission with additional detail on specific development requirements implicated by this regulation in a confidential setting to ensure that sensitive and proprietary information is protected. In the interim, DraftKings respectfully asks the Commission to reconsider significantly narrowing the range of PII and CI subject to the requirements of 257.03(4) to focus only on sensitive data that would present a substantial risk of harm to patrons if accessed or disclosed without authorization – ideally, by bringing this regulation much closer to conformity with MGL c. 93H and, specifically, that statute's definition of "personal information".

#### **257.05: Data Program Responsibilities (1)(K) - December 1st, 2024**

The referenced regulation requires that operators implement procedures to audit and ensure vendor compliance with the requirements in 257.03(3). Implementation of this type of process will require building a new vendor auditing and management program specific to the Commonwealth and these privacy regulations that may encompass scores of third-party vendors and partners. Since existing data processing and data protection agreements with third-party vendors and partners were not drafted with these privacy regulations in mind, DraftKings may need to re-engage with such third parties directly using newly developed privacy and data protection audit questionnaires. This represents a significant amount of net new work for the company's legal and privacy compliance personnel that is estimated to take approximately 12 months to operationalize.

#### **PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

In all cases, if a waiver is not granted by the Commission it would result in DraftKings non-compliance with various areas of 205 CMR 257. Throughout the past several months DraftKings has worked with the Commission to seek clarity on 205 CMR 257 to ensure application of requirement is well defined as we scope project timelines and deliverables to ensure continued compliance in the Commonwealth.

#### **ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

Based on DraftKings understanding of the requirements of 205 CMR 257, compliance with the recently adopted regulations will require significant product redesign, re-architecting, and organizational work unique to the Commonwealth that will entail at least the following:

- Reworking consent management platform (provided in connection with third-party privacy tools vendor) for Massachusetts only to move from an opt-out to an opt-in model for third-party data sharing for non-required purposes;



- Reworking proprietary consent management platform to change default settings for Massachusetts only to move from an opt-out to an opt-in model;
- Extensive discovery and analysis from stakeholders such as outside counsel and legal, compliance, engineering, product, marketing, analytics, IT, information security and other departments to determine if (for Massachusetts only) they may properly be categorized as necessary to (a) operate the wagering platform, (b) to comply with applicable law, (c) detect and prevent security incidents and other harmful or illegal activity, and (d) defend against legal claims (the "Permissible Uses");
- Involvement from all referenced departments, which would involve scores (if not, hundreds) of employees to perform an extensive mapping of all business processes that may fall outside of the Permissible Uses to hundreds of different services and systems (the "Relevant Systems") used for processing PII and CI in ways that fall outside Permissible Uses (for Massachusetts alone). This also needs to be done carefully to allow for continued collection and use of necessary data required for compliance that may also be used for another purpose on the platform that will not require a specific opt-in, as this new separation could create additional, unique compliance concerns;
- Mapping scores of various categories of PII and CI as they are used in each of the Relevant Systems to a new consent management process (for Massachusetts alone) that would have to be built to move to a new default position of not being able to use the PII without opt-in consent;
- Developing numerous freely revocable, opt-in consent prompts and connecting their efficacy to new use permission procedures (for Massachusetts alone) to numerous business processes involving PII and CI that would not qualify as Permissible Uses and the Relevant Systems used to process such data. These prompts implicate a substantial redesign of key aspects of the current platform;
- Extensive testing on all the above-referenced development work on the website and all applications;
- Unwinding data sharing arrangements with vendors and partners (for Massachusetts alone) who perform activities that may fall outside of the Permissible Uses; and
- Extensive guidance would need to be obtained from outside counsel to help develop appropriate understandings of vague or undefined terms and standards in the regulations, in order to ensure we are applying requirements correctly.

### **DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.



## Project Plan Summary

### Wynn MA, LLC dba Encore Boston Harbor waiver request for time to ensure compliance with 205 CMR 257

Three waiver dates are requested, one of which may not be necessary.

- For 205 CMR 257.02, Encore Boston Harbor is requesting a waiver until **December 31, 2024**, to complete a thorough review of all processing activities to determine which may not be “necessary” as defined by regulation. Once those activities are identified, Encore Boston Harbor will implement a consent mechanism as required.
- For 205 CMR 257.03(1), Encore Boston Harbor is requesting a waiver until **October 31, 2024**, to modify its systems related to the “Wynn Rewards” player rewards program.

Whether or not this waiver is necessary depends on whether the Commission considers affiliated entities (for example, Wynn Las Vegas, LLC, the entity operating the Wynn and Encore Las Vegas) to be third parties. If these affiliated entities are determined to be third parties, then patron participation in the Wynn Rewards program, which is shared between Encore Boston Harbor, Wynn and Encore Las Vegas, and WynnBET will result in sharing of patron PII and Confidential Information with third parties.

- For 205 CMR 257.03(3), Encore Boston Harbor is requesting a waiver until **January 31, 2024**, to review and amend all agreements with service providers who may receive patron PII or Confidential Information, to ensure that all agreements are compliant with this section of the regulation.

For all waivers granted, Encore Boston Harbor will provide monthly reports on or around the first of each month, to inform the Commission of our progress toward full compliance.





## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** Wynn MA, LLC dba Encore Boston Harbor

**NAME OF INDIVIDUAL COMPILING REQUEST:** Jacqui Krum

**TITLE OF INDIVIDUAL COMPILING REQUEST:** SVP and General Counsel

**CONTACT EMAIL ADDRESS:** jacqui.krum@encorebostonharbor.com

**CONTACT PHONE NUMBER:** 857-770-7802

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):** N/A

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:**

205 CMR 257.02(1) and (4)

205 CMR 257.02(2)

205 CMR 257.03(1)

205 CMR 257.03(3)

**REGULATION SECTION TITLE:**

Sports Wagering Data Privacy – Data Sharing

**REGULATION LANGUAGE/TEXT:**

257.02: Data Use and Retention

(1) A Sports Wagering Operator shall only use Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(2) If a Sports Wagering Operator seeks to use a patron's Confidential Information or Personally Identifiable Information for purposes beyond those specified in 257.02(1), a Sports Wagering Operator shall obtain the patron's consent, which may be withdrawn at any time.



(a) Such consent must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information in the same document shall not constitute adequate consent, nor shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmative indication of consent.

(b) Consent shall not be deemed to be a waiver of any of the patron's other rights.

(c) The option to withdraw such consent must be clearly and conspicuously available to the patron on the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

(4) A Sports Wagering Operator shall only retain a patron's Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

#### 257.03: Data Sharing

(1) A Sports Wagering Operator shall not share a patron's Confidential Information or Personally Identifiable Information with any third party except as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

.....  
(3) If a Sports Wagering Operator deems it necessary to share a patron's Confidential Information or Personally Identifiable Information with a Sports Wagering Vendor, Sports Wagering Subcontractor, or Sports Wagering Registrant in order to operate its Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, a Sports Wagering Operator shall enter into a written agreement with the Sports Wagering Vendor, Sports Wagering Subcontractor or Sports Wagering Registrant, which shall include, at a minimum, the following obligations:

(a) The protection of all Confidential Information or Personally Identifiable Information that may come into the third party's custody or control against a Data Breach;

(b) The implementation and maintenance of a comprehensive data-security program for the protection of Confidential Information and Personally Identifiable Information, which shall include, at a minimum, the following:

i. A security policy for employees relating to the storage, access and transportation of Confidential Information or Personally Identifiable Information;

ii. Restrictions on access to Personally Identifying Information and Confidential Information, including the area where such records are kept, secure passwords for electronically stored



records and the use of multi-factor authentication;

iii. A process for reviewing data security policies and measures at least annually; and

iv. An active and ongoing employee security awareness program for all employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law.

(c) The implementation, maintenance, and update of security and breach investigation and incident response procedures that are reasonably designed to protect Confidential Information and Personally Identifiable Information from unauthorized access, use, modification, disclosure, manipulation or destruction; and

(d) A requirement that the maintenance of all Confidential Information and Personally Identifiable Information by a Vendor, Subcontractor or Registrant must meet the standards provided in 257.03.

### REASON FOR REQUEST OF WAIVER

#### **DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:**

Regarding 205 CMR 257.02(1), (2) and (4), waiver is requested through December 31, 2024.

Regarding 205 CMR 257.03(1), waiver is requested, if necessary (see below), through October 31, 2024.

Regarding 205 CMR 257.03(3), waiver is requested through January 31, 2024.

*Per 205 CMR 102.03(4)(b)*

#### **PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

In formulating this waiver request, Encore Boston Harbor is relying on the guidance provided by the Commission on October 20, 2023 and October 27, 2023.

Regarding 205 CMR 257.02(1), (2) and (4):

Encore Boston Harbor is requesting time to complete a review of all processing activities being conducted as part of the retail sportsbook operations to determine whether any such processing would require consent pursuant to 205 CMR 257.02. Based on previous similar reviews conducted by the Wynn enterprise, this process could take up to six months to complete. If the review determines that any processing activities are not "necessary to operate" the sportsbook, Encore Boston Harbor will need additional time, estimated to be between three to six months, to complete the development work to obtain such consents through electronic means and/or to put in place procedures for other means of obtaining such consent. While Encore Boston Harbor hopes to complete this work early, we are basing this request on previous experience with similar exercises under other data privacy rules in foreign jurisdictions.



Regarding 205 CMR 257.03(1):

Wynn Rewards is the rewards program for all US-based Wynn enterprises, including Encore Boston Harbor, Wynn and Encore Las Vegas, and WynnBET. Benefits earned at Encore Boston Harbor can be used at the resorts and some benefits earned at the resorts can be redeemed for credit at WynnBET. If a player applies for a Wynn Rewards account, their information is automatically shared with affiliated entities. The administration of the Wynn Rewards program requires the exchange of the patron's Confidential Information, specifically wagering information, to award the benefits of the program.

At the time of this submission, Encore Boston Harbor is seeking guidance from the MGC on whether the Wynn entities that share in the Wynn Rewards program constitute third parties for the purposes of 205 CMR 257.03. If such affiliated companies are considered third parties, then it will require technological development to obtain consent from both current and prospective Wynn Rewards members. Such a process will require development, testing, deployment, and the coordination of third-party service providers to update the necessary systems. This development and testing may take up to twelve months.

Regarding 205 CMR 257.03(3):

Encore Boston Harbor's current agreements do not include robust data privacy terms that include the specific points outlined in this regulation section. Encore Boston Harbor will need to review and amend all relevant agreements. Our initial estimate is that there are between forty and eighty agreements that may have to be reviewed and amended and that this process may take up to three months.

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

Regarding 205 CMR 257.02(1), (2) and (4):

The requirements of this subsection require a detailed analysis of all processing activities to determine whether each use of Confidential Information and Personally Identifiable Information is "necessary to operate." As mentioned in the guidance dated October 27, 2023, this is a fact-specific determination that needs to be made before Encore Boston Harbor is able to determine which uses of such information, if any, require consent.

Regarding 205 CMR 257.03(1):

Wynn Rewards is an integral part of the guest experience at Encore Boston Harbor and a valuable tool for Encore Boston Harbor to determine guest preferences. If the waiver requested above is found to be necessary (because the affiliated Wynn entities are considered third parties) and the waiver is not granted, Encore Boston Harbor may be forced to suspend the Wynn Rewards program in Massachusetts resulting in a significant loss of patrons and gaming revenue, perhaps permanently, as loyal patrons will almost certainly patronize other regional casinos that offer a rewards program.

Regarding 205 CMR 257.03(3):

The requirements of this subsection create a situation where Encore Boston Harbor's current agreements may not be fully compliant with new requirements. Due to the number of agreements already in place, Encore Boston Harbor requires time to identify all agreements that will be necessary to amend and to coordinate with the counterparties.



## **ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

If the affiliated Wynn Resorts entities do not constitute third parties for the purposes of 205 CMR 257.03, no waiver will be necessary for subsection 257.03(1).

## **DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





Cory Fox  
[cory.fox@fanduel.com](mailto:cory.fox@fanduel.com)

November 1, 2023

VIA EMAIL TO: [bruce.band@massgaming.gov](mailto:bruce.band@massgaming.gov)

Bruce Band, Director of Sports Wagering  
Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110

**RE: FanDuel Waiver Request – 205 CMR 257 - Data Privacy**

Dear Director Band:

I write on behalf of FanDuel Group, Inc. (“FanDuel”) to submit our implementation waiver request related to 205 CMR 257 – Data Privacy. First, let me begin by thanking you, your staff, and the Commission for taking the time to hear our concerns. We appreciate the opportunity we had to present to the Commission at the roundtable on September 19<sup>th</sup> and we greatly appreciate the attached guidance we have received from the Commission.

Based on the Commission’s guidance, we are requesting waivers (request attached) of the following regulatory provisions for dates specified:

- 205 CMR 257.02(2) – Through October 1, 2024, to develop, test, and implement the “opt-in” mechanism necessary to receive affirmative consents from patrons on use of their PII;
- 205 CMR 257.02(5) – Through July 1, 2024, to develop, test, and implement a new RG system we are in the process of onboarding;
- 205 CMR 257.03 (generally) – Through February 1, 2024, to ensure that we have accounted for, and stopped any sharing of PII with third parties that is not “necessary to operate” the sports wagering platform;
- 205 CMR 257.03(3) – Through October 1, 2025, to renegotiate all contracts with our Sports Wagering Vendors, Sports Wagering Subcontractors, and/or Sports Wagering registrants to address all the areas related to data security required by this subdivision; and
- 205 CMR 257.04 – Through October 1, 2024, to implement a new process for selective objections to data use, in conjunction with the new “opt-in” mechanism developed to comply with 205 CMR 257.02(2).

We have relied heavily upon the Commission’s written guidance in the scoping and drafting of this waiver request. Further, any change to, or deviation from, the guidance will require a reconsideration of our implementation timelines and scope of necessary waivers. We would encourage the Commission to formalize the guidance through the regulatory process because of



the significant reliance interests and substantial development work that are required to comply with these novel data privacy requirements.

We appreciate your time and consideration of our waiver request and would be happy to discuss it at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cory Fox', written over a light blue horizontal line.

Cory Fox  
Vice President for Product and New Market Compliance

***Attachments:***

Document entitled “Data Privacy QA Guidance” – as updated on October 27, 2023.

Fanduel Waiver Request – 205 CMR 257 – Data Privacy



## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** FanDuel Sportsbook

**NAME OF INDIVIDUAL COMPILING REQUEST:** Cory Fox

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Vice President for Product and New Market Compliance

**CONTACT EMAIL ADDRESS:** [cory.fox@fanduel.com](mailto:cory.fox@fanduel.com)

**CONTACT PHONE NUMBER:** (650) 346-6624

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):** NA

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:**

205 CMR 257.02(2)

205 CMR 257.02(5)

205 CMR 257.03

205 CMR 257.03(3)

205 CMR 257.04

**REGULATION SECTION TITLE:** Sports Wagering Data Privacy

**REGULATION LANGUAGE/TEXT:**

257.02 : Data Use and Retention

(1) A Sports Wagering Operator shall only use Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with

M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to





investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(2) If a Sports Wagering Operator seeks to use a patron's Confidential Information or Personally Identifiable Information for purposes beyond those specified in 257.02(1), a Sports Wagering Operator shall obtain the patron's consent, which may be withdrawn at any time.

(a) Such consent must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information in the same document shall not constitute adequate consent, nor shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmative indication of consent.

(b) Consent shall not be deemed to be a waiver of any of the patron's other rights.

(c) The option to withdraw such consent must be clearly and conspicuously available to the patron on the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

(3) A Sports Wagering Operator may not use a patron's Personally Identifiable Information or Confidential Information, or any information derived from it, to promote or encourage specific wagers or promotional offers based on:

(a) a period of dormancy or non-use of a Sports Wagering Platform;

(b) the wagers made or promotional offers accepted by other patrons with a known or predicted social connection to the patron;

(c) the communications of the patron with any third party other than the Operator;

(d) the patron's actual or predicted.

i. income, debt, net worth, credit history, or status as beneficiary of governmental programs;

ii. medical status or conditions; or

iii. occupation.

(e) Any computerized algorithm, automated decision-making, machine learning, artificial intelligence, or similar system that is known or reasonably expected to make the gaming platform more addictive;

(f) Engagement or utilization of play management options, including type of limit, frequency of engagement or utilization of play management options, and frequency of changing limits;

(g) Engagement or utilization of cooling-off options, including duration of cooling-off period, frequency of engagement or utilization of cooling-off options, and frequency of changing cooling-off periods;

(h) Engagement or utilization of any measure in addition to those described in 205 CMR 257.02(3)(f)-(g) intended to promote responsible gaming.

(4) A Sports Wagering Operator shall only retain a patron's Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with

M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes..

(5) A Sports Wagering Operator shall collect and aggregate patrons' Confidential Information and Personally Identifiable Information to analyze patron behavior for the purposes of identifying and developing programs and interventions to promote responsible gaming and support problem gamblers, and to monitor and deter Sports Wagering in violation of G.L. c. 23N and 205 CMR. The Sports Wagering Operator shall provide a report to the Commission at least every six months on the Sports Wagering Operator's compliance with this subsection, including the trends observed in this data and the Sports wagering Operator's efforts to mitigate potential addictive behavior.



(1) A Sports Wagering Operator shall not share a patron's Confidential Information or Personally Identifiable Information with any third party except as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(2) If a Sports Wagering Operator shares a patron's Confidential Information or Personally Identifiable Information pursuant to 257.03(1), the Operator shall take commercially reasonable measures to ensure the party receiving a patron's Confidential Information or Personally Identifiable Information keeps such data private and confidential, except as required to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity. The party receiving such data shall only use a patron's Confidential Information or Personally Identifiable Information for the purpose(s) for which the data was shared.

(3) If a Sports Wagering Operator deems it necessary to share a patron's Confidential Information or Personally Identifiable Information with a Sports Wagering Vendor, Sports Wagering Subcontractor, or Sports Wagering Registrant in order to operate its Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, a Sports Wagering Operator shall enter into a written agreement with the Sports Wagering Vendor, Sports Wagering Subcontractor or Sports Wagering Registrant, which shall include, at a minimum, the following obligations:

(a) The protection of all Confidential Information or Personally Identifiable Information that may come into the third party's custody or control against a Data Breach;

(b) The implementation and maintenance of a comprehensive data-security program for the protection of Confidential Information and Personally Identifiable Information, which shall include, at a minimum, the following:

i. A security policy for employees relating to the storage, access and transportation of Confidential Information or Personally Identifiable Information;

ii. Restrictions on access to Personally Identifying Information and Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;

iii. A process for reviewing data security policies and measures at least annually; and

iv. An active and ongoing employee security awareness program for all employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law.

(c) The implementation, maintenance, and update of security and breach investigation and incident response procedures that are reasonably designed to protect Confidential Information and Personally Identifiable Information from unauthorized access, use, modification, disclosure, manipulation or destruction; and

(d) A requirement that the maintenance of all Confidential Information and Personally Identifiable Information by a Vendor, Subcontractor or Registrant must meet the standards provided in 257.03.

(4) Sports Wagering Operators shall encrypt or hash and protect, including through the use of multi-factor authentication, from incomplete transmission, misrouting, unauthorized message modification, disclosure, duplication or replay all Confidential Information and Personally Identifiable Information.

#### 257.04 : Patron Access

(1) Patrons shall be provided with a method to make the requests in 205 CMR 257.04(1)(a)-(e). The request must be clearly and conspicuously available to the patron online through the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm their request more than once, and no intervening



pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

(a) A description as to how their Confidential Information or Personally Identifiable Information is being used, including confirmation that such Confidential Information or Personally Identifiable Information is being used in accordance with this Section 205 CMR 257;

(b) Access to a copy of their Confidential Information or Personally Identifiable Information maintained by the Operator or a Vendor, Subcontractor, or Registrant of the Operator;

(c) Updates to their Confidential Information or Personally Identifiable Information;

(d) The imposition of additional restriction on the use of their Confidential Information or Personally Identifiable Information for particular uses; and

(e) That their Confidential Information or Personally Identifiable Information be erased when it is no longer required to be retained by applicable law or Court order.

(2) A Sports Wagering Operator shall provide a written response to a request submitted pursuant to 257.04(1) that either grants or denies the request.

(a) If the Sports Wagering Operator grants the patron's request to access a copy of their Personally Identifiable Information, the Sports Wagering Operator shall provide the patron their Confidential Information or Personally Identifiable Information in a structured, commonly used and machine readable format.

(b) If the Sports Wagering Operator denies the request, the Sports Wagering Operator shall provide in its written response specific reason(s) supporting the denial and directions on how the patron may file a complaint regarding the denial with the Commission.

(3) A Sports Wagering Operator shall grant the patron's request to impose a restriction or erase their Confidential Information or Personally Identifiable Information if it is no longer necessary to retain the patron's Confidential Information or Personally Identifiable Information (or to retain the patron's Confidential Information or Personally Identifiable Information without the requested restriction) to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.; and

(a) The patron withdraws their consent to the Sports Wagering Operator's retention of their Confidential Information or Personally Identifiable Information;

(b) There is no overriding legal interest to retaining the patron's Confidential Information or Personally Identifiable Information;

(c) The patron's Confidential Information or Personally Identifiable Information was used in violation of 205 CMR 257.00; or

(d) Restriction or erasure is necessary to comply with an order from the Commission or a court.

(4) If the Sports Wagering Operator grants the patron's request to erase their Confidential Information or Personally Identifiable Information, the Sports Wagering Operator shall erase the patron's Personally Identifiable Information or Confidential from all storage media it is currently using to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, including HDD, SDD, flash, mobile, cloud, virtual, RAID, LUN, hard disks, solid state memory, and other devices. The Sports Wagering Operator shall also request commercially reasonable confirmation of deletion from any Vendor, Registrant, or Subcontractor who received the patron's Confidential Information or Personally Identifiable Information from the Sports Wagering Operator. Notwithstanding, the foregoing, the Sports Wagering Operator shall not erase a patron's Confidential Information or Personally Identifiable Information on backup or storage media used to ensure the integrity of the Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform from technology failure or to comply with its data retention schedule or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity.

(5) An Operator, or a Vendor, Registrant or Subcontractor of an Operator shall not require a Patron to enter into an agreement waiving any of the Patron's rights under this Section 257.



## REASON FOR REQUEST OF WAIVER

### **DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:**

205 CMR 257.02(2) – October 1, 2024  
205 CMR 257.02(5) – July 1, 2024  
205 CMR 257.03 generally – February 1, 2024  
205 CMR 257.03(3) – October 1, 2025  
205 CMR 257.04 – October 1, 2024

*Per 205 CMR 102.03(4)(b)*

### **PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

This is a series of new regulations, the text of which was finalized on August 8, 2023, with an original effective date of September 1, 2023. The Commission provided a blanket waiver of 205 CMR 257 through November 17, 2023, with the expectation of operators submitting supplemental waiver requests of specific sections along with an implementation timeline. This shall serve as FanDuel's supplemental implementation waiver request.

The Commission has created a data privacy regulation specifically for the sports wagering industry that is the first of its kind in the United States. Multiple provisions of this regulation deviate from standards and applicable statutes and regulations found in other jurisdictions (CA, CO, CT, UT, VA) on data privacy which sports wagering operators have already developed their systems to comply with. The proposed regulations require significant changes to FanDuel's technological architecture, both with respect to customer-facing elements and with respect to FanDuel's back-end systems that maintain customer data. The proposed regulations also require changes to business processes and agreements with third parties.

We believe our proposed waiver periods are reasonable and consistent with data privacy implementation periods in other jurisdictions, which commonly provided 2 years for implementation following the respective privacy law's enactment. A similar process was used in Massachusetts for the implementation of its original data security regulations which were passed in August of 2007 with an effective date of the regulation implementing the Act of March 1, 2010. The regulations (which largely parrot the statute) themselves contained a compliance period from promulgation in November 2009 to implementation in March 2010 (see G.L. c. 93H (signed into law on August 2, 2007, effective November 5, 2007, and 201 CMR 17.05, promulgated November 13, 2009, effective March 1, 2010).

Many of the provisions of this regulation, in particular the "opt-in" consent required for the use of personally identifiable information, are based off of the European Union General Data Protection Regulation (GDPR) which was highlighted during the Commission's roundtable with operators on September 19, 2023. GDPR had an implementation timeline of 2 years following its adoption. The adoption of which took place after more than four years of discussion and negotiations over the language. It is with this precedent in mind that the following implementation waiver is submitted.

*Per 205 CMR 102.03 (4)(a)(4)*

### **PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**



Data privacy regulation is an evolving field. As stated previously, in recognition of that fact, when other jurisdictions have implemented broad new data privacy requirements, they have provided lengthy periods (often multiple years) for businesses to develop and implement solutions to comply with the statute and/or regulations.

We appreciate the written guidance that has been provided by the Commission to operators<sup>1</sup> and have relied heavily upon this guidance in the scoping and drafting of this waiver request. Further, any change to, or deviation from, the guidance will require a reconsideration of our implementation timelines and scope of necessary waivers.

***205 CMR 257.02(2):***

FanDuel has scoped out the work necessary to create a compliant affirmative consent or “opt-in” mechanism for use of a patron’s confidential information or personally identifiable information for purposes beyond those “necessary to operate”. In initial discussions with product teams, we expect the development and implementation of the opt-in mechanism to be completed by October 1, 2024, with the following estimated project timeline:

Commence development – Q4 2023

Development of solution – 20-24 weeks

Testing of solution – 4-6 weeks

Roll out of solution – 1-2 months in order to gain release note approvals and connect consent mechanism with internal systems for operational purposes.

It would not be a hardship, but an impossibility, for FanDuel to develop, test, and implement a compliant affirmative consent or “opt-in” mechanism by the November 17<sup>th</sup> expiration of the current waiver. Thus, we are requesting a waiver of 205 CMR 257.02(2) until October 1, 2024, by which time FanDuel will be able to comply with the provisions of this section.

***205 CMR 257.02(5):***

FanDuel is currently in the process of completing a request for proposals for a new vendor who will assist in implementing tools for data analysis related to responsible gaming and whose services will allow FanDuel to comply with the requirements of this section. FanDuel expects to deploy an initial version of these tools in Q1 2024, with continued iterations throughout 2024 as we make improvements. It is not possible for FanDuel to implement this new tooling by the November 17<sup>th</sup> expiration of the current waiver. Thus, we are requesting a waiver of 205 CMR 257.02(5) until July 1, 2024, by which time FanDuel will be able to comply with the provisions of this section.

***205 CMR 257.03 (generally):***

FanDuel is currently in the process of scoping the nature of its data sharing with third parties in light of the Commission guidance provided on October 27<sup>th</sup> and the clarification of what is deemed “necessary to operate.” It would be a substantial hardship for FanDuel to complete that analysis and turn off all sharing of data with third parties that is not deemed “necessary to operate” by the November 17<sup>th</sup> expiration of the current waiver. Thus, we are requesting a waiver of 205 CMR 257.03 generally until February 1, 2024, by which time FanDuel will be able to comply with the provisions of this section (other than 205 CMR 257.03(3) – of which a separate request is detailed below).

***205 CMR 257.03(3):***

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<sup>1</sup> Document entitled “Data Privacy QA Guidance” – as updated on October 27, 2023.



FanDuel maintains many contracts with third parties which relate to the sharing of patron's confidential information or personally identifiable information as necessary to operate its platform. This section requires that FanDuel have an agreement with any third party with which it shares patron's confidential information or personally identifiable information including specific provisions which must be addressed in the agreement.

It would be a substantial hardship, if not impossibility, for FanDuel to renegotiate all of its contracts with third parties by the November 17<sup>th</sup> expiration of the current waiver. Many of FanDuel's contracts with vendors run 18-24 months. Thus, we are requesting a waiver of 205 CMR 257.03(3) until October 1<sup>st</sup>, 2025, to allow contract negotiations to take place to ensure that the specifically required provisions are addressed in agreements between FanDuel and the third parties it shares patron's confidential information or personally identifiable information with.

There is also precedent for granting operators a two-year implementation period for these requirements. When the New York Department of Financial Services issued its Part 500 cybersecurity regulation, Covered Entities were granted two years from the effective date of the rule to implement its provisions requiring prescriptive updates to third-party service provider agreements.

***205 CMR 257.04:***

While FanDuel currently has implemented a mechanism for withdrawal of patron consent to certain uses of their data, process improvements are required to ensure compliance with the provisions of this section. Further, it would be an impossibility for FanDuel to implement a fully compliant withdrawal of consent mechanism to withdraw the consents required under 205 CMR 257.02(2) prior to the completion and implementation of the affirmative consent mechanism. Thus, we are requesting a waiver of 205 CMR 257.04 until October 1, 2024, by which time FanDuel will be able to comply with the provisions of this section.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

N/A

**DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





November 1, 2023

Massachusetts Gaming Commission  
101 Federal Street  
Boston, MA 02110

**Re: Fanatics Betting and Gaming – Compliance with 205 CMR 257**

To Whom It May Concern:

I write on behalf of Fanatics Betting and Gaming (“FBG”) to request certain time-based waivers related to FBG’s compliance with 205 CMR 257 Sports Wagering Data Privacy (the “Data Privacy Rules”). Herein, FBG provides an implementation timeline, which lays out when FBG currently believes it can come into compliance with each applicable subpart of the Data Privacy Rules. Based in part on this implementation timeline, we are also submitting a formal Waiver/Variance Request Form, whereby FBG requests time-based waivers to build technical and other solutions to comply with the Data Privacy Rules.

We thank the Massachusetts Gaming Commission (“MGC” or the “Commission”) for their guidance and consideration in working with the industry on the implementation of these Data Privacy Rules, and we stand ready to address any questions specific to FBG’s proposed implementation timeline.

Sincerely,

Alex Smith  
VP Regulatory Affairs & Compliance



## **Current State of FBG**

As the Commission is aware, FBG launched its digital sports wagering platform earlier this year, with Massachusetts being one of the first markets FBG entered. To date, FBG operates its online sports wagering platform in five jurisdictions: Massachusetts, Ohio, Maryland, Tennessee, and Kentucky.

Additionally, the Commission is aware that in June 2023, FBG announced its intention to acquire the U.S. business of PointsBet Holdings Limited, which currently operates sports wagering offerings in 14 U.S. state markets. To date, FBG has closed on nine PointsBet state entities, and expects the full acquisition to close in the first quarter of 2024. As part of this acquisition, FBG intends to wind down the PointsBet online platform in the relevant markets, migrate existing PointsBet customers to the FBG online sportsbook platform, and launch under the FBG brand on FBG's tech stack, which currently is live in Massachusetts.

This context is important for two reasons. First, given FBG only launched in 2023, came out of beta mode in August, and operates in a limited number of jurisdictions, the Company is not currently subject to as broad an array of state-specific data privacy rules and requirements as many of its competitors (e.g., FBG operates in 20 fewer jurisdictions than DraftKings). While FBG is committed to patron privacy and already has in place a number of privacy-focused features, it will need the coming months to fully implement all of the proscriptive requirements applicable to its business in each market. Put differently, FBG's competitors have a "head start" from a technical and operational perspective in terms of complying with the applicable requirements found in the Data Privacy Rules, which may necessitate a longer waiver period for FBG.

While FBG has been preparing to fully comply with all applicable state law requirements in the states in which it will launch, the applicable requirements contained in the Data Privacy Rules (e.g. applicability to both patron Personally





Identifiable Information and Confidential Information) go beyond those in any other market, including the California Privacy Protection Act.

Second, it is of critical importance to the viability of FBG's business that the Company swiftly launches its mobile sportsbook in all addressable markets and carries out the planned migrations of PointsBet customers to the FBG platform in 12 of PointsBet's current state markets. Given the importance of these efforts, the vast majority of FBG's software engineering team is solely focused on executing these launches and migrations in the coming months, with limited capacity for additional projects. While the Company will make every effort to progress its compliance efforts with the Data Privacy Rules, including implementing interim and iterative enhancements, the fact that FBG is currently engaged in a complex, multi-state roll out and migration effort will also impact the speed at which FBG can fully comply with the full set of applicable Data Privacy Rules.

## **Key Assumptions**

In reviewing the Data Privacy Rules, as well as the guidance provided to the industry by the MGC staff (last updated October 27, 2023), FBG has developed an implementation plan based on our good faith interpretation of the applicable requirements, including the key limitation that the use and sharing of Personally Identifiable and Confidential Information be limited to that which is "necessary to operate" our business. For example, based in part on the industry guidance provided by MGC staff, we interpret that specific requirement to mean that FBG is allowed to process patron Personally Identifiable Information and Confidential Information:

- For all activities & features that a patron would reasonably expect are related to providing a sports wagering service (e.g., provide markets & pricing, accept & settle wagers, communicate wager details, accept funds & withdrawals etc, regulatory and financial business reporting);

- For select activities and features meant to enhance patrons' in-app experiences and improve the viability of the sportsbook, such as in-app promotion offerings, the sequencing and presentation of content to patrons within the app to reflect their known prior behavior (such as personalizing search results), and sharing data with certain Fanatics affiliates to fulfill promises (such as granting and redeeming FanCash rewards points, Fanatics Commerce merchandise awards, etc.);
- For activities and features meant to improve patrons' out-of-app experience with FBG, such as: digital marketing (e.g. paid social or display advertising), customer lifecycle marketing, advertising measurement, and third-party affiliate data sharing to fulfill customer promises (e.g. third-party acquisition promotion delivery); and
- Allowance for data sharing across the Fanatics Holdings, Inc. universe of companies (Fanatics Commerce, Fanatics Collectibles, Lids) for marketing purposes as well as maintenance of a single Fanatics login credential (FanID).

FBG also assumes that "as necessary to operate" the business would not permit it to process patron Personally Identifiable Information or Confidential Information for:

- Specific non-essential activities and features meant to increase the customers' engagement with FBG, such as: digital retargeting, reactivation marketing based on periods of inactivity, and other specifically enumerated restrictions provided in the Data Privacy Rules.

## **Implementation Plan**

Below, FBG sets out each subpart of 205 CMR 257 and addresses the timeline in which the Company believes it can come into compliance, along with a summary of the key work required in order to reach compliance.

### **257.02 Data Use and Retention**

Compliance with 257.02 will require FBG to:

- Build a bespoke consent collection & management system that does not currently exist in FBG's platform, connect certain services to that system, and cause those services to check consents in MA before acting;
- Build a new user experience flow for collecting consents and allowing for opt-outs;
- Implement tools, processes, and guardrails to prevent defined data elements from being used for non-essential features and activities;
- Develop a workflow for destruction of patron PII on required timelines, while de-conflicting such deletion requirements with data retention obligations in other states given FBG's multi-state wallet solution; and
- Build additional analytics reports for responsible gaming purposes.

**Timeline for Compliance: 18 months**

**257.03 Data Sharing**

Compliance with 257.03 will require FBG to:

- Enable conditional sharing of data based on patron consent;
- Modify numerous existing contractual agreements with third parties; and
- Implement controls and assessments of third party usage of confidential information.

**Timeline for Compliance: 12 months**

**257.04 Patron Access**

Compliance with 257.04 will require FBG to:

- Build and enhance data subject request flows that allow patrons to exercise the specific data subject rights and mechanisms provided for in the Data Privacy Rules; and

- Build functionality that fulfills the expanded data subject rights provided for in the Data Privacy Rules, while remaining compliant with regulations in other markets where FBG operates.

**Timeline for Compliance: 12 months**

**257.05 Data Program Responsibilities**

Compliance with 257.05 will require FBG to:

- Further develop and continually test FBG's policies and programs for compliance with the specific security requirements set forth in the Data Privacy Rules

**Timeline for Compliance: 6 months**

**257.06 Data Breaches**

Compliance with 257.06 will require FBG to:

- Based on FBG's interpretation of this section, no waiver is required as the Company is currently in compliance.

**Timeline for Compliance: Currently in compliance**

## **Reporting/Compliance Updates**

The FBG compliance team will closely monitor progress towards full compliance with the Data Privacy Rules, and will provide quarterly updates to MGC staff outlining progress made in the prior quarter, as well as expectations for progress in the upcoming quarter.



## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** FBG Enterprises Opco LLC d/b/a Fanatics Sportsbook

**NAME OF INDIVIDUAL COMPILING REQUEST:** Alex Smith

**TITLE OF INDIVIDUAL COMPILING REQUEST:** VP Regulatory Affairs & Compliance

**CONTACT EMAIL ADDRESS:** alex@betfanatics.com

**CONTACT PHONE NUMBER:** 870-897-2981

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:** 205 CMR 257

**REGULATION SECTION TITLE:** Sports Wagering Data Privacy

**REGULATION LANGUAGE/TEXT:**

257.02: Data Use and Retention

(1) A Sports Wagering Operator shall only use Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(2) If a Sports Wagering Operator seeks to use a patron's Confidential Information or Personally Identifiable Information for purposes beyond those specified in 205 CMR 257.02(1), a Sports Wagering Operator shall obtain the patron's consent, which may be withdrawn at any time.

(a) Such consent must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information in the same document shall not constitute adequate consent, nor shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmative indication of consent.

(b) Consent shall not be deemed to be a waiver of any of the patron's other rights.



(c) The option to withdraw such consent must be clearly and conspicuously available to the patron on the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

(3) A Sports Wagering Operator may not use a patron's Personally Identifiable Information or Confidential Information, or any information derived from it, to promote or encourage specific wagers or promotional offers based on:

(a) a period of dormancy or non-use of a Sports Wagering Platform;

(b) the wagers made or promotional offers accepted by other patrons with a known or predicted social connection to the patron;

(c) the communications of the patron with any third party other than the Operator;

(d) the patron's actual or predicted:

1. income, debt, net worth, credit history, or status as beneficiary of governmental programs;

2. medical status or conditions; or

3. occupation.

(e) Any computerized algorithm, automated decision-making, machine learning, artificial intelligence, or similar system that is known or reasonably expected to make the gaming or sports wagering platform more addictive.

(f) Engagement or utilization of play management options, including type of limit, frequency of engagement or utilization of play management options, and frequency of changing limits;

(g) Engagement or utilization of cooling-off options, including duration of cooling-off period, frequency of engagement or utilization of cooling-off options, and frequency of changing cooling-off periods;

(h) Engagement or utilization of any measure in addition to those described in 205 CMR 257.02(3)(f) and (g) intended to promote responsible gaming.

(4) A Sports Wagering Operator shall only retain a patron's Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(5) A Sports Wagering Operator shall collect and aggregate patrons' Confidential Information and Personally Identifiable Information to analyze patron behavior for the purposes of identifying and developing programs and interventions to promote responsible gaming and support problem gamblers, and to monitor and deter Sports Wagering in violation of M.G.L. c. 23N and 205 CMR. The Sports Wagering Operator shall provide a report to the Commission at least every six months on the Sports Wagering Operator's compliance with 205 CMR 257.02(5), including the trends observed in this data and the Sports wagering Operator's efforts to mitigate potential addictive behavior.

#### 257.03: Data Sharing

(1) A Sports Wagering Operator shall not share a patron's Confidential Information or Personally Identifiable Information with any third party except as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

(2) If a Sports Wagering Operator shares a patron's Confidential Information or Personally Identifiable Information pursuant to 257.03(1), the Operator shall take commercially reasonable measures to ensure the party receiving a patron's Confidential Information or Personally Identifiable Information keeps such data private and confidential, except as required to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity. The party receiving such data shall only use a patron's Confidential Information or Personally Identifiable Information for the purpose(s) for which the data was shared.



(3) If a Sports Wagering Operator deems it necessary to share a patron's Confidential Information or Personally Identifiable Information with a Sports Wagering Vendor, Sports Wagering Subcontractor, or Sports Wagering Registrant in order to operate its Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, a Sports Wagering Operator shall enter into a written agreement with the Sports Wagering Vendor, Sports Wagering Subcontractor or Sports Wagering Registrant, which shall include, at a minimum, the following obligations:

(a) The protection of all Confidential Information or Personally Identifiable Information that may come into the third party's custody or control against a Data Breach;

(b) The implementation and maintenance of a comprehensive data-security program for the protection of Confidential Information and Personally Identifiable Information, which shall include, at a minimum, the following:

1. A security policy for employees relating to the storage, access and transportation of Confidential Information or Personally Identifiable Information;

2. Restrictions on access to Personally Identifying Information and Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;

3. A process for reviewing data security policies and measures at least annually; and

4. An active and ongoing employee security awareness program for all employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law.

(c) The implementation, maintenance, and update of security and breach investigation and incident response procedures that are reasonably designed to protect Confidential Information and Personally Identifiable Information from unauthorized access, use, modification, disclosure, manipulation or destruction; and

(d) A requirement that the maintenance of all Confidential Information and Personally Identifiable Information by a Vendor, Subcontractor or Registrant must meet the standards provided in 205 CMR 257.03.

(4) Sports Wagering Operators shall encrypt or hash and protect, including through the use of multi-factor authentication, from incomplete transmission, misrouting, unauthorized message modification, disclosure, duplication or replay all Confidential Information and Personally Identifiable Information.

#### 257.04: Patron Access

(1) Patrons shall be provided with a method to make the requests in 205 CMR 257.04(1)(a) through (e). The request must be clearly and conspicuously available to the patron online through the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm their request more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.

(a) A description as to how their Confidential Information or Personally Identifiable Information is being used, including confirmation that such Confidential Information or Personally Identifiable Information is being used in accordance with 205 CMR 257.00;

(b) Access to a copy of their Confidential Information or Personally Identifiable Information maintained by the Operator or a Vendor, Subcontractor, or Registrant of the Operator;

(c) Updates to their Confidential Information or Personally Identifiable Information;

(d) The imposition of additional restriction on the use of their Confidential Information or Personally Identifiable Information for particular uses; and

(e) That their Confidential Information or Personally Identifiable Information be erased when it is no longer required to be retained by applicable law or Court order.

(2) A Sports Wagering Operator shall provide a written response to a request submitted pursuant to 205 CMR 257.04(1) that either grants or denies the request.

(a) If the Sports Wagering Operator grants the patron's request to access a copy of their Personally Identifiable Information, the Sports Wagering Operator shall provide the patron their Confidential Information or Personally Identifiable Information in a structured, commonly used and machine readable format.

(b) If the Sports Wagering Operator denies the request, the Sports Wagering Operator shall provide in its written response specific reason(s) supporting the denial and directions on how the patron may file a complaint regarding the denial with the Commission.



(3) A Sports Wagering Operator shall grant the patron's request to impose a restriction or erase their Confidential Information or Personally Identifiable Information if it is no longer necessary to retain the patron's Confidential Information or Personally Identifiable Information (or to retain the patron's Confidential Information or Personally Identifiable Information without the requested restriction) to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes; and

(a) It is no longer necessary to retain the patron's Confidential Information or Personally Identifiable Information to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity;

(b) The patron withdraws their consent to the Sports Wagering Operator's retention of their Confidential Information or Personally Identifiable Information;

(c) There is no overriding legal interest to retaining the patron's Confidential Information or Personally Identifiable Information;

(d) The patron's Confidential Information or Personally Identifiable Information was used in violation of 205 CMR 257.00; or

(e) Restriction or erasure is necessary to comply with an order from the Commission or a court.

(4) If the Sports Wagering Operator grants the patron's request to erase their Confidential Information or Personally Identifiable Information, the Sports Wagering Operator shall erase the patron's Personally Identifiable Information or Confidential from all storage media it is currently using to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, including HDD, SDD, flash, mobile, cloud, virtual, RAID, LUN, hard disks, solid state memory, and other devices. The Sports Wagering Operator shall also request commercially reasonable confirmation of deletion from any Vendor, Registrant, or Subcontractor who received the patron's Confidential Information or Personally Identifiable Information from the Sports Wagering Operator. Notwithstanding, the foregoing, the Sports Wagering Operator shall not erase a patron's Confidential Information or Personally Identifiable Information on backup or storage media used to ensure the integrity of the Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform from technology failure or to comply with its data retention schedule or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity.

(5) An Operator, or a Vendor, Registrant or Subcontractor of an Operator shall not require a Patron to enter into an agreement waiving any of the Patron's rights under 205 CMR 257.04.

#### 257.05: Data Program Responsibilities

(1) A Sports Wagering Operator shall develop, implement and maintain comprehensive administrative, technical and physical data privacy and security policies appropriate to the size and scope of business and addressing, at a minimum:

(a) Practices to protect the confidentiality, integrity and accessibility of Confidential Information or Personally Identifiable Information;

(b) The secure storage, access and transportation of Confidential Information or Personally Identifiable Information, including the use of encryption and multi-factor authentication;

(c) The secure and timely disposal of Confidential Information or Personally Identifiable Information, including data retention policies;

(d) Employee training on data privacy and cybersecurity for employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law;

(e) Restrictions on access to Personally Identifying Information or Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;

(f) Reasonable monitoring of systems, for unauthorized use of or access to Confidential Information or Personally Identifying Information;





- (g) Reasonably up-to-date versions of system security agent software which must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis;
- (h) Cybersecurity insurance, which shall include, at a minimum, coverage for data compromise response, identity recovery, computer attack, cyber extortion and network security;
- (i) Data Breach investigation and incident response procedures;
- (j) Imposing disciplinary measures for violations of Confidential Information and Personally Identifiable Information policies;
- (k) Active oversight and auditing of compliance by Vendors, Registrants, or Subcontractors with 205 CMR 257.03(3) and with the Operator's Confidential Information and Personally Identifying Information policies.
- (l) Quarterly information system audits; and
- (m) A process for reviewing and, if necessary, updating data privacy policies at least annually.

(2) A Sports Wagering Operator shall maintain on its website and Sports Wagering Platform a readily accessible copy of a written policy explaining to a patron the Confidential Information and Personally Identifiable Information that is required to be collected by the Sports Wagering Operator, the purpose for which Confidential Information or Personally Identifiable Information is being collected, the conditions under which a patron's Confidential Information or Personally Identifiable Information may be disclosed, and the measures implemented to otherwise protect a patron's Confidential Information or Personally Identifiable Information. A Sports Wagering Operator shall require a patron to agree to the policy prior to collecting any Confidential Information or Personally Identifiable Information, and require a patron to agree to any material updates. Agreement to this policy shall not constitute required consent for any additional uses of information.

(3) A Sports Wagering Operator, Sports Wagering Vendor, Sports Wagering Subcontractor, Sports Wagering Registrant, or Person to whom an Occupational License is issued shall comply with all applicable state and federal requirements for data security, including M.G.L. c. 93A, M.G.L. c. 93H, 940 CMR 3.00: General Regulations, 940 CMR 6.00: Retail Advertising and 201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth.

### REASON FOR REQUEST OF WAIVER

**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:**

- 257.02 Data Use and Retention – 18 months
- 257.03 Data Sharing – 12 months
- 257.04 Patron Access – 12 months
- 257.05 Data Program Responsibilities – 6 months

*Per 205 CMR 102.03(4)(b)*

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

See implementation plan.

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

See implementation plan.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**



### **DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





MGM SPRINGFIELD  
ONE MGM WAY  
SPRINGFIELD, MA 01103

413.273.5000  
MGMSPRINGFIELD.COM

November 1, 2023

***Via Email***

Dir. Bruce Band  
Massachusetts Gaming Commission  
Division of Sports Wagering  
101 Federal St, 12<sup>th</sup> Floor  
Boston, MA 02110

**Re: Sports Wagering Data Privacy Variance Request**

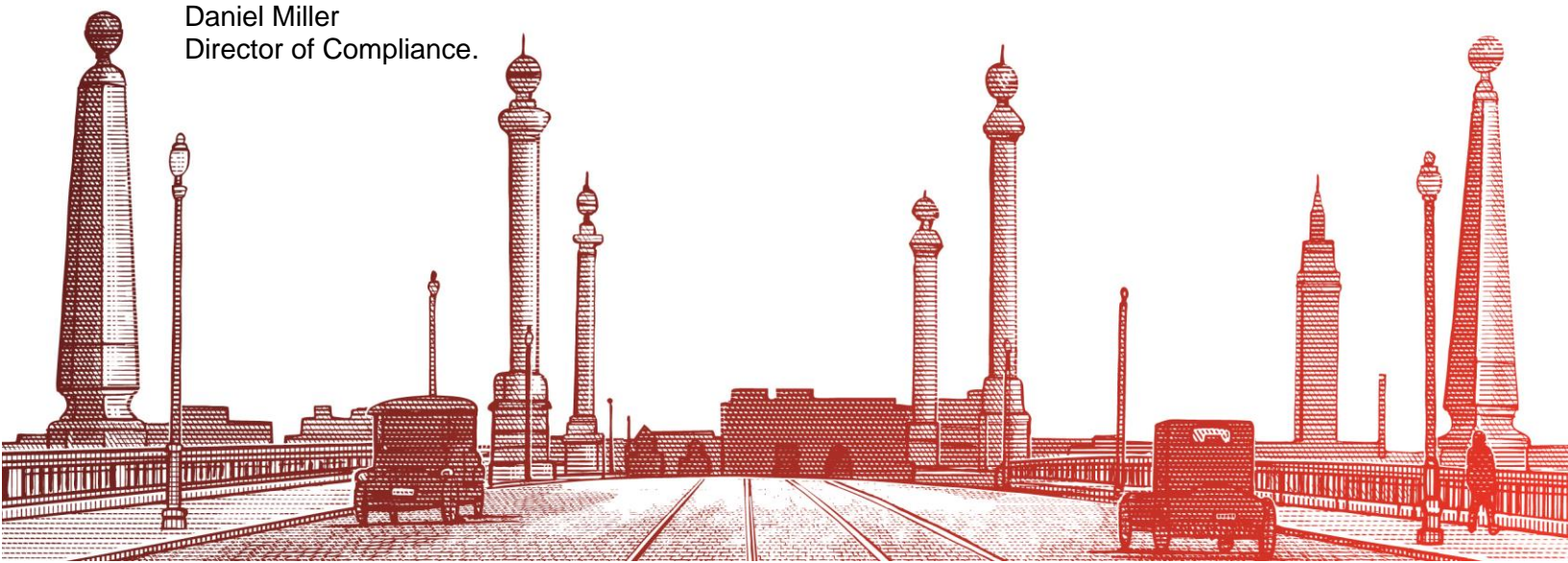
Dear Mr. Band:

MGM Springfield respectfully requests a temporary variance to the requirements of regulation 205 CMR 257.

To comply with regulation 205 CMR 257, as a retail sports wagering operator, we are working with our service provider, BetMGM, to assess the impact of the regulation. Similarly, a review of existing contracts with our service provider and other subcontractors needs to be completed, to assess provisions in those contracts related to data privacy and the requirements under the new regulation. In some cases, amendments to said contracts may be necessary. This review is expected to take 120 – 180 days in order to identify relevant contracts, communicate with such vendors and subcontractors regarding the necessary changes, and update such contracts.

Sincerely,

Daniel Miller  
Director of Compliance.





MGM SPRINGFIELD  
ONE MGM WAY  
SPRINGFIELD, MA 01103

413.273.5000  
MGMSPRINGFIELD.COM

I certify that, to the best of my knowledge and belief, all information above is accurate and that this request will not lessen the applicable administrative, accounting, or physical control of MGMS's sports wagering operations.

*Arlen Carballo*

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Name: Arlen Carballo  
Title: VP of Finance  
Date: 11/1/2023

*Augustine Kim*

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Name: Augustine Kim  
Title: VP & Legal Counsel  
Date:



## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** Blue Tarp ReDevelopment, LLC  
d/b/a MGM Springfield

**NAME OF INDIVIDUAL COMPILING REQUEST:** Daniel Miller

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Compliance Director

**CONTACT EMAIL ADDRESS:** dmiller@mgmspringfield.com

**CONTACT PHONE NUMBER:** (413)557-8143

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**  
[akim@mgmspringfield.com](mailto:akim@mgmspringfield.com),

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:** 205 CMR 257.00

**REGULATION SECTION TITLE:** Sports Wagering Data Privacy

**REGULATION LANGUAGE/TEXT:**

205 CMR 257: SPORTS WAGERING DATA PRIVACY

Entire Regulation as currently written.

### REASON FOR REQUEST OF WAIVER

**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:** 180 days from when the current waiver expires on 11/17/2023.

*Per 205 CMR 102.03(4)(b)*

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

Certain contract legal review and possible updates and amendments to same may be necessary in order to comply with the regulation.



*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

The current deadline will not provide enough time to ensure adequate review with vendors and subcontractors and to enact any necessary amendments to contracts. MGM Springfield would not fully comply with 205 CMR 257 Sports Wagering Privacy.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

MGM Springfield is requesting a one hundred eighty (180) day exception. This would allow our data privacy and legal teams to collaborate with necessary vendors and subcontractors to review and amend contracts where and when necessary.

**DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





November 1, 2023

**VIA EMAIL ONLY**

Crystal Beauchemin, Sports Wagering Business Manager  
Massachusetts Gaming Commission  
101 Federal Street  
Boston, MA 02110

**Re: Penn Sports Interactive, LLC (“PSI”) Implementation Planning for 205 CMR 257**

Dear Ms. Beauchemin,

PSI appreciates the willingness of the Massachusetts Gaming Commission (the “Commission”) to collaborate with Sports Wagering Operators to ensure that 205 CMR 257: Sports Wagering Data Privacy is implemented in an efficient manner and as intended by the Commission. Please accept this letter and the enclosed information as PSI’s submission of the action plan for implementation of all requirements.

Please note, the information, timelines, and plans for implementation explained in PSI’s action plan are formulated in reliance on the guidance related to 205 CMR 257 that the Commission provided to sports wagering operators on October 20, 2023. To the extent any of this previously issued guidance changes, it may also result in necessary changes to PSI’s current plan(s) for implementation of the applicable regulatory requirements.

**Items that PSI believes it can complete immediately upon expiration of the current universal waiver:**

After careful consideration and due diligence, PSI does not anticipate the need for any additional waivers related to the requirements of 205 CMR 257. PSI currently incorporates relevant policies and procedures in satisfaction of the applicable requirements and/or does not have concerns with satisfaction of the requirements upon expiration of the currently effective universal waiver valid through November 17, 2023.

**Items that may be more difficult to implement for any reason:**

PSI does, however, respectfully request additional guidance from the Commission related to the reporting necessary under 205 CMR 257.02(5) to ensure that the correct information is included, as well as further details on when the first iteration of the relevant report must be submitted to the Commission. For this reason, 205 CMR 257.02(5) is indicated as an item that will be more difficult to implement. PSI is not seeking an additional extension for this requirement and is confident that it can meet the reasonable submission deadline to be determined by the Commission upon receipt of the additional guidance requested.

Please do not hesitate to contact me should there be any questions or if additional information is needed.



Regards,

*Adam Kates*

Adam Kates  
Sr. Director, Compliance  
Penn Sports Interactive, LLC

cc:

Bruce Band, Director of Sports Wagering, Massachusetts Gaming Commission, *via email only*

Andrew Steffen, Interim Sports Wagering Operations Manager, Massachusetts Gaming Commission, *via email only*

Chris Soriano, VP Chief Compliance Officer, PENN Entertainment, Inc., *via email only*

Samantha Haggerty, Deputy Chief Compliance Officer & Regulatory Affairs Counsel, PENN Entertainment Inc., *via email only*

Leo Wan, VP, Legal – Intellectual Property and Privacy, PENN Entertainment Inc., *via email only*





**PSI – 205 CMR 257: Sports Wagering Data Privacy Action Plan:**

**1. Items that can be completed immediately.**

PSI is able to complete the following items and comply with the applicable regulatory requirements without the need for an additional temporary waiver or other extension upon the expiration of the currently effective blanket waiver for 205 CMR 257, which will occur on **November 18, 2023**:

**(a) 205 CMR 257.02: Data Use and Retention, subparts 257.02(1)-257.02(4):**

*(1) A Sports Wagering Operator shall only use Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.*

*(2) If a Sports Wagering Operator seeks to use a patron's Confidential Information or Personally Identifiable Information for purposes beyond those specified in 257.02(1), a Sports Wagering Operator shall obtain the patron's consent, which may be withdrawn at any time.*

*(a) Such consent must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Confidential Information or Personally Identifiable Information in the same document shall not constitute adequate consent, nor shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmative indication of consent.*

*(b) Consent shall not be deemed to be a waiver of any of the patron's other rights.*

*(c) The option to withdraw such consent must be clearly and conspicuously available to the patron on the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.*

*(3) A Sports Wagering Operator may not use a patron's Personally Identifiable Information or Confidential Information, or any information derived from it, to promote or encourage specific wagers or promotional offers based on:*

*(a) a period of dormancy or non-use of a Sports Wagering Platform;*

*(b) the wagers made or promotional offers accepted by other patrons with a known or predicted social connection to the patron;*

*(c) the communications of the patron with any third party other than the Operator;*

*(d) the patron's actual or predicted.*

*i. income, debt, net worth, credit history, or status as beneficiary of governmental programs;*

*ii. medical status or conditions; or*



*iii. occupation.*

*(e) Any computerized algorithm, automated decision-making, machine learning, artificial intelligence, or similar system that is known or reasonably expected to make the gaming platform more addictive;*

*(f) Engagement or utilization of play management options, including type of limit, frequency of engagement or utilization of play management options, and frequency of changing limits;*

*(g) Engagement or utilization of cooling-off options, including duration of cooling-off period, frequency of engagement or utilization of cooling-off options, and frequency of changing cooling-off periods;*

*(h) Engagement or utilization of any measure in addition to those described in 205 CMR 257.02(3)(f)-(g) intended to promote responsible gaming.*

*(4) A Sports Wagering Operator shall only retain a patron's Confidential Information and Personally Identifiable Information as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.*

PSI maintains robust policies and procedures that ensure the Confidential Information and Personally Identifiable Information of patrons is used only as necessary for reasonable and legitimate business purposes related to sports wagering operations. In addition, PSI currently utilizes patron Confidential Information and Personally Identifiable Information, as defined by 205 CMR 257, to inform and conduct marketing activities; however, PSI handles this on an "opt-in" basis. During the process to create and register a sports wagering account on the platform, PSI presents the patron with the option to affirmatively choose whether or not to receive marketing communications and materials utilizing checkbox functionality. If the patron does not choose to opt in at that time, the patron will not receive marketing communications until, and only if, the patron subsequently affirmatively grants their consent to receive. Moreover, once the account has been successfully registered, the choice remains with the patron as they may re-visit their marketing communication preferences, which enables them to efficiently opt-in or opt-out of receiving marketing materials via easy-to-use toggle functionality.

To the extent PSI seeks to use a patron's Confidential Information or Personally Identifiable Information for a reason not included in 257.02(1), PSI will ensure patron consent is properly received for those purposes in accordance with the requirements of this rule.

As it relates to 257.02(3), PSI understands the requirements and prohibitions. PSI will not use any patron Confidential Information or Personally Identifiable Information, or any information derived therefrom, to promote or encourage specific wagers or promotions being offered in the Commonwealth based on any of the enumerated considerations. Guidance on the requirements and specific prohibitions of 257.02(3) has been provided to PSI's Marketing Compliance team.

In addition, PSI currently maintains policies and procedures that are designed to ensure that the Confidential Information and Personally Identifiable Information of patrons is collected and retained only for reasonable and legitimate business purposes related to the operation of sports wagering. PSI also has processes in place that ensure compliance with all legal and regulatory requirements regarding the timely disposal of patron Confidential Information and Personally Identifiable Information when appropriate.



**(b) 205 CMR 257.03: Data Sharing:**

*(1) A Sports Wagering Operator shall not share a patron's Confidential Information or Personally Identifiable Information with any third party except as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.*

*(2) If a Sports Wagering Operator shares a patron's Confidential Information or Personally Identifiable Information pursuant to 257.03(1), the Operator shall take commercially reasonable measures to ensure the party receiving a patron's Confidential Information or Personally Identifiable Information keeps such data private and confidential, except as required to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity. The party receiving such data shall only use a patron's Confidential Information or Personally Identifiable Information for the purpose(s) for which the data was shared.*

*(3) If a Sports Wagering Operator deems it necessary to share a patron's Confidential Information or Personally Identifiable Information with a Sports Wagering Vendor, Sports Wagering Subcontractor, or Sports Wagering Registrant in order to operate its Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, a Sports Wagering Operator shall enter into a written agreement with the Sports Wagering Vendor, Sports Wagering Subcontractor or Sports Wagering Registrant, which shall include, at a minimum, the following obligations:*

*(a) The protection of all Confidential Information or Personally Identifiable Information that may come into the third party's custody or control against a Data Breach;*

*(b) The implementation and maintenance of a comprehensive data-security program for the protection of Confidential Information and Personally Identifiable Information, which shall include, at a minimum, the following:*

*i. A security policy for employees relating to the storage, access and transportation of Confidential Information or Personally Identifiable Information;*

*ii. Restrictions on access to Personally Identifying Information and Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;*

*iii. A process for reviewing data security policies and measures at least annually; and*

*iv. An active and ongoing employee security awareness program for all employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law.*

*(c) The implementation, maintenance, and update of security and breach investigation and incident response procedures that are reasonably designed to protect Confidential Information*



and Personally Identifiable Information from unauthorized access, use, modification, disclosure, manipulation or destruction; and

*(d) A requirement that the maintenance of all Confidential Information and Personally Identifiable Information by a Vendor, Subcontractor or Registrant must meet the standards provided in 257.03.*

*(4) Sports Wagering Operators shall encrypt or hash and protect, including through the use of multi-factor authentication, from incomplete transmission, misrouting, unauthorized message modification, disclosure, duplication or replay all Confidential Information and Personally Identifiable Information.*

As indicated above, PSI maintains robust policies and procedures that ensure the Confidential Information and Personally Identifiable Information of patrons is used only as necessary for reasonable and legitimate business purposes related to sports wagering operations, including any necessary sharing of such information with third parties. Moreover, PSI encrypts all patron Confidential Information and Personally Identifiable information within its possession and control.

In addition, whenever PSI determines it is necessary to share a patron's Confidential Information or Personally Identifiable Information with a Sports Wagering Vendor, Sports Wagering Subcontractor, and/or Sports Wagering Registrant for reasonable and legitimate business purposes, PSI requires that there be adequate contractual obligations related to data privacy and security in place prior to sharing. PSI will ensure all considerations included in 205 CMR 257.03(3)(a)-(d) are accounted for in such written agreements on a go-forward basis.

**(c) 205 CMR 257.04: Patron Access, subpart 257.04(1):**

*(1) Patrons shall be provided with a method to make the requests in 205 CMR 257.04(1)(a)-(e). The request must be clearly and conspicuously available to the patron online through the Sports Wagering Operator's Sports Wagering Platform. A patron shall not be required to confirm their request more than once, and no intervening pages (other than those needed to confirm withdrawal of consent) or offers will be presented to the patron before such confirmation is presented to the patron.*

*(a) A description as to how their Confidential Information or Personally Identifiable Information is being used, including confirmation that such Confidential Information or Personally Identifiable Information is being used in accordance with this Section 205 CMR 257;*

*(b) Access to a copy of their Confidential Information or Personally Identifiable Information maintained by the Operator or a Vendor, Subcontractor, or Registrant of the Operator;*

*(c) Updates to their Confidential Information or Personally Identifiable Information;*

*(d) The imposition of additional restriction on the use of their Confidential Information or Personally Identifiable Information for particular uses; and*

*(e) That their Confidential Information or Personally Identifiable Information be erased when it is no longer required to be retained by applicable law or Court order.*

PSI currently maintains procedures, which are included in its Privacy Policy, whereby a patron is provided a method to make requests concerning their Confidential Information and Personally Identifiable Information in accordance with 257.04(1). The Privacy Policy is clearly and conspicuously posted and readily available on the sports wagering platform and a patron must acknowledge review thereof to successfully establish and register their sports wagering account. Further, PSI has dedicated in-house



privacy professionals that oversee all incoming requests related to a patron's Confidential Information and Personally Identifiable Information. A high-level overview of this process is included below:

- The Privacy Policy, in compliance with all privacy laws and data privacy regulations, includes a description of how Confidential Information and Personally Identifiable Information is collected, used, disclosed.
- A patron may access a copy of their maintained Confidential Information and Personally Identifiable Information, subject to applicable laws, by contacting [privacy@pennentertainment.com](mailto:privacy@pennentertainment.com).
- A patron may also request an update to their Confidential Information and Personally Identifiable Information either by logging into their sports wagering account and sending an email to [privacy@pennentertainment.com](mailto:privacy@pennentertainment.com), or the patron may contact Customer Support to update the applicable information.
- A patron may also request the imposition of additional restrictions on the use of their Confidential Information and Personally Identifiable Information in accordance with applicable privacy laws and regulations by contacting [privacy@pennentertainment.com](mailto:privacy@pennentertainment.com). The ultimate imposition of the additional restriction(s) requested by the patron is subject to the applicable laws and regulations of the patron's state of residency.

In addition, PSI understands 205 CMR 257.04(1) requires this method to be available to the patron on the sports wagering platform. In order to increase the efficiency of this method, as well as patron awareness thereof, PSI will clearly and conspicuously incorporate appropriate messaging and a direct link to the proper contact address onto the platform within the appropriate page – for example, the Support page or something similar. This messaging will clearly and concisely indicate that if a patron wishes to review their Confidential Information and/or Personally Identifiable Information, or make any request concerning such information, they may do so by contacting [privacy@pennentertainment.com](mailto:privacy@pennentertainment.com).

PSI anticipates that it will be able to complete the product development work necessary to incorporate this notice onto the sports wagering platform by the expiry of the currently effective universal waiver, which is valid through November 17, 2023.

**(d) 205 CMR 257.04: Patron Access, subparts 257.04(2)-257.04(5):**

*(2) A Sports Wagering Operator shall provide a written response to a request submitted pursuant to 257.04(1) that either grants or denies the request.*

*(a) If the Sports Wagering Operator grants the patron's request to access a copy of their Personally Identifiable Information, the Sports Wagering Operator shall provide the patron their Confidential Information or Personally Identifiable Information in a structured, commonly used and machine readable format.*

*(b) If the Sports Wagering Operator denies the request, the Sports Wagering Operator shall provide in its written response specific reason(s) supporting the denial and directions on how the patron may file a complaint regarding the denial with the Commission.*

*(3) A Sports Wagering Operator shall grant the patron's request to impose a restriction or erase their Confidential Information or Personally Identifiable Information if it is no longer necessary to retain the patron's Confidential Information or Personally Identifiable Information (or to retain the patron's Confidential Information or Personally Identifiable Information without the requested restriction) to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those*



responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.; and

(a) The patron withdraws their consent to the Sports Wagering Operator's retention of their Confidential Information or Personally Identifiable Information;

(b) There is no overriding legal interest to retaining the patron's Confidential Information or Personally Identifiable Information;

(c) The patron's Confidential Information or Personally Identifiable information was used in violation of 205 CMR 257.00; or

(d) Restriction or erasure is necessary to comply with an order from the Commission or a court.

(4) If the Sports Wagering Operator grants the patron's request to erase their Confidential Information or Personally Identifiable Information, the Sports Wagering Operator shall erase the patron's Personally Identifiable Information or Confidential from all storage media it is currently using to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform, including HDD, SDD, flash, mobile, cloud, virtual, RAID, LUN, hard disks, solid state memory, and other devices. The Sports Wagering Operator shall also request commercially reasonable confirmation of deletion from any Vendor, Registrant, or Subcontractor who received the patron's Confidential Information or Personally Identifiable Information from the Sports Wagering Operator. Notwithstanding, the foregoing, the Sports Wagering Operator shall not erase a patron's Confidential Information or Personally Identifiable Information on backup or storage media used to ensure the integrity of the Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform from technology failure or to comply with its data retention schedule or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena or civil investigative demand of a governmental entity.

(5) An Operator, or a Vendor, Registrant or Subcontractor of an Operator shall not require a Patron to enter into an agreement waiving any of the Patron's rights under this Section 257.

As explained in detail in PSI's narrative response concerning 205 CMR 257.04(1) (please see section 2(c) of this Action Plan), PSI's Privacy Policy, which is readily available on the platform and must be acknowledged during the account registration process, currently provides a patron with a method and opportunity to submit requests related to their Confidential Information and/or Personally Identifiable Information in accordance with 257.04(1).

In compliance with various United States state privacy laws, PSI's dedicated in-house privacy professionals manage this consumer access requests process which includes the provision of a written response to the patron when any such request concerning their Confidential Information and/or Personally Identifiable Information is made. If the patron's request is denied, the patron is also afforded the benefit of an appeal process conducted in accordance with relevant state privacy laws, and any subsequent denial during the appeal by PSI is subject to review by a privacy regulator. In addition, the written response issued to the patron will advise them of their right to file a complaint with the appropriate authority(ies).

If PSI approves any patron request to erase their Confidential Information or Personally Identifiable Information, pursuant to the conditions included in 257.04(3), PSI will proceed with the required deletion procedures in accordance with 257.04(4) and its internal retention policies, which may include, when appropriate, anonymization and aggregation of patron Confidential Information and Personally Identifiable Information in a manner that prevents the data from being associated with any particular individual.

Finally, PSI does not require any patron to enter into any agreements that have the effect of waiving any rights of the patron under this regulation.



**(e) 205 CMR 257.05: Data Program Responsibilities, subpart 257.05(1):**

*(1) A Sports Wagering Operator shall develop, implement and maintain comprehensive administrative, technical and physical data privacy and security policies appropriate to the size and scope of business and addressing, at a minimum:*

*(a) Practices to protect the confidentiality, integrity and accessibility of Confidential Information or Personally Identifiable Information;*

*(b) The secure storage, access and transportation of Confidential Information or Personally Identifiable Information, including the use of encryption and multi-factor authentication;*

*(c) The secure and timely disposal of Confidential Information or Personally Identifiable Information, including data retention policies;*

*(d) Employee training on data privacy and cybersecurity for employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law;*

*(e) Restrictions on access to Personally Identifying Information or Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;*

*(f) Reasonable monitoring of systems, for unauthorized use of or access to Confidential Information or Personally Identifying Information;*

*(g) Reasonably up-to-date versions of system security agent software which must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis;*

*(h) Cybersecurity insurance, which shall include, at a minimum, coverage for data compromise response, identity recovery, computer attack, cyber extortion and network security;*

*(i) Data Breach investigation and incident response procedures;*

*(j) Imposing disciplinary measures for violations of Confidential Information and Personally Identifiable Information policies;*

*(k) Active oversight and auditing of compliance by Vendors, Registrants, or Subcontractors with 257.03(3) and with the Operator's Confidential Information and Personally Identifying Information policies.*

*(l) Quarterly information system audits; and*

*(m) A process for reviewing and, if necessary, updating data privacy policies at least annually.*

PSI currently maintains policies and procedures regarding each of the requirements under 205 CMR 257.05(1)(a) through (m). Please find the applicable information immediately below, organized by the relevant subpart to which it applies:

(a) – PSI has multiple controls in place to help ensure the protection of patron Confidential Information and Personally Identifiable Information, including data encryption, access controls and limits on which team members may access personal data, and procedures to alert for any unusual activity associated with patron Confidential Information and Personally Identifiable Information.



(b) – PSI ensures that all patron Confidential Information and Personally Identifiable Information is encrypted while in transit as well as at rest. In addition, PSI has access controls in place which ensure only authorized personnel can access Confidential Information and Personally Identifiable Information. Multi-factor authentication is implemented to further enhance the applicable access controls.

(c) – PSI has processes and policies in place to help ensure compliance with all applicable state laws and regulations around the retention and timely disposal of Confidential Information and Personally Identifiable Information, including formal request and fulfillment processes.

(d) – Annual privacy training is provided to PSI staff and quarterly bulletins are circulated covering privacy best practices that should be adhered to. In addition, privacy training is continually improved and updated to capture changes in the burgeoning privacy field across all jurisdictions. Such privacy training includes measures such as “phishing” simulations which are performed throughout the year and additional training for team members who fail these simulations.

(e) – PSI utilizes access control processes designed to allow only those individuals who absolutely need access to Confidential Information and Personally Identifiable Information to have that access. These processes include encrypted authentication, hashed password protections, and multi-factor authentication.

(f) – PSI has systems in place to monitor for access to Confidential Information and Personally Identifiable Information. These systems have a combination of static rules and risk-based evaluation criteria to determine whether an alert should be generated for suspicious activity.

(g) – PSI deploys security tools, including malware protection, anti-virus and overall endpoint protection are also deployed and are kept up to date. Patches are applied on a regular basis and any critical patches are reviewed and deployed in an expedited manner when and where appropriate.

(h) – PSI maintains appropriate cybersecurity insurance, in accordance with all applicable laws and regulations. Cyber insurance coverage is reviewed annually.

(i) – PSI has processes and procedures in place for breach investigation and incident response. For example, the Incident Response Plan is maintained to ensure unified procedures are in place to respond to any suspected incident involving a patron’s Confidential Information and Personally Identifiable Information. In addition, an Incident Response Committee and Executive Cyber Committee oversee the Incident Response Plan and meet regularly to discuss security events and incidents.

(j) – PSI also maintains disciplinary measures that may be taken for violations of any policies concerning Confidential Information and Personally Identifiable Information. The prospective disciplinary measures that may be taken are incorporated into all relevant internal policy documents so that applicable team members are made aware of the potential repercussions for any violation(s).

(k) – Due diligence and review procedures are in place for all vendors, contractors, and other entities that may require access to internal systems that contain Confidential Information and Personally Identifiable Information. Such procedures include, but are not limited to, an onboarding review and regular periodic review of the applicable third-party entity’s overall public risk profile. In addition, access controls are in place and monitored for any suspicious activity.

(l) – Systems and procedures are in place to ensure periodic scans of the product environment are conducted at least on a quarterly basis. Such periodic scans include confirming any patches are kept up to date, no unexpected services are running, and verification that access controls are monitoring and reporting appropriately.





(m) – All applicable internal privacy policies are reviewed at least annually by team members from various departments, including IT Security, Legal, and PSI's in-house privacy experts. If an update is identified and necessary, it is first discussed with the Executive Cyber Committee prior to its adoption and incorporation.

**(f) 205 CMR 257.05: Data Program Responsibilities, subparts 257.05(2)-257.05(3):**

*(2) A Sports Wagering Operator shall maintain on its website and Sports Wagering Platform a readily accessible copy of a written policy explaining to a patron the Confidential Information and Personally Identifiable Information that is required to be collected by the Sports Wagering Operator, the purpose for which Confidential Information or Personally Identifiable Information is being collected, the conditions under which a patron's Confidential Information or Personally Identifiable Information may be disclosed, and the measures implemented to otherwise protect a patron's Confidential Information or Personally Identifiable Information. A Sports Wagering Operator shall require a patron to agree to the policy prior to collecting any Confidential Information or Personally Identifiable Information, and require a patron to agree to any material updates. Agreement to this policy shall not constitute required consent for any additional uses of information.*

*(3) A Sports Wagering Operator, Sports Wagering Vendor, Sports Wagering Subcontractor, Sports Wagering Registrant, or Person to whom an Occupational License is issued shall comply with all applicable state and federal requirements for data security, including M.G.L. c. 93A, M.G.L. c. 93H, 940 CMR 3.00, 940 CMR 6.00 and 201 CMR 17.00.*

PSI's Privacy Policy, which covers all information required pursuant to 257.05(2), is publicly and readily available on the sports wagering platform and website (as well as the PENN Entertainment, Inc. website) for ease of patron reference. In addition, when a patron attempts to register a sports wagering account, to complete the account registration process, they must consent to the Privacy Policy, the acknowledgement of which is captured and maintained. For any additional use of data not mentioned in the Privacy Policy, PSI will seek patron consent or rely on any applicable reasonable and legitimate business interest exemption as permitted by applicable laws and regulations.

Regarding 257.05(3), PSI complies with all applicable data security laws and regulations amongst the various jurisdictions where the business conducts operations.

**(g) 205 CMR 257.06: Data Breaches:**

*(1) In the event of a suspected Data Breach involving a patron's Confidential Information or Personally Identifiable Information, a Sports Wagering Operator shall immediately notify the Commission and commence an investigation of the suspected Data Breach, which shall be commenced no less than five (5) days from the discovery of the suspected breach, and completed as soon as reasonably practicable thereafter.*

*(2) Following completion of the investigation specified pursuant to 257.06(1), the Sports Wagering Operator shall submit a written report to the Commission describing the suspected Data Breach and stating whether any patron's Confidential Information or Personally Identifying Information was subjected to unauthorized access. Unless the Sports Wagering Operator shows that unauthorized access did not occur, the Sports Wagering Operator's written report shall also detail the Operator's plan to remediate the Data Breach, mitigate its effects, and prevent Data Breaches of a similar nature from occurring in the future.*

*(3) Upon request by the Commission, the Sports Wagering Operator shall provide a report from a qualified third-party forensic examiner, the cost of which shall be borne by the Sports Wagering Operator being examined.*



*(4) In addition to the other provisions of this 205 CMR 257.06, the Sports Wagering Operator shall be required to comply with any other legal requirements applicable to such Data Breaches or suspected Data Breaches, including its obligations pursuant to G.L. c. 93H and 201 CMR 17.00.*

PSI has existing processes in place for potential Data Breach investigations and incident response. In addition, in the event of a suspected Data Breach that involves patron Confidential Information and/or Personally Identifiable Information, PSI will notify the Commission and commence the required investigation in accordance with the requirements of 205 CMR 257.06(1). Upon the completion of the required investigation, PSI will provide the Commission with a written report of its findings, pursuant to 205 CMR 257.06(2), and PSI will comply with all other applicable legal requirements in the case of a suspected Data Breach.

PSI understands that the third-party forensic examiner's report subject to 205 CMR 257.06(3) is not automatically required as a result of a suspected data breach. However, if so requested by the Commission, PSI will ensure that a third-party forensic examiner's services are obtained, and the required independent report produced and provided to the Commission.

## **2. Items that will take longer to complete (specific timing included as applicable):**

PSI is able to produce the reporting required pursuant to 205 CMR 257.02(5) in accordance with the biannual cadence to be set by the Commission. However, PSI respectfully requests some additional guidance, as further detailed below, in order to ensure that the required report includes all information expected by the Commission. As the Commission has not yet determined a specific submission date for the first iteration of the report(s) required under 205 CMR 257.02(5), PSI does not anticipate the need for an additional temporary waiver for the requirements of this rule; however, should the circumstances change upon receipt of any additional guidance requested, PSI will promptly submit any necessary temporary waiver request.

### **(a) 205 CMR 257.02: Data Use and Retention, subpart 257.02(5):**

*(5) A Sports Wagering Operator shall collect and aggregate patrons' Confidential Information and Personally Identifiable Information to analyze patron behavior for the purposes of identifying and developing programs and interventions to promote responsible gaming and support problem gamblers, and to monitor and deter Sports Wagering in violation of G.L. c. 23N and 205 CMR. The Sports Wagering Operator shall provide a report to the Commission at least every six months on the Sports Wagering Operator's compliance with this subsection, including the trends observed in this data and the Sports wagering Operator's efforts to mitigate potential addictive behavior.*

PSI understands the reporting requirement(s) under 205 CMR 257.02(5) and shall produce the biannual reporting to be provided to the Commission. However, PSI is including this as an item that will take longer to complete to highlight the following considerations:

- As the current language of this rule is broad, PSI respectfully requests additional guidance from the Commission regarding the specific information that the Commission expects sports wagering operators to include in the report(s). Does the Commission anticipate issuing a reporting template to sports wagering operators to ensure the desired information is included?
- In addition, once the scope of required information is defined, some product development time will be necessary to enable the sports wagering system to produce the required report and analysis of the results in accordance with the cadence to be determined by the Commission.



As mentioned above, PSI is not currently requesting a temporary waiver of this requirement as the Commission's specific cadence to produce the reports is not yet known. So long as the Commission permits sports wagering operators reasonable time to develop the reporting in their sports wagering systems and provides additional guidance concerning the scope of the information to be included, PSI has no concerns producing such reports timely.



November 2, 2023

**VIA EMAIL ONLY**

Crystal Beauchemin, Sports Wagering Business Manager  
Massachusetts Gaming Commission  
101 Federal Street  
Boston, MA 02110

**Re: Plainridge Park Casino (“PPC”) Implementation Plan for 205 CMR 257:**

Dear Ms. Beauchemin,

PPC appreciates the Massachusetts Gaming Commission’s (the “Commission”) collaborative approach with licensed sports wagering operators towards the implementation of 205 CMR 257. After the Commission approved the universal waiver for the requirements of this regulation, PPC performed thorough due diligence to determine the impact of the requirements of this regulation and whether any development work or process changes were necessary. Please accept this letter and the enclosed information resulting from this thorough assessment as PPC’s submission of the required implementation plan.

It is important to note that the information concerning the implementation of 205 CMR 257 included in this plan is in reliance on the guidance related to 205 CMR 257 provided by the Commission on October 20, 2023. If any specific guidance changes, it may also result in necessary changes to the current implementation plan.

**Items for which PPC is requesting a temporary waiver:**

For the reasons explained in further detail in the accompanying waiver request form, PPC is seeking one additional temporary waiver for the requirements of 205 CMR 257.02(5) through January 1, 2025. As PENN Entertainment, Inc., the parent company of PPC, is beginning the process of transitioning all retail sports wagering technology onto its proprietary in-house system, this extension will allay any resource constraints and/or delays to that initiative. Please note, PPC will make all commercially reasonable efforts to implement the requirements of 257.02(5) prior to the date requested.

**Items that PPC can complete immediately:**

PPC does not anticipate the need for any additional waivers for the further requirements of 205 CMR 257 upon expiration of the currently effective waiver, valid through November 17, 2023. Relevant policies and procedures are currently in place which PPC believes meet the requirements and regulatory intent of the regulation.

Please do not hesitate to follow up if there are any questions or if additional information is needed.

Sincerely,

Lisa McKenney  
Compliance Manager  
Plainridge Park Casino



**PPC – 205 CMR 257 Action Plan:**

**1. Items that PPC can complete upon expiration of the current waiver:**

PPC believes it can complete the following items without the need for any additional temporary waiver or other extensions:

**(a) 205 CMR 257.02: Data Use and Retention, subparts 257.02(1)-257.02(4):**

In accordance with current policies and procedures, PPC ensures that any patron Confidential Information and Personally Identifiable Information obtained is used only as necessary for reasonable and legitimate sports wagering business purposes. If PPC subsequently seeks to use a patron's Confidential Information or Personally Identifiable Information any reason that is arguably not "necessary" to the operation of sports wagering or otherwise not included in 257.02(1), patron consent shall be properly received for those purposes in accordance with this regulation.

In addition, PPC will not use any patron Confidential Information or Personally Identifiable Information, or any information derived from it, to promote or encourage specific wagers or promotions in the Commonwealth in accordance with 257.02(3).

PPC also maintains policies and procedures to ensure that any Confidential Information and Personally Identifiable Information obtained from a patron is retained only as necessary for reasonable and legitimate business purposes. Further, processes are in place to ensure compliance with all legal requirements concerning disposal of such information if and when appropriate.

**(b) 205 CMR 257.03: Data Sharing:**

PPC's policies and procedures concerning privacy and security are designed not only to ensure that a patron's personal information is used only as necessary for operations but also to ensure that this information is only shared only when necessary for reasonable legitimate operational purposes. If sharing is deemed necessary, the information is encrypted to prior to sending, and all Confidential Information and Personally Identifiable Information is encrypted when in PPC's possession and control.

Moreover, commercially reasonable, and adequate contractual obligations related to data privacy and security must be in place before any personal information can be shared with a Sports Wagering Vendor, Sports Wagering Subcontractor, or Sports Wagering Registrant.

**(c) 205 CMR 257.04: Patron Access:**

In accordance with the PENN Entertainment Inc. company-wide Privacy Policy, PPC currently maintains procedures that allow a patron to make a request regarding their Confidential Information and Personally Identifiable Information. Pursuant to various state privacy laws, PENN Entertainment's in-house privacy professionals manage this requests process and provide a written response to the patron when any such request is made. If denied, the patron may appeal the decision in accordance with relevant state privacy laws, and any denial during the appeal is subject to review by the applicable privacy regulator. The written response will also include further helpful information, including providing notice of the patron's right to file a complaint with the appropriate authority. A high-level overview of this process is included below:



- Subject to applicable laws, a patron may obtain access to a copy of their Confidential Information and Personally Identifiable Information by contacting [privacy@pennentertainment.com](mailto:privacy@pennentertainment.com).
- Updates to any Confidential Information or Personally Identifiable Information maintained can also be made by contacting this email address.
- A patron may also request that additional restrictions be imposed on the use of their Confidential Information and Personally Identifiable Information in accordance with applicable privacy laws and regulations. The imposition of any requested restriction(s) is subject to the applicable laws and regulations of the patron's state of residency.

If any such patron request is approved pursuant to the conditions included in 257.04(3), PPC will complete the required procedures to delete in accordance with 257.04(4) and internal retention policies, including, if appropriate, anonymization and aggregation of patron Confidential Information and Personally Identifiable Information in a manner that prevents it from being associated with a particular individual.

PPC does not require any patron to enter into any agreements that purport or attempt to waive any rights of the patron under this regulation.

**(d) 205 CMR 257.05: Data Program Responsibilities:**

As it relates to 257.05(1), please find immediately below a description of PPC's current practices, organized by the applicable subpart:

(a) – Controls are in place to protect any Confidential Information and Personally Identifiable Information obtained from a patron during retail sports wagering operations. This includes encryption, access controls and limits on who may access retained personal data, and procedures to notify and escalate if there is any unusual activity associated with patron Confidential Information and Personally Identifiable Information.

(b) – All patron Confidential Information and Personally Identifiable Information is encrypted both at rest and in transit. Access controls are also in place that assist with ensuring only authorized team members can access this information and multi-factor authentication is layered in which further enhances the applicable controls.

(c) – Processes and policies help ensure compliance with all applicable laws and regulations that inform appropriate retention periods and timely disposal of Confidential Information and Personally Identifiable Information.

(d) – Annual privacy training is provided to all staff and period bulletins are disseminated to ensure all staff is up to date on privacy best practices and expectations. This training is continually updated in a manner that notifies of any changes in best practices and expectations. PENN's IT Security team also performs data privacy training simulations and conducts further training exercises for any team members that may be deficient during a simulated training.

(e) – Access controls are incorporated that ensure only individuals who have a legitimate need for accessing a patron's Confidential Information and Personally Identifiable Information are able to do so. For example, passwords are hashed and protected, authentication is encrypted, and multi-factor authentication is utilized to further enhance these access controls.



(f) – Systems incorporating a combination of static rules and risk-based evaluation criteria are in place to monitor access to Confidential Information and Personally Identifiable Information. These systems assist with determination of whether a notification/alert for suspicious activity is necessary.

(g) – Malware protection, anti-virus protection, overall endpoint protection, amongst other security tools, are deployed and are kept up to date when necessary. In addition, security patches are applied regularly, with any identified critical patches reviewed and deployed in an expedited manner.

(h) – PPC maintains adequate cybersecurity insurance, which is reviewed annually for sufficiency of coverage in accordance with all applicable laws and regulations.

(i) – Standard processes and procedures are in place to address any potential breach and incident response involving a patron’s Confidential Information or Personally Identifiable Information, including any necessary investigation. In addition, PENN Entertainment maintains an Incident Response Committee and Executive Cyber Committee who oversee these processes and procedures and meet regularly to ensure all processes and procedures are effectively being incorporated.

(j) – Disciplinary measures may be taken for any violations of internal policies concerning Confidential Information and Personally Identifiable Information. Prospective disciplinary measures that may be taken are noticed to all team members via internal policies so that team members are made aware of the potential repercussions of a violation.

(k) – Proper review and due diligence procedures are in place for all vendors, contractors, and registrants if they necessarily require access to internal systems that contain Confidential Information and Personally Identifiable Information. These review and due diligence procedures include an onboarding review, regular periodic review of the entity’s overall public risk profile, and access controls.

(l) – Relevant periodic scans are performed at least quarterly in accordance with all applicable laws and regulations. These scans include items such as patch confirmations, checks for unexpected services, and verification of the functionality of all access controls.

(m) – All applicable internal privacy policies are reviewed at least annually by team members from various departments, including IT Security, Legal, and in-house privacy professionals. Any required updates are discussed with the Executive Cyber Committee before adoption and incorporation.

In addition, PENN Entertainment’s Privacy Policy is readily available to the public on the PPC website and can also be readily accessed from the PENN Entertainment website. If PPC seeks to use personal data for anything not mentioned in the Privacy Policy, patron consent will be sought or PPC will rely on any applicable reasonable and legitimate business interest exemption as permitted by applicable laws and regulations.

**(e) 205 CMR 257.06: Data Breaches:**

Existing processes are currently in place to inform the actions to be taken in the case of a potential Data Breach, including proper investigation and incident response. In accordance with the requirements of 257.06, PPC will notify the Commission and commence the investigation resulting from any future suspected data security incident. A written report of any findings will be provided to the Commission.



In addition, to the extent the Commission requests review of any data breach incident by a third-party forensic examiner, PPC will obtain the required services and produce the required independent report.

**2. Items that will take longer to complete (specific timing included as applicable):**

PPC anticipates that it will take additional time and development work to complete the following requirement(s) included in 205 CMR 257:

**(a) 205 CMR 257.02: Data Use and Retention, subpart 257.02(5):**

For the reasons detailed further in the accompanying temporary waiver request for the requirements of 205 CMR 257.02(5), PPC is respectfully seeking an additional temporary extension through January 1, 2025. Subject to review and approval by the Commission, this temporary extension would decrease any resource constraints that may result from PENN Entertainment's company-wide effort to transition its retail sports wagering technology onto its proprietary in-house system and will ensure the technical team members have sufficient time to develop the appropriate reporting solution within the system.





## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** Plainridge Park Casino ("PPC")

**NAME OF INDIVIDUAL COMPILING REQUEST:** Lisa McKenney

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Compliance Manager

**CONTACT EMAIL ADDRESS:** lisa.mckenney@pennentertainment.com

**CONTACT PHONE NUMBER:** 508-576-4409

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**  
N/A

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:** 205 CMR 257: Sports Wagering Data Privacy

**REGULATION SECTION TITLE:** 205 CMR 257.02(5): Data Use and Retention

**REGULATION LANGUAGE/TEXT:**

(5) A Sports Wagering Operator shall collect and aggregate patrons' Confidential Information and Personally Identifiable Information to analyze patron behavior for the purposes of identifying and developing programs and interventions to promote responsible gaming and support problem gamblers, and to monitor and deter Sports Wagering in violation of G.L. c. 23N and 205 CMR. The Sports Wagering Operator shall provide a report to the Commission at least every six months on the Sports Wagering Operator's compliance with this subsection, including the trends observed in this data and the Sports wagering Operator's efforts to mitigate potential addictive behavior.

### REASON FOR REQUEST OF WAIVER



**DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:** January 1, 2025. Please note, while PPC is requesting a temporary waiver through the date indicated for the reasons stated below, all commercially reasonable efforts will be made to satisfy this requirement as soon as possible.

*Per* 205 *CMR* 102.03(4)(b)

**PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:** PENN Entertainment Inc. (“PENN”), the parent company of PPC, is set to begin the undertaking of migrating its retail sports wagering technology from a third-party provided platform and onto PENN’s in-house proprietary retail sports wagering platform. Due to the nature of retail sports wagering operations, this transition will occur jurisdiction-by-jurisdiction, as the necessary regulatory approvals are received. Moreover, additional time is necessary for PENN to definitively define the transition cadence, including when the retail sports wagering software utilized at PPC will be transitioned to the in-house platform. As this migration exercise continues to move forward, PPC will ensure that the in-house retail sports wagering platform can produce the reporting required under 257.02(5); however, such reporting will ultimately not be available until migration efforts at PPC are successfully completed.

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:** In furtherance of the retail sports wagering migration efforts discussed above, resources are being allocated in a manner that will ensure the project remains on its pre-determined cadence, resulting in resource constraint amongst the applicable technology teams. Any shifting of these resources will result in significant delays to the enterprise-wide migration effort, which would impact how quickly PPC is able to begin providing the required reporting to the Commission.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:** N/A

### DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.



## **Project Plan Summary**

### **WynnBET waiver request for time to ensure compliance with 205 CMR 257**

Two waiver dates are requested, one of which may not be necessary.

- For 205 CMR 257.03(1), WynnBET is requesting a waiver until **October 31, 2024**, to modify its systems related to the Wynn Rewards program.

Whether or not this waiver is necessary depends on whether the Commission considers other entities in the Wynn corporate family (including Wynn MA, LLC, that operates Encore Boston Harbor and Wynn Las Vegas, LLC, that operates the Wynn Las Vegas) to be third parties (more details are found in the waiver request). If they are considered third parties, then patron participation in Wynn Rewards (which is currently automatic) results in sharing of patron PII and Confidential information with third parties. This will necessitate significant updates to the WynnBET systems to make participation in Wynn Rewards optional.

- For 205 CMR 257.03(3), WynnBET is requesting a waiver until **January 31, 2024**, to review and update all agreements with service providers who may receive patron PII or Confidential Information, to ensure that all agreements are compliant with this section of the regulation.

For all waivers granted, WynnBET will provide monthly reports on or around the first of each month, to inform the Commission of our progress toward full compliance.



## MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

*In accordance with 205 CMR 202.03; 205 CMR 102.03(4)*

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

### CONTACT INFORMATION

**DATE:** 11/1/2023

**NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY):** WynnBET (WSI US, LLC)

**NAME OF INDIVIDUAL COMPILING REQUEST:** Joseph Peacock

**TITLE OF INDIVIDUAL COMPILING REQUEST:** Director, Legal

**CONTACT EMAIL ADDRESS:** [joseph.peacock@wynnresorts.com](mailto:joseph.peacock@wynnresorts.com)

**CONTACT PHONE NUMBER:** 702-770-7858

**EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):**  
[legal@wynnbet.com](mailto:legal@wynnbet.com)

### REGULATION INFORMATION

**SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:**

205 CMR 257.03(1)

205 CMR 257.03(3)

**REGULATION SECTION TITLE:**

Sports Wagering Data Privacy – Data Sharing

**REGULATION LANGUAGE/TEXT:**

257.03: Data Sharing

(1) A Sports Wagering Operator shall not share a patron's Confidential Information or Personally Identifiable Information with any third party except as necessary to operate a Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, or any other applicable law, regulation, court order, subpoena, or civil investigative demand of a governmental entity, to detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity, debug to identify and repair errors, to investigate, respond to and defend against filed legal claims, and for other reasonable safety and security purposes.

.....  
(3) If a Sports Wagering Operator deems it necessary to share a patron's Confidential Information or Personally Identifiable Information with a Sports Wagering Vendor, Sports Wagering Subcontractor, or Sports Wagering Registrant in order to operate its Sports Wagering Area, Sports Wagering Facility or Sports Wagering Platform or to comply with M.G.L. c. 23N, 205 CMR, any other applicable law,



regulation, court order, subpoena, or civil investigative demand of a governmental entity, a Sports Wagering Operator shall enter into a written agreement with the Sports Wagering Vendor, Sports Wagering Subcontractor or Sports Wagering Registrant, which shall include, at a minimum, the following obligations:

(a) The protection of all Confidential Information or Personally Identifiable Information that may come into the third party's custody or control against a Data Breach;

(b) The implementation and maintenance of a comprehensive data-security program for the protection of Confidential Information and Personally Identifiable Information, which shall include, at a minimum, the following:

i. A security policy for employees relating to the storage, access and transportation of Confidential Information or Personally Identifiable Information;

ii. Restrictions on access to Personally Identifying Information and Confidential Information, including the area where such records are kept, secure passwords for electronically stored records and the use of multi-factor authentication;

iii. A process for reviewing data security policies and measures at least annually; and

iv. An active and ongoing employee security awareness program for all employees who may have access to Confidential Information or Personally Identifiable Information that, at a minimum, advises such employees of the confidentiality of the data, the safeguards required to protect the data and any applicable civil and criminal penalties for noncompliance pursuant to state and federal law.

(c) The implementation, maintenance, and update of security and breach investigation and incident response procedures that are reasonably designed to protect Confidential Information and Personally Identifiable Information from unauthorized access, use, modification, disclosure, manipulation or destruction; and

(d) A requirement that the maintenance of all Confidential Information and Personally Identifiable Information by a Vendor, Subcontractor or Registrant must meet the standards provided in 257.03.

### REASON FOR REQUEST OF WAIVER

#### **DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:**

Regarding 205 CMR 257.03(1), waiver is requested, if necessary (see below), through October 31, 2024.

Regarding 205 CMR 257.03(3), waiver is requested through January 31, 2024.

*Per 205 CMR 102.03(4)(b)*

#### **PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:**

In formulating this waiver request, WynnBET is relying on the guidance provided by the Commission on October 20, 2023, and October 27, 2023, regarding the Commission's interpretation of the regulation.



Regarding 205 CMR 257.03(1):

Wynn Rewards is the rewards program for all US-based Wynn enterprises, including Encore Boston Harbor, Wynn Las Vegas, and WynnBET. Benefits earned on WynnBET can be used at the resorts and some benefits earned at the resorts can be redeemed for credit at WynnBET. All new WynnBET patrons are automatically enrolled in Wynn Rewards. If a new patron already has a Wynn Rewards account, their information will be used to pair their existing Wynn Rewards account with their WynnBET account when they register. This requires the exchange of the patron's Personally Identifiable Information with Wynn Resorts to identify an existing account or establish a new one. The administration of the Wynn Rewards program requires the exchange of the patron's Confidential Information, specifically wagering information, to award the benefits of the program.

At the time of this submission, WynnBET is seeking advice from MGC on whether the Wynn entities that share in the Wynn Rewards program constitute third parties for the purposes of 205 CMR 257.03. If such affiliated companies are considered third parties, then it will require significant technological development to make participation in the Wynn Rewards program optional for WynnBET patrons in Massachusetts. Such a process will require development, testing, deployment, and the coordination of multiple third-party service providers to update the necessary systems. This development and testing may take up to twelve months.

Regarding 205 CMR 257.03(3):

While all of WynnBET's agreements include confidentiality provisions that cover patron data, not all agreements include robust data privacy terms that include the specific points outlined in this regulation section. We require time to identify all relevant vendors, review their agreements with the specific terms of 257.03(3) in mind, and issue addenda to the necessary agreements. Our initial estimate is that there are between forty and eighty agreements that may have to be reviewed and addended. We estimate this process may take up to three months.

*Per 205 CMR 102.03 (4)(a)(4)*

**PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:**

Regarding 205 CMR 257.03(1):

Wynn Rewards is a popular program among our patrons and is the only rewards program in place on WynnBET. If the waiver requested above is found to be necessary (because the affiliated Wynn entities are considered third parties) and the waiver is not granted, WynnBET will be forced to remove the Wynn Rewards program from its online sportsbook in Massachusetts. This will create a significant detriment to WynnBET's product offering, negatively impacting existing patrons and reducing the service's appeal to potential new patrons.

Further, if the affiliated Wynn entities are considered third parties and the waiver is not granted, it will take time for the Wynn Rewards integration to be removed from the service. Wynn Rewards is fully integrated into the registration process and the wagering functions of the WynnBET service. Removing that integration in order to remain compliant will require time and development resources.



Regarding 205 CMR 257.03(3):

The requirements of this subsection create a situation where WynnBET's current agreements may not be fully compliant with new requirements. Due to the number of agreements already in place, we require time to identify all agreements that will be necessary to addend and coordinate with the counterparties.

**ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:**

If the affiliated Wynn Resorts entities do not constitute third parties for the purposes of 205 CMR 257.03, no waiver will be necessary for subsection 257.03(1).

**DETERMINATION**

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.



**From:** [Roberts, Jennifer](#)  
**To:** [Beauchemin, Crystal](#); [Band, Bruce](#); [Steffen, Andrew](#)  
**Cc:** [Peacock, Joseph](#)  
**Subject:** 205 CMR 257 Question  
**Date:** Wednesday, November 1, 2023 5:21:16 PM  
**Attachments:** [image001.png](#)

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Good afternoon. WynnBET has just submitted our waiver on 205 CMR 257, but I had a clarifying question on the guidance that was distributed.

The guidance includes a section on 257.03 (Data Sharing) that contains the following paragraph:

Operators, however, can reasonably expect that if they seek to share a patron's PII/CI with a third-party for a limited purpose beyond those specifically related to operating a Sports Wagering Area, Sports Wagering Facility, or Sports Wagering Platform, a specific consent would be required. **This might include, for example, linking a player's account to a third-party rewards system provided by a third-party.**

WynnBET is connected to the Wynn Rewards system, which is the player reward system for US-based Wynn enterprises, including Encore Boston Harbor, Wynn Las Vegas, and WynnBET. These companies are affiliates of each other that share common ultimate beneficial ownership through Wynn Resorts, Limited. Like other operators, patron information would be shared among our affiliates for a common rewards system.

We included this in our waiver request in case that was the intention of the bolded language. However, if a shared rewards program among affiliates was not intended to be covered, we are happy to either amend our waiver or have the request disregarded.

Can you please confirm whether a common rewards system and program among affiliates is considered a third-party program that would be applicable here?

Thank you,

JENNIFER ROBERTS  
Vice President & General Counsel - WynnBET

WynnBET  
6600 Bermuda Road, Las Vegas, NV 89119  
tel (702) 770-7592 cell (702) 236-8110

[jennifer.roberts@wynnbet.com](mailto:jennifer.roberts@wynnbet.com)

The logo for WynnBET, featuring the word "Wynn" in a gold, stylized font and "BET" in a bold, dark blue font.

The information contained in this message may be privileged and confidential and thus protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately



by replying to the message and deleting it from your computer. Thank you.

**Waiver Requests**  
**205 CMR 238: Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering**  
**205 CMR 257: Sports Wagering Data Privacy**

Subsection	Justification	Topics	Waiver through	Commenter/Entity
238.02(7)(1) and (m)	Assess and investigate uses of algorithms, automated decision-making, machine learning, AI and similar systems before providing the Commission with an updated Internal Control document.	Internal control updates	January 1, 2024	BetMGM
257.00 (generally)	Review contracts, and potentially update and amend said contracts.	Contracts	May 15, 2024	MGM Springfield
257.02	<p>Implement tools, processes and guardrails to prevent data from being used for non-essential features and activities.</p> <p>Build a consent collection and management system, including a new user experience flow.</p> <p>Develop a workflow for destruction of patron data.</p> <p>Build analytics reports for responsible gaming purposes.</p>	<p>Definition of “necessary”</p> <p>Consent technology</p>	May 2024	Fanatics
257.02(1)-(2)	<p>Analyze and determine what PII is not necessary to operate.</p> <p>Once identified, map where the PII is, including with first and third party systems. After that, build opt-in consent prompts and opt-out mechanisms, including changing its current opt-out default.</p>	<p>Definition of “necessary”</p> <p>Consent technology</p>	July 1, 2024	Draft Kings

**Waiver Requests**  
**205 CMR 238: Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering**  
**205 CMR 257: Sports Wagering Data Privacy**

<b>Subsection</b>	<b>Justification</b>	<b>Topics</b>	<b>Waiver through</b>	<b>Commenter/Entity</b>
257.02(1)-(2)	Build and test new opt-in functionality for loyalty program (currently, a rewards account is automatically set up for Caesars patrons).	Consent technology.	June 30, 2024	Caesars
257.02(2)	Develop and implement an opt-in system. Would be difficult, but not impossible, to implement opt-in by expiration of current waiver (Nov. 17).	Consent technology	October 1, 2024	FanDuel
257.02(2)(a)-(c)	Develop an opt-in consent form, as well as a consent withdrawal form.	Consent technology	March 1, 2024	Betr
257.02(3)	Update internal tooling, databases, marketing and promotional campaigns, develop employee training, monitoring procedures, and update access controls. Engage in comprehensive auditing of existing promotional activities. Build new infrastructure to run new geolocation-based flags.	Consent technology	December 1, 2024	Draft Kings
257.02(5)	Build a new alerting system.	RG Tools	January 15, 2024	Draft Kings
257.02(5)	Currently developing an RFP for a vendor to assist in implementing tools for data analysis related to responsible gaming. Following RFP, initial version of responsible gaming tools are anticipated in Q1 2024.	RG Tools	July 1, 2024	FanDuel
257.02(5)	Scope out and develop an iterative, AI inflected analytics program, and potentially engage third-party experts on AI and problem gambling.	RG Tools	June 30, 2024	Caesars
257.02(5)	Penn Entertainment Inc, PPC's parent company, is migrating its retail sports wagering technology from a third-party platform onto PENN's in-house proprietary retail sports wagering platform, and is doing so jurisdiction by jurisdiction. Reporting	RG Tools; Reporting	January 1, 2025	Plainridge Park Casino

**Waiver Requests**  
**205 CMR 238: Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering**  
**205 CMR 257: Sports Wagering Data Privacy**

<b>Subsection</b>	<b>Justification</b>	<b>Topics</b>	<b>Waiver through</b>	<b>Commenter/Entity</b>
	required under 257.02(5) will not be available until migration is complete.			
257.03	Scope nature of data sharing with third parties to determine what is necessary to operate.	Definition of “necessary”	February 1, 2024	FanDuel
257.03	Modify existing contracts with third parties, and implement controls and assessments of third party usage of patron data.	Definition of “necessary”  Contracts	November 2024	Fanatics
257.03(1)	Need to build and test new opt-in functionality for loyalty program (currently, a rewards account is automatically set up for Caesars patrons).	Consent technology	June 30, 2024	Caesars
257.03(1)	If entities in the Wynn corporate family are third parties, then systems will need to be updated to make rewards participation optional.	Definition of “necessary”	October 31, 2024	WynnBET
257.03(1)	Audit data sharing agreements with vendors and partners to determine which are covered by and outside the scope of 257. Data sharing arrangements identified will then have to be changed to require opt-in consent.	Contracts	July 1, 2024	Draft Kings
257.03(3)	Revise Data Protection Addendum and contracts to incorporate BetMGM’s revised Data Protection Addendum.	Contracts	February 1, 2024	BetMGM
257.03(3)	Negotiate amendments with vendors to include specific contractual language.	Contracts	June 30, 2024	Caesars
257.03(3)	Review and update agreements with service providers who may receive patron data.	Contracts	January 31, 2024	WynnBET
257.03(3)	Renegotiate contracts with third parties. Contracts tend to run 18-24 months, and FanDuel intends to	Contracts	October 1, 2025	FanDuel

### Waiver Requests

#### 205 CMR 238: Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering 205 CMR 257: Sports Wagering Data Privacy

Subsection	Justification	Topics	Waiver through	Commenter/Entity
	renegotiate once current contracts have, or are about to, expire.			
257.03(4)	<p>Encrypting/hashing all PII and CI while “at rest” and “in transit” is not possible, particularly for locally stored PII on a patron’s device. Will be easier if it’s just PII and CI “at rest.” Even then, will have to rebuild data pipelines and storage systems, including backup systems to filter wide range of data.</p> <p>Communication with third parties will also be impossible as third parties will need decryption abilities.</p> <p>Unsure that there will be a usable platform if Draft Kings fully complies with this regulation, based on anticipated impacts to database latency and platform performance.</p> <p>Suggest amending regulation to focus only on sensitive data that would present a substantial risk of harm to patrons if accessed or disclosed without authorization.</p>	Encryption	December 1, 2024 or July 1, 2025 or permanent	Draft Kings
257.03(4) 257.05(1)(b)	BetMGM’s information security program includes hashing and encryption, but some data is protected through other methods (e.g., data obfuscation, dual-factor authentication, VPN, firewall, access controls). BetMGM would like to demonstrate these protections to the Commission for approval	Encryption	Permanent	BetMGM

**Waiver Requests**  
**205 CMR 238: Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering**  
**205 CMR 257: Sports Wagering Data Privacy**

<b>Subsection</b>	<b>Justification</b>	<b>Topics</b>	<b>Waiver through</b>	<b>Commenter/Entity</b>
	to use these measures in lieu of encryption or hashing.			
257.04	Require process improvement to ensure compliance with withdrawal of patron consent.	Consent Withdrawal	October 1, 2024	FanDuel
257.04	Build and enhance data subject request flows and functionalities to allow patrons to exercise data rights.	Consent Withdrawal	November 2024	Fanatics
257.04(1)(d)	<p>BetMGM allows patrons to submit requests for access, correction and deletion of patron data, and to opt-out of marketing. BetMGM also allows patrons to limit the use of cookies on its website. Concern is that allowing patrons the ability to restrict use of data in other ways can lead to significant negative effects that hamper BetMGM's ability to comply with AML and responsible gaming requirements.</p> <p>In lieu of compliance, BetMGM proposes permitting patrons to opt out of marketing and control cookies, but not other uses.</p>	Consent Withdrawal	Permanent	BetMGM
257.04(1)(a)-(e)	Need to develop an opt-in consent form, as well as a consent withdrawal form.	Consent Withdrawal  Consent Technology	March 1, 2024	Betr
257.04(1)(d)	Until opt-in mechanism is implemented, patrons are unable to restrict sharing of patron data with rewards program at registration.	Consent Technology	June 30, 2024	Caesars
257.05	Develop and test policies and requirements for compliance with 257.	General	May 2024	Fanatics

**Waiver Requests**

**205 CMR 238: Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering**

**205 CMR 257: Sports Wagering Data Privacy**

<b>Subsection</b>	<b>Justification</b>	<b>Topics</b>	<b>Waiver through</b>	<b>Commenter/Entity</b>
257.05(k)	Build new vendor auditing and management program. May also need to revisit data processing and data protection agreements with third-party vendors and partners.	Contracts	December 1, 2024	Draft Kings

Operator	Notes	Reg(s)	Date	Reporting
Encore Boston Harbor	Encore confirmed compliance with all other components			Monthly
		257.02	12/31/2024	
		257.03 (1)	10/31/2024	
		257.03 (3)	1/31/2024	
WynnBet	Whether or not this waiver is necessary depends on whether the Commission considers other entities in the Wynn corporate family (including Wynn MA, LLC, that operates Encore Boston Harbor and Wynn Las Vegas, LLC, that operates the Wynn Las Vegas) to be third parties			Monthly
		257.03 (1)	10/31/2024	
		257.03 (3)	1/31/2024	
MGM Springfield	Working with service provider (BetMGM) to identify implementation 180 day waiver request	257	5/15/2024	would be similar to BetMGM
BetMGM	Waiver provided specific timeline/details for implementation			"Regular" - undefined
		257.04 (1) d	permanent	
		257.03 (4)	permanent	
		257.05 (1)(b)	permanent	
		257.03 (3)	2/1/2024	
		238.02(7)(l)	1/1/2024	
		238.02 (7)m	1/1/2024	
Penn Sports Interactive	PSI indicates in letter it will not need waiver- details provided for each reg			N/A
PPC	Indicated they follow PSI plan in full, aside from one component:			N/A
		257.02 (5)	1/1/2025	
American Wagering/Caesars	See Cover Letter for information/ specific regulations included			quarterly
		note	11/20/2023	
		257.03 (3)	6/30/2024	
		257.02 (1)-(2)	12/31/2024	
		257.03 (1)	12/31/2024	
		257.02 (5)	12/31/2024	
Betr				bi-monthly
		257.02(2)(a)-(c)	3/7/2024	
		257.04(1)(a)-(e)	3/7/2024	
DraftKings	DraftKings is NOT requesting a waiver for 257.02(4): Data Use and Retention; 257.04: Patron Access; 257.03(2)-(3): Data Sharing; 257.05 (1)(A-L), (2)-(3): Data Program Responsibilities; or 257.06: Data Breaches. DraftKings believes that its current controls, programs, and processes meet the applicable regulatory requirements of said sections.			
		257.02 (1-2)	7/1/2024	monthly
		257.02(3)	12/1/2024	quarterly
		257.02(5)	1/15/2024	quarterly
		257.03(1)	7/1/2024	monthly
		257.03(4)	note	tdb
	257.05(k)	12/1/2024	quarterly	
FanDuel				
		257.02 (2)	10/1/2024	
		257.02(5)	7/1/2024	
		257.03	2/1/2024	
		257.03(3)	10/1/2025	
		257.04	10/1/2024	
FBG/Fanatics				quarterly
		257.02	5/17/2025	
		257.03	11/17/2024	
		257.04	11/17/2024	
		257.05	5/17/2024	
		257.06	4/17/2024	





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

FROM: Andrew Steffen – Interim Sports Wagering Operations Manager

CC: Todd Grossman – Interim Executive Director  
Bruce Band – Sports Wagering Division Director

DATE: November 14, 2023

RE: Request to Void Wagers

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Pursuant to 205 CMR 238.35(2), the Commission reviews all requests to authorize the cancellation or voiding of all wagers of a specific type, kind, or subject. A Sports Wagering Operator shall submit its request to cancel or void the Wager in writing. Under Section 4, the Commission shall issue a written order granting or denying the request to cancel or void the Wager.

**EXECUTIVE SUMMARY:**

DraftKings Sportsbook has submitted a request to void wagers after becoming aware of bets placed at incorrect odds. A total of 178 wagers were placed on these impacted markets by a total of 137 individual customers for a total handle of \$4,182.36 with a total liability of \$575,436.82.

On October 25, 2023, at approximately 13:36 ET, DraftKings informed the Sports Wagering Division of the incident, providing a detailed report of all 178 wagers requesting the Commission to void. On October 27, 2023, at approximately 15:47 ET, DraftKings, after completing its investigation, provided a detailed incident report and timeline to the Sports Wagering Division.

**DISCUSSION:**

On October 24, 2023, at approximately 16:33 ET, DraftKings became aware of Same Game Parlay (SGP) wagers that had been accepted at incorrect totals for 'Total Points', 'Total Rebounds', and 'Total Assists' during the October 24 NBA matchup between the Los Angeles Lakers and the Denver Nuggets.



*Sports Wagering Division*

The timeline of events begins on October 23 at approximately 13:12 ET when Sportcast (the SGP vendor) advised DraftKings they intend to offer new 1<sup>st</sup> Quarter basketball markets. On October 24 at approximately 11:51 ET, DraftKings advised Sportcast they are unable to ingest the 1<sup>st</sup> Quarter lines Sportcast intends to offer. At approximately 16:22 ET, Sportcast released the 1<sup>st</sup> Quarter player markets. Approximately 11 minutes later at 16:33 ET, DraftKings reported to Sportcast that player markets are being offered at incorrect lines. Approximately 2 minutes later at 16:35 ET, Sportcast suspended the 1<sup>st</sup> Quarter markets.

The markets at incorrect odds were open for approximately 13 minutes from 16:22 ET to 16:35 ET.

The root cause has been summarized as Sportcast releasing the 1<sup>st</sup> Quarter player markets for the game after DraftKings communicated development work was needed to handle these markets. As a result, the 1<sup>st</sup> Quarter player markets were offered as full game markets, as the DraftKings platform interpreted the odds as full game odds rather than 1<sup>st</sup> Quarter odds.

With regards to remediation, DraftKings has advised Sportcast they will not be offering 1<sup>st</sup> Quarter player markets until further development work has been completed.

Per DraftKings approved House Rules, they will not cancel or void a wager(s) due to an “obvious error” without prior approval of the MGC. An “error”, as defined in their House Rules, may occur when bets are placed at odds that are materially different from those available in the general market at the time the bet was placed.

**CONCLUDING STATEMENT:**

The Sports Wagering Division has reviewed the incident reported by the operator and confirms all requirements have been met under 205 CMR 238.35(2) and has no reservations about moving forward in processing the request to void all affected wagers with regards to this incident.



# PLAINRIDGE PARK

Q3 2023 REPORT



# RETAIL SPORTS WAGERING REVENUE AND TAXES

Year	Quarter	Taxable Sports Wagering Revenue	Sports Wagering Taxes
2023	Q1	\$972,663	\$145,899
	Q2	\$630,385	\$94,558
	Q3	\$575,136	\$86,270
	Q4		
	<b>Total</b>	<b>\$1,603,048</b>	<b>\$240,457</b>

In addition to the Retail Sportsbook, Plainridge Park has 20 sports wagering kiosks.

# GAMING REVENUE AND TAXES

Year	Quarter	Net Slot Revenue	State Taxes	Race Horse Taxes	Total Taxes
2022	Q1	\$33,730,006	\$13,492,002	\$3,035,701	\$16,527,703
	Q2	\$36,607,522	\$14,643,009	\$3,294,677	\$17,937,686
	Q3	\$36,659,335	\$14,663,734	\$3,299,340	\$17,963,074
	Q4	\$36,066,338	\$14,426,558	\$3,245,970	\$17,672,528
	<b>Total</b>	<b>\$143,063,201</b>	<b>\$57,225,303</b>	<b>\$12,875,688</b>	<b>\$70,100,991</b>
2023	Q1	\$38,463,638	\$15,385,455	\$3,461,727	\$18,847,182
	Q2	\$39,147,502	\$15,659,001	\$3,523,275	\$19,182,276
	Q3	\$40,057,478	\$16,022,991	\$3,605,173	\$19,628,164
	Q4				
	<b>Total</b>	<b>\$117,668,618</b>	<b>\$47,067,447</b>	<b>\$10,590,175</b>	<b>\$57,657,622</b>

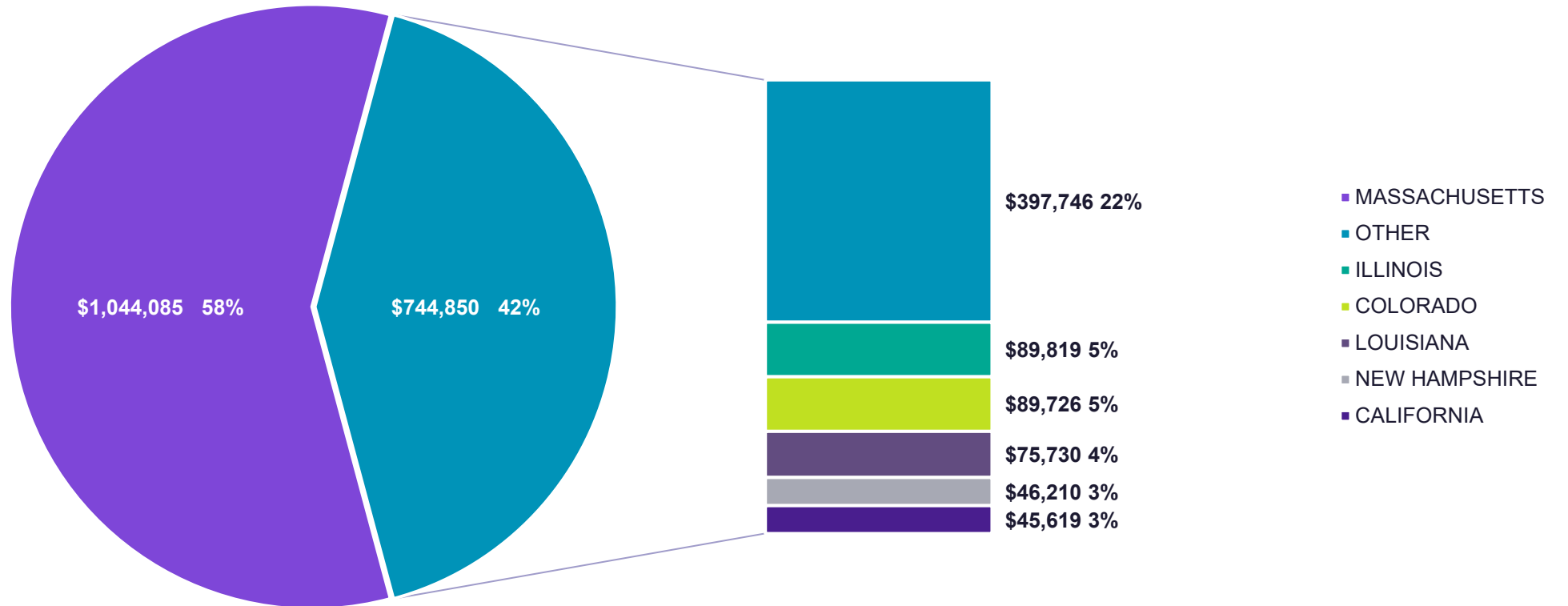
# LOTTERY SALES

Quarter	2023	2022	\$ Difference	% Difference
Q1	\$588,793	\$507,710	\$81,083	16.0%
Q2	\$645,963	\$485,744	\$160,219	33.0%
Q3	\$656,103	\$529,297	\$126,806	24.0%
Q4		\$532,016		
<b>Total</b>		<b>\$2,054,767</b>		

- PPC currently has five instant ticket machines and four online terminals
- Prior to the casino opening the property had one instant ticket machine and two online machines

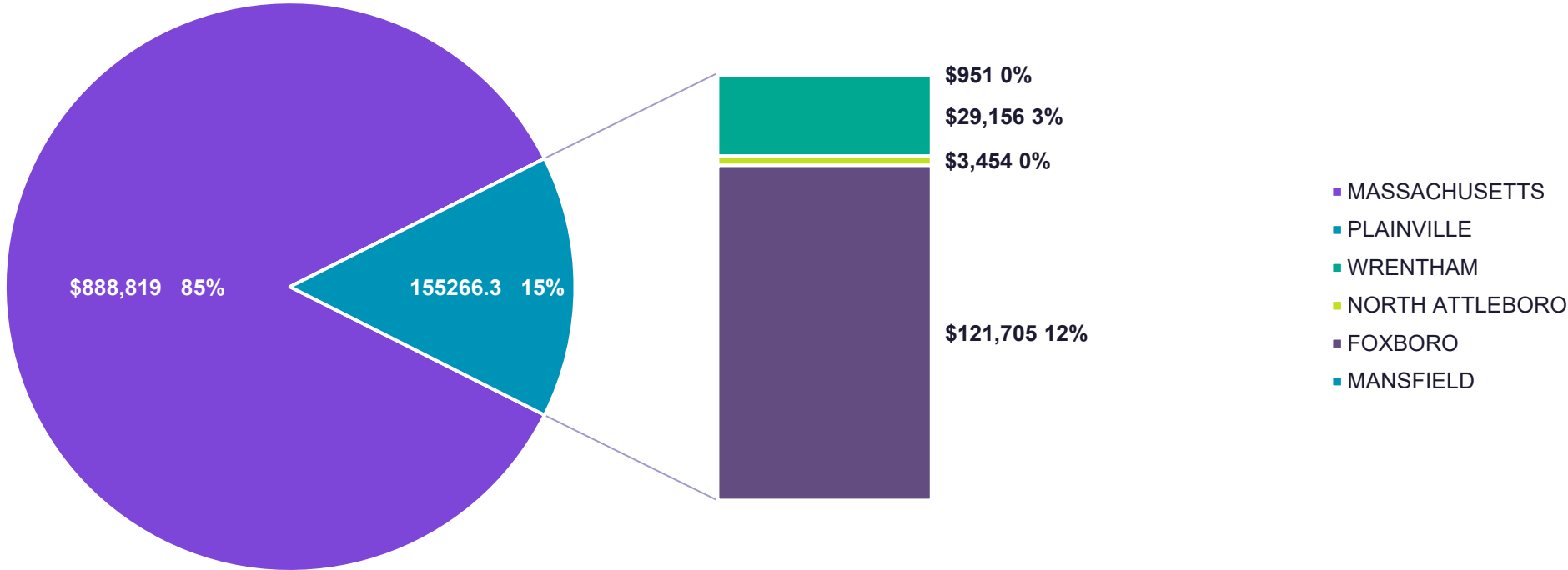
# SPEND BY STATE

## Q3 2023 Total Qualified Spend By State



# LOCAL SPEND

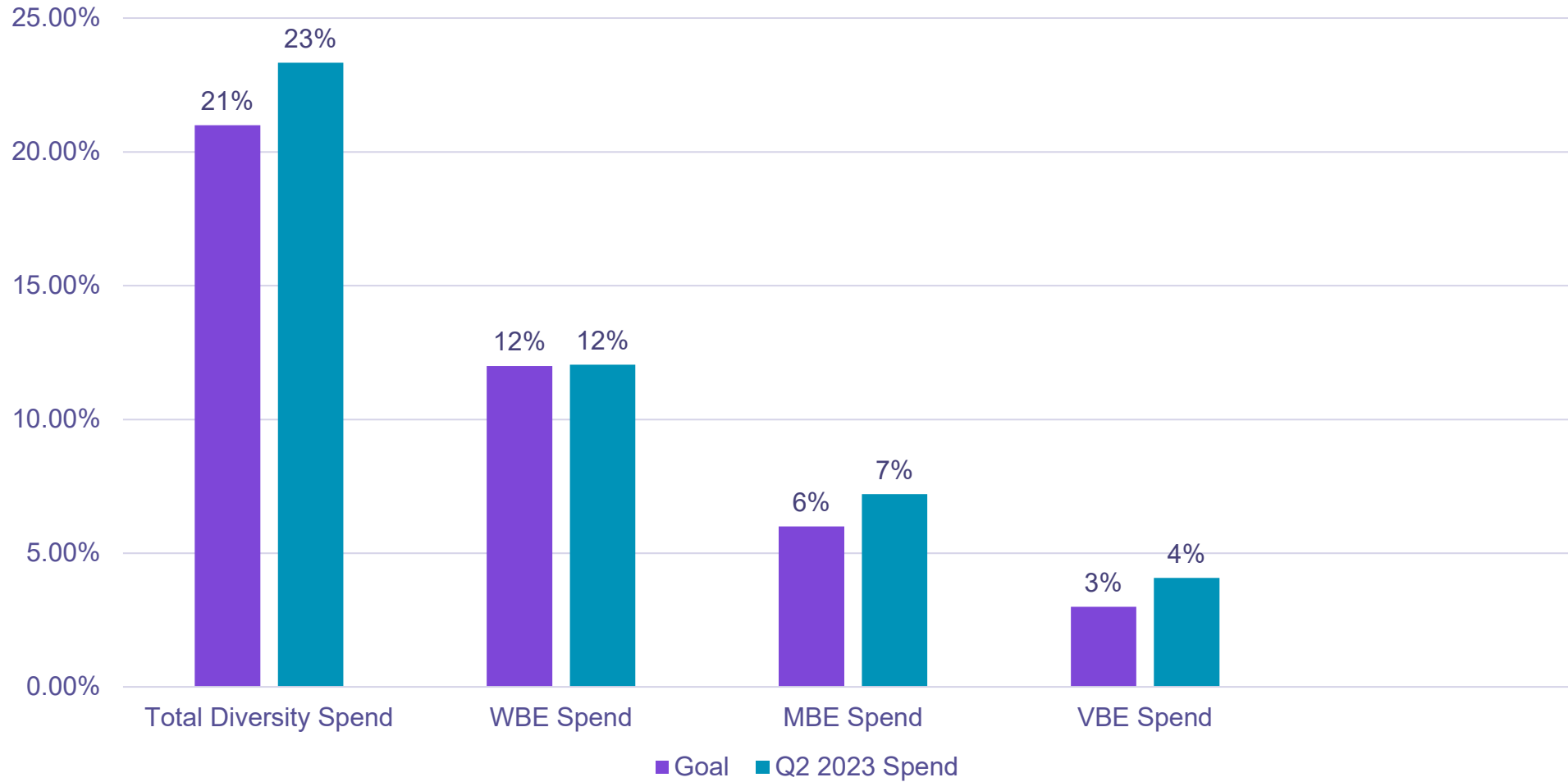
## Q3 2023 Massachusetts vs Host & Surrounding Community Qualified Spend





# VENDOR DIVERSITY

## Q3 2023 vs Goal



# DIVERSE SPEND

Category <sup>1</sup>	Q3 2023	Q2 2023	\$ Difference	% Difference
<b>WBE</b>	\$215,550	\$178,602	\$36,948	20.69%
<b>MBE</b>	\$129,069	\$69,311	\$59,758	86.22%
<b>VBE</b>	\$72,922	\$83,833	(\$10,911)	(13.02%)
<b>Total Diverse Spend</b>	<b>\$417,541</b>	<b>\$331,746</b>	<b>\$85,795</b>	<b>25.86%</b>
<b>Qualified Spend</b>	<b>\$1,788,935</b>	<b>\$1,478,161</b>	<b>\$310,774</b>	<b>21.02%</b>

<sup>1</sup> Includes vendors that are certified in multiple diversity categories. Spend is reported in all qualified categories.

# COMPLIANCE

Month	Prevented from Entering Gaming Establishment			Expired, Invalid, No ID	Fake ID	Minors and Underage Escorted from the Gaming Area	Minors and Underage found Gaming at Slot Machines	Minors and Underage Escorted from the Sports Wagering	Minors and Underage found Sports Wagering	Minors and Underage Consuming Alcoholic Beverages
	Total	Minors <sup>1</sup>	Underage <sup>2</sup>							
July	79	5	19	55	0	0	0	0	0	0
August	75	7	20	48	0	0	0	0	0	0
September	77	3	10	64	0	0	0	0	0	0
<b>Total</b>	<b>231</b>	<b>15</b>	<b>49</b>	<b>167</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<sup>1</sup> Person under 18 years of age

<sup>2</sup> Person 18-21 years of age



# EMPLOYMENT<sup>1</sup>: ALL EMPLOYEES<sup>2</sup>

Employee Category	Percentage Goal	Total # of Employees in Category	Q3-23 Actual Percentage of Total Employees	Q2-23 Actual Percentage of Total Employees
Diversity	15%	122	26%	21%
Veterans	2%	18	4%	4%
Women	50%	214	46%	43%
Local <sup>3</sup>	35%	149	32%	32%
<b>MA Employees</b>		290	<b>63%</b>	65%

<sup>1</sup> All employees referenced in this slide were current as of Q3 2023

<sup>2</sup> Total number of employees Q3 2023: 462

<sup>3</sup> Local includes Attleboro, Foxboro, Mansfield, North Attleboro, Plainville & Wrentham

	Employees	Full-Time	Part-Time	Seasonal
<b>Total</b>	462	292	170	0
<b>% of Total</b>	<b>100%</b>	<b>63%</b>	<b>37%</b>	<b>0%</b>



# EMPLOYMENT<sup>1</sup>: SPORTSBOOK<sup>2</sup>

Employee Category	Total # of Employees in Category	Actual Percentage of Total Employees
Diversity	3	17%
Veterans	0	0 %
Women	4	22 %
Local <sup>3</sup>	3	17%
Full-Time	9	50%

<sup>1</sup> All employees referenced in this slide were current as of Q3 2023

<sup>2</sup> Total number of **Sportsbook employees (does not include Sports restaurant employees)** Q3 2023:18

<sup>3</sup> Local includes Attleboro, Foxboro, Mansfield, North Attleboro, Plainville & Wrentham

# EMPLOYMENT<sup>1</sup>: SUPERVISOR AND ABOVE<sup>2</sup>

Employee Category	Total # of Employees in Category	Actual Percentage of Total Employees
Diversity	10	13 %
Veterans	4	5 %
Women	27	35 %

<sup>1</sup> All employees referenced in this slide were current as of Q3 2023

<sup>2</sup> Total number of Supervisor and Above Q3 2023: 77

# PPC CARES: OUR DEVELOPMENT

*Creating Outstanding Leaders*



Executive Development

*planning and team building for success*



PPC Town Hall

*creating a path for new leaders*



Q2 Aces of Penn Awardees

*above & beyond team members*



Women's Link Business Networking

*making new connections*



Welcome Matt Carey

*Director of Food & Beverage*



Emerging Leaders Program

*growing in the organization*



Women Leading at Penn

*inspiring women to pursue leadership roles*

# PPC CARES: OUR TEAM

## *Engaged Team Members*



Sportsbook Grand Opening

*planning and building for fun*



Hiring & Training

*creating a path for new hires*



MGC & Tedy Bruschi

*engaged & present*



Ribbon Cutting

*promoting our brand*



Spirit of Mass

*Local Racing & Entertainment*



Rebranded Patio

*changing and embracing enjoyment*



Supporting American Cancer Society

*inspiring women to make strides*



# PPC CARES: OUR COMMUNITY

*Partnering Success*



American Cancer Society

raising *funds* and awareness



Habitat for Humanity

Delivering homes to *families*



Chamber Summer Business BBQ

Meet & greet *business* members



Golf Tournaments

*linking* on the links



Attleboro Animal Shelter

*Providing* support & shelter



Wrentham 350 Grand Parade

*serving* and *protecting*



Foxboro Recruit Military

*calling* to duty and *ready* to *serve*



# Quarterly Report Q3 2023

November 16, 2023

Massachusetts Gaming Commission

*Encore*<sup>®</sup>  
BOSTON HARBOR  
A WYNN RESORT

# Gaming Revenue, Taxes & Lottery Sales

*Encore*<sup>®</sup>  
BOSTON HARBOR  
A WYNN RESORT

# Gaming Revenue & Taxes: Q3 2023

Year	Month	Table Games GGR	Slots GGR	Total GGR	State Taxes Collected
2023	<b>July</b>	\$26,493,193.26	\$34,782,973.62	\$61,276,166.88	\$15,319,041.72
	<b>August</b>	\$25,361,672.67	\$35,958,648.87	\$61,320,321.54	\$15,330,080.39
	<b>September</b>	\$26,390,983.12	\$33,429,867.35	\$59,820,850.47	\$14,955,212.62
	<b>Total</b>	<b>\$78,245,849.05</b>	<b>\$104,171,489.84</b>	<b>\$182,417,338.89</b>	<b>\$45,604,334.73</b>

# Gaming Revenue & Taxes: Year-Over-Year

Year	Quarter	Table Games GGR	Slots GGR	Total GGR	State Taxes Collected
2022	Q1	\$79,459,213.78	\$94,110,326.79	\$173,569,540.57	\$43,392,385.14
	Q2	\$83,618,480.43	\$98,210,588.95	\$181,829,069.38	\$45,457,267.36
	Q3	\$81,026,184.12	\$103,366,682.87	\$184,392,866.99	\$46,098,216.75
	Q4	\$88,429,261.89	\$101,504,033.71	\$189,933,295.60	\$47,483,323.90
	<b>Total</b>	<b>\$332,533,140.22</b>	<b>\$397,191,632.32</b>	<b>\$539,791,476.94</b>	<b>\$182,431,193.15</b>
2023	Q1	\$87,514,647.65	\$103,225,625.66	\$190,740,273.31	\$47,685,068.33
	Q2	\$86,482,473.05	\$105,539,308.38	\$192,021,781.43	\$48,005,445.37
	Q3	\$78,245,849.05	\$104,171,489.84	\$182,417,338.89	\$45,604,334.73
	Q4	-	-	-	-
	<b>Total (to date)</b>	<b>\$252,242,969.75</b>	<b>\$312,936,423.88</b>	<b>\$565,179,393.63</b>	<b>\$141,294,848.43</b>

# Sports Wagering Revenue & Taxes: Q3 2023

Year	Month	Monthly Win	State Retail Taxes Collected
2023	<b>July</b>	\$357,923.00	\$52,475.00
	<b>August</b>	-\$48,027.00	\$0.00
	<b>September</b>	\$242,313.0	\$25,320.05
	<b>Total</b>	<b>\$552,209.00</b>	<b>\$77,795.05</b>

# Lottery Sales: Q3 2023\*

Year	Month	Lottery Sales	% Change 2021
2023	July	\$531,533.50	50.4%
	August	\$387,462.00	44.8%
	September	\$596,407.50	131.0%
	<b>Total</b>	<b>\$1,515,403.00</b>	<b>72.4%</b>

\*The periods for which relevant sales are reported are based upon week-end totals, and may not correspond precisely to calendar month periods.

# Lottery Sales: Year-Over-Year

Year-	Quarter	Lottery Sales	% Change from Previous Year
2022	Q1	\$818,421.75	33.4%
	Q2	\$828,894.50	14.0%
	Q3	\$879,137.50	13.0%
	Q4	\$1,111,519.50	22.4%
	<b>Total</b>	<b>\$3,637,973.25</b>	<b>20.2%</b>
2023	Q1	\$1,076,576.75	31.5%
	Q2	\$1,467,402.50	77.0%
	Q3	\$1,515,403.00	72.4%
	Q4	-	-
	<b>Total (to date)</b>	<b>\$4,059,382.25</b>	-



# Workforce

*Encore*<sup>®</sup>  
BOSTON HARBOR  
A WYNN RESORT

# Employment: Non-Sports Wagering Related Employees

Sector	Goal	Q1% <sup>1</sup>	Q1 Total # of Employees	Q2% <sup>2</sup>	Q2 Total # of Employees	Q3% <sup>3</sup>	Q3 Total # of Employees	Q4%	Q4 Total # of Employees
Minority	40%	58%	2,061	59%	2,093	60%	2,095	-	-
Veteran	3%	2%	83	2%	77	2%	75	-	-
Women	50%	45%	1,587	45%	1,591	45%	1,569	-	-
Local/Host/Surrounding Community Resident <sup>4</sup>	75%	88%	3,105	88%	3,097	88%	3,081	-	-
MA Residents	-	91%	3,207	91%	3,226	91%	3,190	-	-
<b>Total Number of Employees<sup>5</sup></b>			3,526		3,530		3,491		-
<b>Full-time</b>			2,452		2,490		2,436		-
<b>Part-time</b>			1,074		1,040		1,055		-
<b>On-call</b>			0		0		0		-

1 All Q1 figures are as of March 10, 2023.

2 All Q2 figures are as of July 1, 2023.

3 All Q3 figures are as of October 1, 2023.

4 “Local/Host/Surrounding Community Residents” include residents from communities within thirty (30) miles of Encore Boston Harbor.

5 Please note that an employee may fall into more than one sector (e.g.: minority and local) and, as such, totals may not be reflective of the sum of previous columns.

# Employment: Non-Sports Wagering Related Employees Supervisory and Above

	Minority	Women	Veteran	Total Head Count (including non-minority employees)
<b>ALL EMPLOYEES</b>				
Number of Employees	2,095	1,569	75	3,491
% Actual	60%	45%	2%	-
<b>MANAGER AND ABOVE</b>				
Number of Employees	89	86	11	206
% Actual	43%	42%	5%	-
<b>SUPERVISORS AND ABOVE</b>				
Number of Employees	327	231	21	545
% Actual	60%	42%	4%	-

# Employment: Sports Wagering Related Employees

Sector	Goal	Q1% <sup>1</sup>	Q1 Total # of Employees	Q2% <sup>2</sup>	Q2 Total # of Employees	Q3% <sup>3</sup>	Q3 Total # of Employees	Q4%	Q4 Total # of Employees
Minority	40%	52%	34	25%	7	29%	6		
Veteran	3%	0%	0	0%	0	0%	0		
Women	50%	52%	34	39%	11	38%	8		
Local/Host/Surrounding Community Resident <sup>4</sup>	75%	88%	57	82%	23	86%	18		
MA Residents	-	89%	58	89%	25	86%	18		
<b>Total Number of Employees<sup>5</sup></b>			65		28		21		
Full-time			42		25		18		
Part-time			23		3		3		
On-call			0		0		0		

- 1 All Q1 figures are as of March 10, 2023.
- 2 All Q2 figures are as of July 1, 2023.
- 3 All Q3 figures are as of October 1, 2023.
- 4 “Local/Host/Surrounding Community Residents” include residents from communities within thirty (30) miles of Encore Boston Harbor.
- 5 Please note that an employee may fall into more than one sector (e.g.: minority and local) and, as such, totals may not be reflective of the sum of previous columns.

# Employment: Sports Wagering Related Supervisory and Above Employees

	Minority	Women	Veteran	Total Head Count (including non-minority employees)
<b>ALL EMPLOYEES</b>				
Number of Employees	6	8	0	21
% Actual	29%	38%	0%	-
<b>MANAGER AND ABOVE</b>				
Number of Employees	2	1	0	2
% Actual	100%	50%	0%	-
<b>SUPERVISORS AND ABOVE</b>				
Number of Employees	2	2	0	5
% Actual	40%	40%	0%	-

# Employment: Recruiting Update

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- ❖ Attended and/or hosted 27 recruiting events
- ❖ 15% of events were veteran focused (3% of which were specifically women veteran-focused)
- ❖ 11% of events were specifically related to college hospitality programs – 66% of hospitality program enrollees nationally and 70% locally are women, so these events organically recruit more women

# Operating Spend

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# Operating Spend<sup>1</sup>: Diversity

Diversity Category	Annual Goal	Q3%	Q3 Spend
MBE Vendor Spend	8%	12%	\$2,504,610.91
VBE Vendor Spend	3%	5%	\$1,094,877.44
WBE Vendor Spend	14%	12%	\$2,475,426.02
<b>Total Diverse Spend</b>	<b>25%</b>	<b>29%</b>	<b>\$6,074,914.37</b>

1 All spend figures referenced herein are based upon Encore Boston Harbor's Q3 discretionary spend amount of \$20,699,982.62.



# Operating Spend: Local

Locality	Annual Goal	Q3%	Q3 Spend
Boston	\$20,000,000.00	9%	\$1,776,162.82
Chelsea	\$2,500,000.00	2%	\$362,844.63
Everett	\$10,000,000.00	10%	\$2,150,999.75
Malden	\$10,000,000.00	1%	\$158,632.15
Medford	\$10,000,000.00	0%	\$65,689.49
Somerville	\$10,000,000.00	9%	\$1,962,070.61
MA (Statewide)	-	55%	\$11,378,899.59

# Compliance

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# Compliance: Minors<sup>1</sup> Prevented from Gaming<sup>2</sup>

Month	Minors Intercepted on Gaming Floor and Prevented from Gaming	Minors Intercepted Gaming	Minors Intercepted at Slot Machines	Minors Intercepted at Table Games	Minors Intercepted Consuming Alcohol	Number of IDs NOT Checked that Resulted in Minor on Gaming Floor	Number of Fake IDs Provided by Minors that Resulted in Minor on Gaming Floor	Numbers of Minors on Gaming Floor Under 18 Years of Age
July	6	1	0	1	0	6	1	2
August	2	0	0	0	1	0	1	0
September	1	2	2	1	1	0	2	0
<b>Total</b>	<b>9</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>4</b>	<b>2</b>

1 A “minor” is defined as a person under 21 years of age, provided however, that the last column of the above specifically refers to persons under 18 years of age.

2 Please note that no minors were intercepted from or engaged in any sports wagering during Q3.

- The average length of time spent by a minor on the casino floor was 38 minutes.
- The longest length of time spent by a minor on the casino floor was 1 hour, 58 minutes.
- The shortest length of time spent by a minor on the casino floor was 1 minute.



# Human Resources Initiatives

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# Day in the Life Program



❖ In an effort to create meaningful connections between leaders and team members, leaders sign up for 2- or 4-hour shifts where they actively participate in the daily operations of their respective departments

# Team Member Appreciation and Engagement Survey Kickoff Event



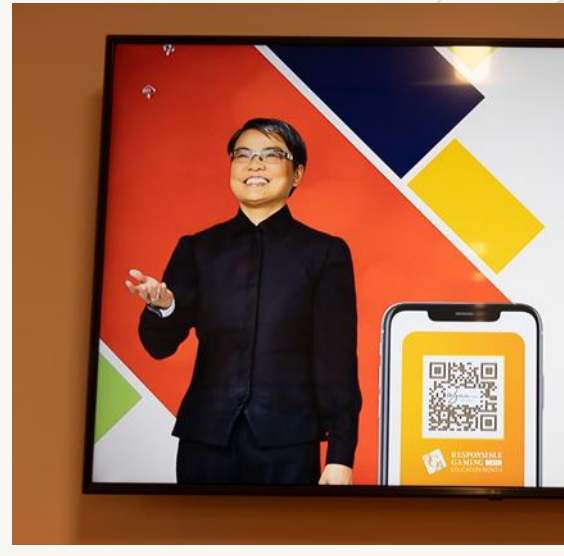
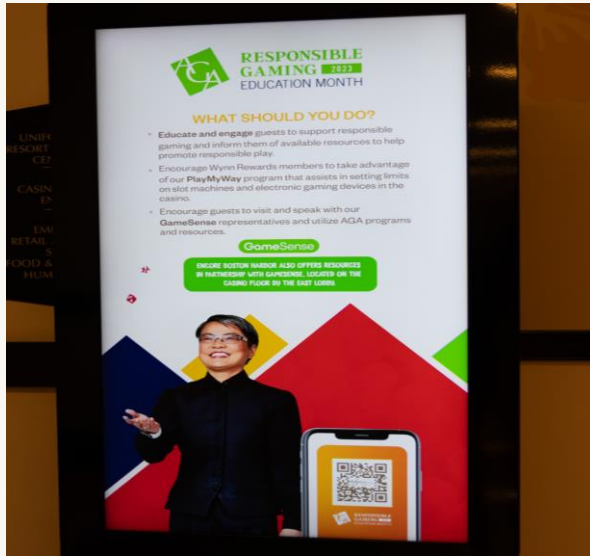
To thank team members for their feedback and to kick-off the Engagement Survey, the Engagement team and volunteers distributed 2023 Forbes Quarter Zip Sweaters and novelty ice cream to team members.

# Employee Engagement Survey



- ❖ To catch the attention of team members and encourage their participation in the Engagement Survey, Training Room 1 was transformed into a tropical paradise survey lounge
- ❖ Posters, digitals, and lollipops all included QR codes so that team members could easily access the survey on their phones
- ❖ iPads were distributed to multiple departments for easier accessibility

# Responsible Gaming Education Month



❖ The mission for RGEM was to educate and engage with team members to inform them of available resources for guests and to help them promote responsible play

❖ There was a Responsible Gaming Quiz on the WIRE and Gamesense had a table in the HOH where they had information on responsible gaming and quizzes and raffles for prizes







# Promotions, Marketing, Special Events and Volunteerism

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# Executive Chef of Rare and Rare Lounge Featured on CBS Boston



- ❖ Chef Megan Vaughan was featured on Boston's local CBS news affiliate
- ❖ Chef Vaughan is the Executive Chef of both Rare and Rare Lounge and brings her years of high-end, fine dining experience to Encore Boston Harbor

# ABCD Hoop Dreams



❖ On September 26, team members from Encore Boston Harbor participated in ABCD Hoop Dreams to play hoops for charity at TD Garden. Teams from different companies played for a chance to compete in the finals and claim the title of ABCD Hoop Dreams Champions.



❖ Event proceeds support ABCD youth programs, which includes programs that provide a paid job, career development, and mentoring to help under-resourced young people build a better future.

# Q2 Community Relations Highlights

27



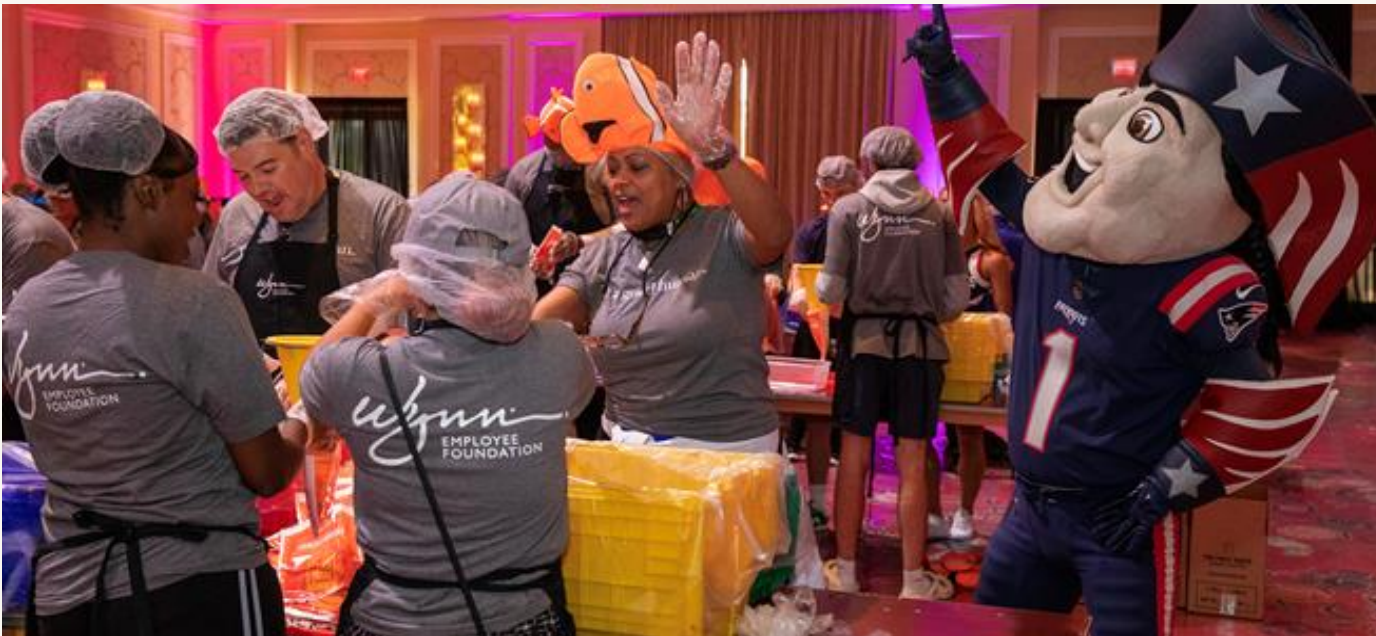
- ❖ Employees volunteered 4,104 hours of their time serving organizations such as Greater Boston Food Bank, Mystic River Watershed Association, Community Servings, Food for Free, and Camp Harborview
- ❖ Employees donated more than 1,330 school supplies for the Everett Public School District
- ❖ Employees donated 1,220lbs of food for Bread of Life, a nonprofit organization who supports residents in Everett, Malden, and Medford



# Feed the Funnel



- ❖ On August 31 and September 1, a total of 863 employees, friends, family, nonprofit partners and vendors, contributed 1,999.5 hours to help pack 457,108 meals in partnership with The Pack Shack



- ❖ Meals were donated to local organizations including Food for Free, Community Works Services, Salvation Army Chelsea Corps, Salvation Army Cambridge Corps, and Eliot Family Resource Center

# Second Annual Non-Profit Leadership Retreat <sup>29</sup>

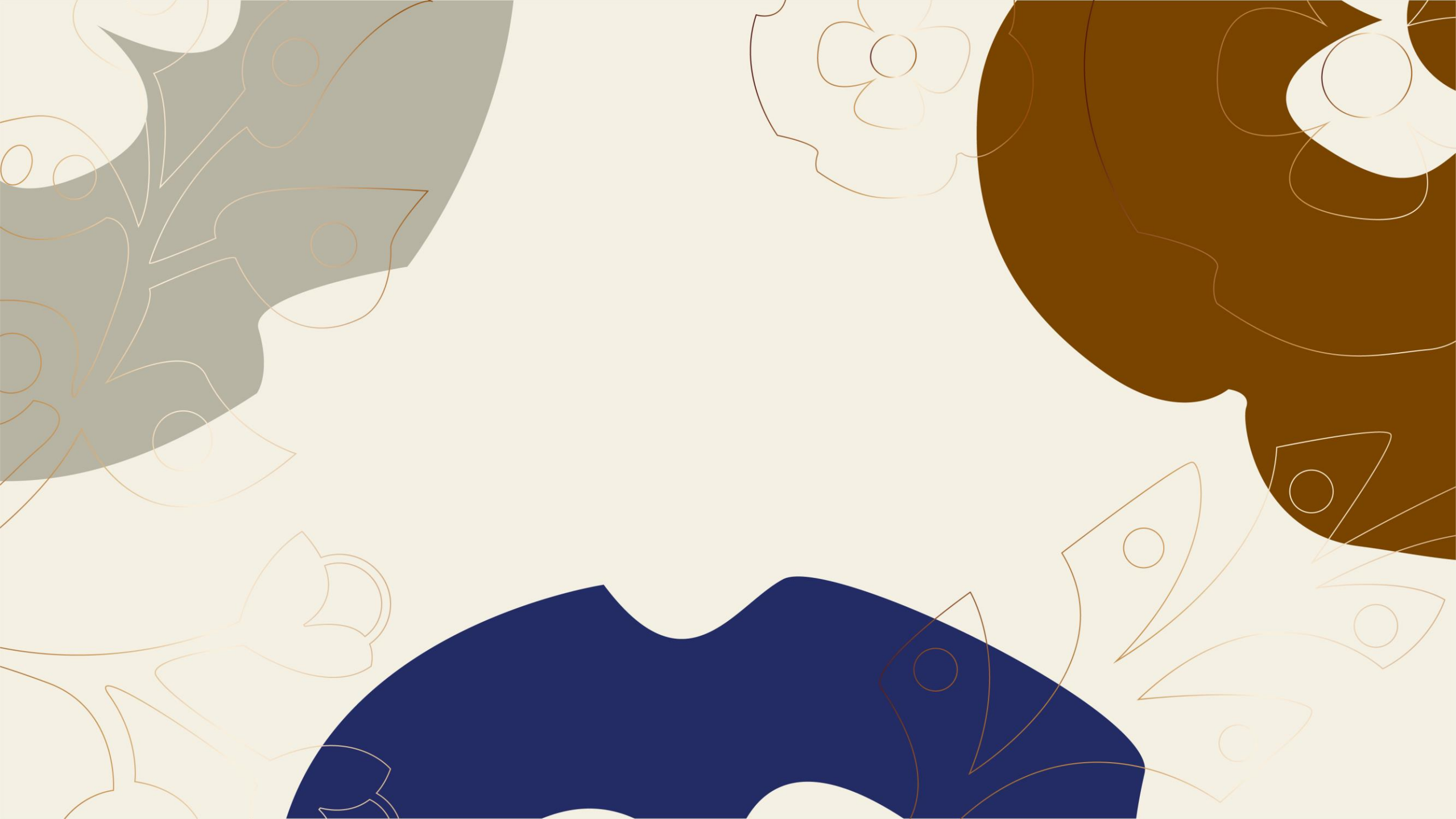


- ❖ On September 27, Encore Boston Harbor hosted the 2nd Annual Nonprofit Leadership Retreat where nonprofit leaders learned from various guest speakers, Encore & Wynn Executives and each other
- ❖ The all-day program featured a Fireside Chat with Dave Hoffman and Monica Moradkhan, Diversity and Inclusion Panel with Bekha Salwasser, Nageeb Sumar, Jesse Tauriac Ph.D., and Glenda Swain, Keynote Speaker Dr. James Rouse, General Session with Jenny Holaday and Philanthropy Panel with Ed Kane, Josh Kraft, Sharon McNally, and Jacqui Krum
- ❖ A total of 75 attendees representing 39 different nonprofits were present

# Q3\* TRU Patron Charitable Contributions

Charitable Organization	Dollar Amount	Number of Tickets
Casa Myrna	\$4,052.42	30,749
Last Hope K9 Rescue	\$14,758.17	56,574
Pan-Mass Challenge	\$5,740.49	34,625
Urban League of Eastern MA	\$4,221.32	30,494
Animal Rescue League of Boston	\$1,994.98	8,815
Big Sister Association of Greater Boston, Inc.	\$1,003.73	6,547
New England Center for Homeless Veterans	\$1,682.49	8,228
South Cove Manor at Quincy Point Rehab Center	\$855.89	6,142
<b>Total</b>	<b>\$34,309.49</b>	<b>182,174</b>

\*Contributions for Casa Myrna, Last Hope K9 Rescue, Pan-Mass Challenge and the Urban League of Eastern MA are from July 1, 2023, through August 15, 2023. All other contributions are from August 15, 2023 through September 30, 2023.

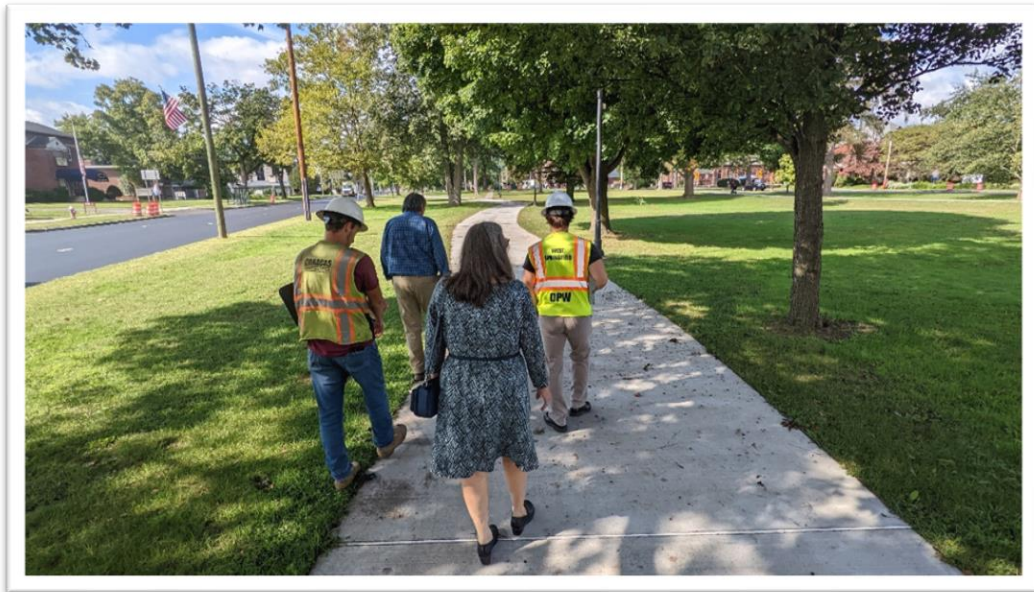




# Massachusetts Gaming Commission



## COMMUNITY MITIGATION FUND



## Fiscal Year 2025 Program Guidelines

Approved by the Massachusetts Gaming Commission on

**November 16, 2023**

# FY 2025 Community Mitigation Fund Guidelines

*Welcome to the FY 2025 Community Mitigation Fund (CMF) Guidelines. The below sections explain some of the major changes that have taken place to facilitate the awarding of CMF Grants.*

The Community Affairs Division has identified opportunities to improve the utilization and administration of the Community Mitigation Fund program. The Massachusetts Gaming Commission (Commission) has created a new structure for the program, which will provide municipalities with some certainty regarding the availability of mitigation funds and assist them in funding actionable, mitigation-based projects tailored their community.

## MAJOR CHANGES FOR FISCAL YEAR 2025

1. *Creation of a Two-Tiered Grant Program* – The changes to the CMF result in two types of grants – the Municipal Block Grant and the Regional Agency Grant. The Municipal Block Grant Program establishes a proposed grant amount for each eligible municipality based on a distribution formula. The Regional Agency Grant Program funds eligible regional agencies in workforce development, public safety, and regional planning grants.
2. *Grant Applications for Municipal Block Grants* – Municipalities will be required to submit a single application for the entire community. Applications are due to the Commission by January 31, 2024 at 11:59 p.m. The application must describe how the municipality will spend the proposed grant amount in accordance with the program guidelines. **If a municipality does not submit a application by January 31, they will forfeit the funds for that year.**
3. *More Detailed Project Guidance* – Through discussions with program stakeholders there was a consensus that more clearly outlining uses of the funds available by category would enable municipalities to develop their programs more efficiently by focusing specifically on eligible mitigation. These guidelines present clearly identified casino-related impacts by category as well as projects that may address these impacts.
4. *Administrative Costs* - This year the Commission has determined that up to 7.5% of the grant may be applied toward the cost of administration up to a cap of \$50,000.
5. *Funding for Regional Planning Agencies* – The Commission is making available up to \$250,000 for the Regional Planning Agencies associated with each gaming establishment. These funds are for regional projects associated with a casino related impact.
6. *Conversion to a Fiscal Year* – Starting with this grant round, the CMF will operate on the State Fiscal Year (7/1/24-6/30/25). This will bring our program into line with best state and municipal practices. Programmatically, grant recipients should not notice any changes to how grants are administered or how funds are disbursed.

CMF Applicants are encouraged to contact the Commission’s staff with any questions or concerns.

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# FY 2025 Community Mitigation Fund Guidelines

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# FY 2025 Community Mitigation Fund Guidelines

## 1.0 COMMUNITY MITIGATION FUND GRANT PROGRAM

The Expanded Gaming Act created the Community Mitigation Fund to help communities and other entities offset costs related to the construction and operation of a gaming establishment. Applications for the Fiscal Year 2025 (FY 2025) grant round are due **January 31, 2024**. The Massachusetts Gaming Commission anticipates making funding decisions on any requests for grant assistance before July 2024.

For FY 2025, there are two types of grants programs within the CMF:

- The Municipal Block Grant Program
- The Regional Agency Grant Program

The Municipal Block Grant Program will provide funds for eligible municipalities to mitigate casino-related impacts and the Regional Agency Grant Program will fund projects to be carried out by regional agencies in the area of workforce development, public safety and regional planning.

## 1.1 Program Eligibility

The Commission's regulations identify a range of eligible entities including, but not limited to:

- The host communities and surrounding communities; communities that entered into a nearby community agreement; any communities that petitioned to be a surrounding community; and any communities that are geographically adjacent to a host community
- Water and sewer districts in the vicinity of a gaming establishment
- Local and regional agencies involved in education, transportation, infrastructure, housing and environmental issues; governmental entities within communities such as redevelopment authorities or non-regional school districts must submit applications through a municipal administrator in its service area
- The county district attorney, police, fire, and emergency services

Any governmental entity seeking funding for mitigation is required to ensure that any planned use of funding complies with the provisions of the Massachusetts Constitution and with all applicable laws and regulations.

Private non-governmental parties may not apply for Community Mitigation Funds. Governmental entities may apply to the Commission for funds on behalf of a private party to mitigate impacts provided that the funding is used for a "public purpose" and not the direct benefit or maintenance of a private party in accordance with the "Anti-Aid Amendment" of the Massachusetts Constitution.

## 1.2 Ineligible Expenses for all Grants

The CMF will not fund the mitigation of impacts already being addressed by a Host or Surrounding Community Agreement. All applications must demonstrate that CMF funds will supplement and not supplant historical operations funding.

# FY 2025 Community Mitigation Fund Guidelines

**FY 2025 grant funds may not be used for the mitigation of:**

- Impacts that are projected or predicted but that are not occurring or have not occurred by January 31, 2024
- Impacts that are the responsibility (e.g. contractual, statutory, regulatory) of parties involved in the construction and operation of gaming establishments
- Other impacts determined annually by the Commission

## 1.3 Application Requirements

The following requirements are applicable for all grants. Please see the individual grant guidelines for specific instructions regarding each type of grant.

- Applicants are required to fully complete the grant application appropriate to their type of grant.
- All applications must identify an impact associated with the casino and describe how the project will address the impact.
- **All applications must be submitted by 11:59 PM January 31, 2024. Submissions must be sent via e-mail to MGCCMF@massgaming.gov. Any application received after the deadline will not be considered for funding in FY 2025.**

## 1.4 Funding Allocation

The Commission intends to allocate FY 2025 CMF funding based on the proportion of funds paid into the CMF from the taxes and fines generated by the MGM Springfield and Encore Boston Harbor facilities.<sup>1</sup>

For FY 2025, the Commission plans to allocate \$16.3 million to the eligible municipalities in Region A, Region B and the Category 2 facility:

- Region A \$11.5 million
- Category 2 \$ 0.5 million
- Region B \$ 4.3 million

Category 2 grants will be funded from CMF revenues generated in Region A as Plainridge Park Casino lies within the boundaries of Region A.

For FY 2025, the Regional Agency Grants will be funded with unspent funds from previous grant rounds. The Commission anticipates that up to \$3 million may be expended on Regional Agency Grants. Targeted spending may be found in the detailed descriptions of the Regional Agency Grant categories. The Commission determined in grant year 2020, that any unused funds allocated to each Category 1 Region will be set aside for that region for a period of three years. After the three-year period, the funds shall be allocated back into a combined fund for all regions and for Category 2 impacts. It is the intention of the Commission to count any allocated regional balances first toward FY 2025 spending targets.

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<sup>1</sup> These Guidelines do not describe revenue estimates from the potential Tribal facility in Taunton or the participation of a Region C facility, as no Region C license or Tribal facility has yet been fully authorized.

# FY 2025 Community Mitigation Fund Guidelines

## 2.0 MUNICIPAL BLOCK GRANT PROGRAM

The Municipal Block Grant Program is designed to give municipalities in the vicinity of the gaming establishments some certainty regarding the availability of mitigation funds to their communities.

### 2.1 Program Eligibility

The Municipal Block Grant Program will include all eligible municipalities. Eligible municipalities are:

- **Region A** - Everett, Boston, Cambridge, Chelsea, Lynn, Malden, Medford, Melrose, Revere, Somerville, and Saugus
- **Category 2** – Attleboro, Foxborough, Mansfield, North Attleboro, Plainville, and Wrentham
- **Region B** - Springfield, Agawam, Chicopee, Holyoke, East Longmeadow, Hampden, Longmeadow, Ludlow, Northampton, West Springfield, and Wilbraham

### 2.2 Key Programmatic Aspects

The Municipal Block Grant will fund projects in several categories – Community Planning, Transportation, Public Safety, Gambling Harm Reduction, and Specific Impact. These categories are further described in Section 2.6 of the Guidelines. The following are some of the key aspects of the program:

- The proposed grant amount for each eligible municipality is based on a distribution formula.
- For each category of grant, the Commission has identified impacts that are likely to be caused by, or associated with, the gaming establishments. For these identified impacts, applicants may reference them in their applications.
- For each category of grant, the Commission has identified the types of projects that are generally acceptable to address casino related impacts.
- For each category of grant, the Commission has identified ineligible projects or items.

### 2.3 Proposed Municipal Grant Amounts

The proposed grant amounts for FY 2025 can be found as **ATTACHMENT-A** .

Proposed grant amounts were voted by the Commission on November 16, 2023 each municipality will have received a letter outlining their proposed and the steps that must be taken to receive that award.

### Suggested Grant Spending

The Commission would like to see spending spread among the several project categories to address as many casino-related impacts as possible. Therefore, a suggested minimum of 15% of the grant should be targeted to each of the Community Planning, Transportation, Public Safety, Gambling Harm Reduction categories. This would allow the municipality to spend up to 40% of the grant on whichever categories they choose. For the first year of this program, these are not

# FY 2025 Community Mitigation Fund Guidelines

mandated minimums. The Commission will monitor compliance with this program element and use this data to evaluate future program guidelines.

## 2.4 Application Requirements

**Grant applications are due to the Commission by 11:59 PM on January 31, 2024** via e-mail at MGCCMF@massgaming.gov or as a response to COMMBUYS BID Number:BD24-1068-1068C-1068L-95061. **Applications received after this time will not be considered for funding. Each municipality must submit only one application for the entire municipality. Applications should include the following elements.**

Please click here: [www.massgaming.com/about/community-mitigation-fund/forms/](http://www.massgaming.com/about/community-mitigation-fund/forms/) for the application forms and an example application.

- a. Applicants are required to fully complete the CMF Municipal Block Grant Application and select the appropriate categories for their application.
- b. Applicants must identify an impact associated with the casino, describe how the project will address it, and provide justification for any funds requested.
- c. The municipality must submit a separate form for each project within a grant category detailing the scope, schedule, and budget in accordance with the Guidelines. Applicants may submit additional supporting materials. These combined forms and attachments will make up your municipality's complete application.
- d. If a municipality cannot identify sufficient projects that will expend the entire proposed grant amount, a municipality may apply for a lower amount of funding. Any unused funding for that fiscal year will be forfeited by the municipality.

## 2.5 Waivers

The Commission may in its discretion waive or grant a variance from any provision or requirement contained in these Guidelines. Any requests for waivers shall be submitted with the Grant Application. Please click here for the waiver form : [www.massgaming.com/about/community-mitigation-fund/forms/](http://www.massgaming.com/about/community-mitigation-fund/forms/) . The following provision is only applicable to the Municipal Block Grant Program.

Funding Waiver- If any municipality determines that the proposed grant amount is insufficient to mitigate identified casino related impacts, it may request a waiver for those specific projects that cause the municipality to exceed the proposed grant amount. These will be evaluated on a case by case basis and award decisions will be based on available funding. **The intent of this waiver is not to fund routine expenses but rather to fund significant projects that would not otherwise be able to be funded under a municipality's annual CMF allocation.**

Please see section 5.5 of these Guidelines for additional information about waivers.

# FY 2025 Community Mitigation Fund Guidelines

## 2.6 Grant Categories

The Commission has identified five categories under which a municipality may apply for funding. All applicants should make sure they are aware of each category's distinct requirements and that they apply under the relevant category. Projects that the Commission determines are incorrectly filed may be recategorized by staff.

### Community Planning

The Community Planning grant category is designed to help municipalities either address negative impacts of the gaming establishment on the local community or take advantage of opportunities that the gaming establishment presents.

Community Planning projects must address an identified casino related impact. Grant funds may be used for both project planning and project implementation. Past projects have included the development of marketing and tourism plans, design and implementation of web sites highlighting local businesses, wayfinding projects, re-zoning studies, and projects to improve the local economic capacity.

Applicants should consult with the Regional Planning Agency (RPA) or nearby communities to determine the potential for cooperative regional efforts regarding planning activities. Details of these consultations should be provided in the application.

A project may identify the addition of staff to implement the project. The Commission will fund the portion of the staff member's salary that is directly related to the implementation of the mitigation efforts. The municipality would need to provide the remaining amount of any employee cost and certify that all such expenses are casino related.

**Identified Impacts:** The Commission has identified impacts associated with the gaming establishment, which municipalities may cite in their application. There may be other impacts that have not been identified by the Commission that could be eligible for grant funds. If a municipality has identified an additional impact to be addressed, the application must identify the impact and provide sufficient evidence that the impact is caused or is associated with a gaming establishment.

### Positive Impacts

- Gaming establishments attract a large group of patrons and employees to their establishments that would not otherwise be present in the area. This provides opportunities for local communities and businesses to attract these patrons and employees to their communities and business establishments.
- Gaming establishments typically purchase millions of dollars of goods and services each year, much of which is purchased locally. This provides the opportunity for local businesses to provide these goods and services.



## FY 2025 Community Mitigation Fund Guidelines

- Gaming establishments require a significant number of workers, which provide employment opportunities for local residents.

### **Negative Impacts**

- Competition from the gaming establishment may have negative impacts on other businesses competing in the hospitality and entertainment industries.
- The presence of a gaming establishment may result in reallocated spending. Reallocated spending is spending on goods and services which would have occurred had the casinos never opened, but which did not occur because an individual chose to spend their money at the casino instead. The main areas where monies are reallocated are transportation, retail items, hotels and travel, restaurants and bars, recreation, non-live entertainment and live entertainment.
- The marketing capabilities of the gaming establishments may put other competing local businesses at a disadvantage.

**Eligible Community Planning and Implementation Projects** – The following types of projects may be considered to address casino related impacts:

- Marketing and tourism plans to attract casino patrons and employees to the municipality, highlight local businesses, promote recreational and entertainment opportunities, and help communities compete with the gaming establishments for business.
- Projects to provide economic development opportunities for local businesses.
- Programs to increase business opportunities to provide goods and services to the gaming establishments.
- Other programs to encourage casino employees to live/work/play in the community.

**Ineligible Projects** – The following types of projects have been deemed ineligible for grant funding:

- Projects that do not address a casino-related impact.

# FY 2025 Community Mitigation Fund Guidelines

## Transportation

The Transportation grant category is designed to help municipalities deal with the transportation related impacts that a gaming establishment may have on all modes of transportation including vehicular travel, public transit and pedestrian/bicycle travel. This category includes both the planning for transportation improvements and the construction of identified transportation improvement projects.

**Transportation Planning Projects:** Transportation planning projects must address an identified casino impact. Transportation planning projects must have a defined area or issue that will be investigated as well as a clear plan for implementation of the results. Transportation planning grants are intended to assist communities with gathering data and analysis, hiring planning consultants, performing engineering review/surveys, conducting public meetings, preparing final reports, and preparing analysis or design.

Planning projects for road improvements will only be funded on routes that have been identified in the Environmental Impact Report for the gaming establishment as carrying at least 1 percent of the casino related traffic. The Commission may consider other roadway sections if the applicant can affirmatively demonstrate that the road section is significantly impacted by casino related traffic. Please see **ATTACHMENT B** for the trip distribution maps for the gaming establishments.

For any proposed transit improvement studies, the municipality must consult with the Regional Transit Authority where the gaming establishment is located and must have support from that agency before proceeding with the project.

Applicants may, but are not required, to include a description of how the project meets the evaluation standards for the Fiscal Year 2025 TIP criteria for the Boston MPO Region or the Pioneer Valley Planning Commission's transportation evaluation criteria, or other regional transportation project evaluation standard, whichever may be most applicable. Applicants are strongly encouraged to include a letter of support from MassDOT with any application.

**Transportation Construction Projects:** Transportation construction projects must address an identified casino impact. The Grant will only fund a portion of the construction costs. Grant funds will provide 100% of project costs up to \$250,000 and will fund up to 30% of the costs in excess on \$250,000 up to a maximum grant of \$1.5 million. If a municipality has more than one transportation construction project, the total cost of the combined projects will be used to determine the project subsidy (i.e., only the first \$250,000 of the combined projects receives the 100% subsidy).

Applicants must demonstrate that the project will begin construction no later than June 30, 2025.

**Identified Impacts:** The Commission has identified transportation related impacts associated with the gaming establishments, which municipalities may cite in their applications. There may be other impacts that have not been identified by the Commission that may be eligible for grant

# FY 2025 Community Mitigation Fund Guidelines

funds. If a municipality has identified additional impacts to be addressed, the applications must identify the impact and provide sufficient evidence that the impact is caused or is associated with a gaming establishment.

- Increased traffic associated with the gaming establishment may cause increased congestion on the major routes leading to/from the gaming establishment.
- Increased traffic associated with the gaming establishment may result in increased vehicular accidents on major routes leading to/from the gaming establishment.
- Increased traffic associated with the gaming establishment may result in increased vehicular/bicycle/pedestrian conflicts.
- Increased traffic associated with the gaming establishment may cause localized increases in air pollution due to congestion.
- Increased visitation to the gaming establishment area may place a strain on public transit services.

**Eligible Transportation Planning Projects** – Eligible transportation planning projects could include:

- Road safety audits
- Complete Streets evaluations and designs
- Studies to improve public transit
- Multi-use path planning and design
- Road/traffic signal improvement designs to improve vehicular safety and/or reduce traffic congestion.
- Planning for bike share networks
- Studies to identify air pollution reduction strategies
- Studies to identify ways to reduce single occupancy vehicles

**Eligible Transportation Construction Projects**

- Construction of multi-use paths
- Construction of identified road safety improvements
- Construction of identified roadway capacity enhancements
- Purchase and installation of bike share networks
- Construction of transit improvements
- Construction of traffic signal improvements to enhance roadway capacity and/or improve vehicular and pedestrian safety
- Other transportation related construction projects that can be demonstrated to address an impact of a gaming establishment.

**Ineligible Projects**

- Routine road paving projects
- Projects only associated with aesthetic improvements
- Operational costs associated with traffic safety (e.g., police costs for traffic enforcement, costs of traffic control equipment such as speed boards, etc.) Applicants should apply for these funds under public safety.
- Projects that do not address a casino related impact

# FY 2025 Community Mitigation Fund Guidelines

## Public Safety

Public safety grants are intended to assist municipalities in addressing the increased public safety operational costs associated with the introduction of a gaming establishment to the region. Eligible entities include Police, Fire, EMS, and other public safety agencies. Any proposed project under this section must be done in response to a casino related impact. All applications for public safety personnel or other public safety operational costs, including relevant training, must demonstrate that CMF funds will supplement and not supplant historical operations funding.

Applicants that are applying for radio or other communication equipment that engages with the statewide interoperability system must submit the ICIP (Interoperable Communications Investment Proposal) form and Special Conditions Form directly to the Executive Office of Public Safety and Security (EOPSS). The applicant shall submit a copy of their forms with their public safety application. The applicant shall send the approved ICIP and Special Conditions Forms to [MGCCMF@Massgaming.gov](mailto:MGCCMF@Massgaming.gov) when they receive an approved copy back from EOPSS.

Applicants must include detailed hourly estimates for the costs of any public safety personnel. Applicants should include the most relevant information describing historical service or staffing levels (“baseline information”) in order to demonstrate that all funds will be used to supplement existing efforts. For example, if a community requests funding for additional staffing for a specific time period, the application should include information about the staffing levels that have been used for that same time period during the license term of the gaming facility. Applicants are requested to provide as much detailed baseline information as practicable to help the Commission in its review.

**Identified Impacts:** The Commission has identified public safety related impacts associated with the gaming establishments, which municipalities may cite in their applications. There may be other impacts that have not been identified by the Commission that could be eligible for grant funds. If a municipality has identified additional impacts to be addressed, the applications must identify the impact and provide sufficient evidence that the impact is caused or is associated with a gaming establishment.

- Increased visitation and employment due to the casino will likely increase the interaction between public safety personnel and casino patrons and employees.
- It is recognized by law enforcement and the casino industry that casinos and other hospitality related businesses may attract certain types of crime including but not limited to human trafficking, money laundering, and drug trafficking. Other crimes that may be attributable to casinos include increased assaults, fraud, and property crimes.
- The presence of casinos has been demonstrated to cause an increase in cases of operating under the influence.
- Increases in traffic can cause increases in congestion, accidents, and vehicular/bicycle/pedestrian conflicts.

## FY 2025 Community Mitigation Fund Guidelines

- The influx of visitors to a casino can result in an increase in calls for service and put pressure on local emergency services including emergency responders like fire departments and EMS. This could lead to increased needs for mutual aid.

### Possible Mitigation Measures

- Police training including de-escalation training, implicit bias training, use of force training or other training to help improve police/patron/employee interactions.
- Efforts to improve traffic safety that could include enhanced traffic enforcement, use of speed/message boards, public education programs, or other efforts that are demonstrated to improve traffic safety.
- Efforts to reduce impaired driving potentially including sobriety checkpoints, saturation patrols, education programs, or other demonstrated measures to reduce impaired driving.
- Efforts to identify, monitor and address issues related to human trafficking, drug trafficking and money laundering.
- Efforts to better track casino related crimes.
- Training to Fire Departments and EMS to address issues that arise specifically associated with the gaming establishment.

**Ineligible Projects** – MGC has identified the following projects/items as ineligible for grant funding:

- Equipment that is normally supplied by a public safety agency to their staff (e.g., uniforms, safety equipment, weapons, body armor, etc).
- Routine replacement of vehicles.
- Routine replacement of radio equipment.
- Equipment that does not specifically address a casino related impact.
- Funding that supplants existing historical funding.
- Funding for Gaming Enforcement Unit personnel or operations costs specified or anticipated in the memoranda of understanding between the Massachusetts State Police and host communities' police departments
- Any project does not address a casino related impact.

# FY 2025 Community Mitigation Fund Guidelines

## Gambling Harm Reduction

Funding for gambling harm reduction is designed to assist municipalities in identifying populations at risk for problem gambling, studying the impact of gambling on those populations, identifying solutions to help mitigate identified harms and implementing solutions that help reduce the risk of gambling harms.

### Identified Impacts

- Certain groups of people are disproportionately at risk of gambling-related harm by the presence of a casino. These groups can be linked by race, ethnicity, gender, age, people who have recently immigrated, veteran status, and/or socioeconomic status.

MGC recently worked with Gambling Research Exchange Ontario (GREO) to compile research on different groups that may be relevant to your community's needs. Please click here to access the studies on different populations that may be at increased risk for gambling harm

<https://massgaming.com/about/community-mitigation-fund/application-guidelines/>

### Possible Mitigation Measures

- A municipality may use these funds for the development and planning of a study or project. Projects are primarily for community engagement, vision and planning. Applicants may develop a plan to engage the community to identify a casino or gambling related topic or issue which warrants further investigation. The product of this process should be a research strategy which may be considered for detailed research funding in subsequent funding cycles. We expect these types of grants to be for a one-year term.
- A community may also use these funds for conducting detailed research on the topic identified. Applicants that have a specific research topic and/or question and are prepared to propose a research strategy. For this type of proposal, applicants must organize their proposal in the following order.

**Specific Aims:** State concisely the goals of the proposed research. Summarize the gambling related harms and potential impacts that the results of the proposed project will exert on Massachusetts and the research field(s) involved.

**Research Strategy:** Provide a detailed research strategy, including the following:

**Approach:** Describe the overall strategy, methodology, and analyses to be used to accomplish the specific aims of the project.

**Significance:** Explain the importance of the topic or question that the proposed project addresses.

**Innovation:** Describe any new or novel theoretical concepts, approaches or methodologies to be used.

**Protection of Human Subjects:** If applicable, summarize your plan to protect human subjects and obtain IRB approval.

**Collaboration and Knowledge of the Community:** Describe the organization's relationship and understanding of the community with whom the study will take place.

**Knowledge Translation and Exchange:** Describe how an answer to the question or insight on the topic may mitigate gambling related harms in the community. Identify

## FY 2025 Community Mitigation Fund Guidelines

specific activities and/or measures which may be supported by the Community Mitigation Fund in subsequent funding cycles. Describe a plan to share information with the community and or use it to inform policy or practice.

Some examples of the MGC General Research Agenda and Community Engaged Research can be found: <https://massgaming.com/about/research-agenda/> or <https://massgaming.com/about/research-agenda-search/?cat=community-engaged-research>

- A community may also apply to fund a project that will help to mitigate a gaming harm identified via their own detailed research or the application of MGC research. Applicants can utilize research identified in the community specific interventions slide deck found <https://massgaming.com/about/community-mitigation-fund/application-guidelines/> or impacts outline in the MGC reports found <https://massgaming.com/about/research-agenda/> or <https://massgaming.com/about/research-agenda-search/?cat=community-engaged-research>

**Ineligible Projects** – MGC has identified the following projects/items as ineligible for grant funding:

- Project does not address a casino related impact.
- Detailed research projects that are not grounded in available evidence.
- A project that will mitigate a gaming-related harm that is not grounded in their own detailed research or recommendations arising from MGC research (as outlined in the community specific interventions slide deck or MGC research reports referenced above).

# FY 2025 Community Mitigation Fund Guidelines

## Specific Impact

Specific Impact Grants are only for projects that do not fit within the other categories of CMF Grants. The municipality must provide a thorough description of an identified impact of the gaming establishment and proposed mitigation measures to address the impact.

**Identified Impacts:** The Specific Impact category recognizes that there may be other impacts associated with a gaming establishment that have not been identified by the Commission. If a municipality has identified an additional impact to be addressed, the application must identify the impact and provide sufficient evidence that the impact is caused or is associated with a gaming establishment.

The Commission's regulation 205 CMR 125.01 2(b)4 defines operational impacts as:

*"The community will be significantly and adversely affected by the operation of the gaming establishment after its opening taking into account such factors as potential public safety impacts on the community; increased demand on community and regional water and sewer systems; impacts on the community from storm water runoff, associated pollutants, and changes in drainage patterns; stresses on the community's housing stock including any projected negative impacts on the appraised value of housing stock due to a gaming establishment; any negative impact on local, retail, entertainment, and service establishments in the community; increased social service needs including, but not limited to, those related to problem gambling; and demonstrated impact on public education in the community."*

Although these definitions include the types of operational impacts that may be funded, it is not limited to those. The determination will be made by the Commission after its review.

### **Eligible Expenses**

The Commission will make funding available to mitigate gaming facility operational impacts that are being experienced or were experienced by the January 31, 2024 application deadline.

### **Ineligible Expenses**

Any expense considered to be a municipal cost such as any cost which may be included its annual budget

- Any cost for which it receives payments through its Host Community Agreement or Surrounding Community Agreement.
- Any project that does not address a casino related impact.
- Applications from non-governmental entities.



# FY 2025 Community Mitigation Fund Guidelines

## 3.0 REGIONAL AGENCY GRANT PROGRAM

The Commission will accept applications by regional agencies to address impacts on communities that go beyond one municipality and can be more effectively addressed in a regional manner.

### 3.1 Eligibility

MGL c. 23K, Section 61 identifies eligible entities as “local and regional education, transportation, infrastructure, housing, environmental issues and public safety, including the office of the county district attorney, police, fire and emergency services. The Commission may, at its discretion, distribute funds to a governmental entity or district other than a single municipality in order to implement a mitigation measure that affects more than 1 municipality.”

This definition provides the Commission with broad authority regarding the distribution of mitigation funds to regional governmental entities. However, the Commission has identified three priority areas for project funding – regional planning efforts, regional public safety, and regional workforce education programs.

While other regional governmental entities may be eligible for funding, any such entity proposing to apply for funding should contact the Community Affairs Division well in advance of the submission deadline to discuss project eligibility and casino related impacts.

### 3.2 Key Programmatic Aspects

Historically, the Commission has funded regional agencies through the CMF as part of each year’s grant round. For FY 2025, the Regional Agency Grant Program will be the funding mechanism. Three categories of grants are available for FY 2025 – Regional Planning Grant, Regional Public Safety Grant, and Regional Workforce Development Grant. These categories are further described in Section 3.5 of the Guidelines. The following are some of the key aspects of the program:

- For each category of grant, the Commission has identified impacts that are likely to be caused by, or associated with, the gaming establishments. For these identified impacts, applicants may reference them in their applications.
- For each category of grant, the Commission has identified the types of projects that are generally acceptable to address casino related impacts.
- For each category of grant, the Commission has identified ineligible projects or items.

### 3.3 Application Requirements

**Grant applications are due to the Commission by 11:59 PM on January 31, 2024** via e-mail at MGCCMF@massgaming.gov or as a response to COMMBUYS BID Number:BD24-1068-1068C-1068L-95061. **Applications received after this time will not be considered for funding. Each regional agency must submit only one application. Applications should include the following elements.**

# FY 2025 Community Mitigation Fund Guidelines

Please click here: [www.massgaming.com/about/community-mitigation-fund/forms/](http://www.massgaming.com/about/community-mitigation-fund/forms/) for the application forms and an example application.

- a. Applicants are required to fully complete the CMF Regional Agency Grant Application and fill out the appropriate section for the selected grant category.
- b. Applicants must identify an impact associated with the casino, describe how the project will address it, and provide justification for any funds requested.
- c. The regional agency must submit an application detailing the scope, schedule, and budget which provides details on how the agency will spend the money in accordance with the program guidelines. Agencies may submit additional materials to support their applications.

## 3.4 Waivers

The Commission may in its discretion waive or grant a variance from any provision or requirement contained in these Guidelines. Any requests for waivers shall be submitted with the Grant Application. Please click here for the waiver form : [www.massgaming.com/about/community-mitigation-fund/forms/](http://www.massgaming.com/about/community-mitigation-fund/forms/)

## 3.5 Grant Categories

The Commission has identified three categories under which a regional agency may apply for funding. All applicants should make sure they are aware of each category's distinct requirements and that they apply under the relevant category. Project that the Commission determines are incorrectly filed may be recategorized by staff.

### Regional Planning Grants

Certain casino related impacts may present challenges across multiple communities or create opportunities to leverage the presence of a casino to provide regional benefits. Projects to address these types of impacts are often better served through the use of a regional agency to develop and implement solutions.

For FY 2025, the Commission is authorizing grants of up to \$250,000 for Regional Planning Agencies (RPAs) to identify and implement projects that address regional impacts associated with the gaming establishments.

The eligible RPAs for these grants are those that serve the casino's host community – the Metropolitan Area Planning Council for Region A, The Southeast Regional Planning and Economic Development District for the Category 2 facility, and the Pioneer Valley Planning Commission for Region B.

Similar to the Community Planning and Transportation categories under the Municipal Block Grant Program, these grants are designed to help either address negative impacts of the gaming establishment on the region or to take advantage of opportunities that the gaming establishment presents.

# FY 2025 Community Mitigation Fund Guidelines

Regional planning projects must address an identified casino related impact. Grant funds may be used for both project planning and project implementation. Planning projects must have a defined area or issue that will be investigated as well as a clear plan for implementation of the results. Applicants should work in collaboration with or on behalf of impacted municipalities. Planning grants are intended to assist agencies with gathering data and analysis, hiring planning consultants, performing engineering review/surveys, conducting public meetings, preparing final reports, and preparing analysis or design.

**Identified Impacts:** The Commission has identified impacts associated with the gaming establishment, which RPAs may cite in their application. There may be other impacts that have not been identified by the Commission that could be eligible for grant funds. If an agency has identified additional impacts to be addressed, the application must identify the impact and provide sufficient evidence that the impact is caused or is associated with a gaming establishment.

## **Positive Impacts**

- Gaming establishments attract a large group of patrons and employees to their establishments that would not otherwise be present in the area. This provides opportunities for local communities and businesses to attract these patrons and employees to their communities and business establishments.
- Gaming establishments typically purchase millions of dollars of goods and services each year, much of which is purchased locally. This provides the opportunity for local businesses to provide these goods and services.
- Gaming establishments require a significant number of workers, which provide employment opportunities for local residents.

## **Negative Impacts**

- Competition from the gaming establishment may have negative impacts on other businesses competing in the hospitality or entertainment industries.
- The presence of a gaming establishment may result in reallocated spending. Reallocated spending is spending on goods and services which would have occurred had the casinos never opened, but which did not occur because an individual chose to spend their money at the casino instead. The main areas where monies are reallocated are transportation, retail items, hotels and travel, restaurants and bars, recreation, non-live entertainment, and live entertainment.
- The marketing capabilities of the gaming establishments may put other competing local businesses at a disadvantage.
- Increased traffic associated with the gaming establishment may cause increased congestion on the major routes leading to/from the gaming establishment.
- Increased traffic associated with the gaming establishment may result in increased vehicular accidents on major routes leading to/from the gaming establishment.
- Increased traffic associated with the gaming establishment may result in increased vehicular/bicycle/pedestrian conflicts.
- Increased traffic associated with the gaming establishment may cause localized increases in air pollution due to congestion.

## FY 2025 Community Mitigation Fund Guidelines

- Increased visitation to the gaming establishment area may place a strain on public transit services.

**Eligible Projects** – The following types of projects may be considered to address casino related impacts:

- Marketing and tourism plans to attract casino patrons and employees to the municipality, highlight local businesses, promote recreational and entertainment opportunities, and help communities compete with the gaming establishments for business.
- Projects to provide economic development opportunities for local businesses.
- Programs to increase business opportunities to provide goods and services to the gaming establishments.
- Other programs to encourage casino employees to live/work/play in the region.
- Road safety audits
- Complete Streets evaluations and designs
- Studies to improve public transit
- Multi-use path planning and design
- Road/traffic signal improvement designs to improve vehicular safety and/or reduce traffic congestion.
- Planning for bike share networks
- Studies to identify air pollution reduction strategies
- Studies to identify ways to reduce single occupancy vehicles

**Ineligible Projects** – The following types of projects have been deemed ineligible for grant funding:

- Projects that do not address a casino-related impact.
- Applications from non-governmental entities.

# FY 2025 Community Mitigation Fund Guidelines

## Regional Public Safety Grants

MGL c. 23K, Section 61 identifies regional public safety agencies as being eligible for mitigation funds and specifically identifies the county District Attorney's Offices. The Commission seeks to support the Attorney General and District Attorney's Offices in jurisdictions where the establishment and operation of a casino have resulted in an increase in criminal cases. The objective of this category is to ensure that these offices have the necessary resources to effectively manage and prosecute cases associated with the operation of a casino.

The regional agencies eligible for funding under this category include:

- The Office of the County District Attorneys
- Attorney General's Office
- Other relevant public safety agencies

For FY 2025, the Commission has established a maximum grant of \$100,000 for the District Attorney's Offices. Grant amounts for the Attorney General or other relevant public safety agencies will be based on available funding and demonstrated need.

**Identified Impacts:** The Commission has identified regional public safety related impacts associated with the gaming establishments, which agencies may cite in their applications. There may be other impacts that have not been identified by the Commission that could be eligible for grant funds. If an agency has identified additional impacts to be addressed, the application must identify the impact and provide sufficient evidence that the impact is caused or is associated with a gaming establishment.

- The introduction of casinos in the Commonwealth has led to increased criminal cases being handled by the District Attorney or Attorney General.
- It is recognized by law enforcement and the casino industry that casinos and other hospitality related businesses may attract certain types of crime. This is including but not limited to human trafficking, money laundering, and drug trafficking. Other crimes that may be attributable to casinos include increased assaults, fraud, and property crimes.
- The presence of casinos has been demonstrated to cause an increase in cases of operating under the influence.

### **Eligible Costs**

- Funding for personnel, including prosecutors, investigators, and administrative staff, and victim witness advocates to assist these offices in handling the additional workload created by the casino's presence. The office must demonstrate an increase in criminal cases directly related to the presence of the casino. The office must have a clear plan for the utilization and record keeping of the grant funds, specifying the roles and responsibilities of the additional personnel to be hired or assigned to the grant.

# FY 2025 Community Mitigation Fund Guidelines

## Ineligible Costs

- Staff whose jobs are not directly tied to the increased case load associated with a casino.
- A project that does not address a casino related impact

## Reporting and Accountability

Grant recipients will be required to provide quarterly progress reports on their progress as well as a final report with case numbers to ensure that the funds are being used as intended and to assess the program's impact on case management. The grantee will also provide to the Commission staff a record of the following case types.

- Motor Vehicle/OUI
- Property Damage/Theft
- Assaults
- Sexual Assault
- Drug Offenses
- Money Laundering
- Disorderly Conduct
- Human Trafficking
- Firearms
- RICO
- Identity Theft

Additional detail with respect to reporting will be included in the grant documents if awarded.

# FY 2025 Community Mitigation Fund Guidelines

## Regional Workforce Development Grants

Regional Workforce Development Grant applicants should focus on areas highly impacted by casino operations to mitigate a strain in existing resources and a potential impact to the regional labor market. Applicants must be able to demonstrate that the education and skills training programs proposed are in response to an identified need at the casinos or to provide a sufficient supply of workers to backfill jobs being lost to the casinos. The Commission encourages new and innovative program ideas that align with the grant program's intention.

A consortium application is required. Eligible workforce development proposals must include a regional consortium approach to improve the skills, knowledge, and credential attainment for residents. The proposal must also include regional labor market information and evidence of employer partnerships.

**Grantees will be expected to track numbers related to student participation and job placement across several defined parameters such as gender, minority status, and veteran status.**

### **Regional Workforce Development Program Spending**

The Commission anticipates awarding one grant per region with the following maximum value:

- Region A - \$750,000
- Region B - \$750,000

**Identified Impacts:** The Commission has identified the following impacts associated with the gaming establishment, which may be cited in the application. There may be other impacts that have not been identified by the Commission that could be eligible for grant funds. If an agency has identified additional impacts to be addressed, the application must identify the impact and provide sufficient evidence that the impact is caused or is associated with a gaming establishment.

- Increase in demand for employees with a high school diploma or equivalent credentials
- Increase in demand for employees with understanding of roles in the hospitality field
- Increase in demand for employees who speak English
- Increase in demand for applicants with basic digital literacy

### **Eligible Expenses**

- Gaming school scholarships
- Post-secondary vocational programs in culinary, hospitality skills, banking, or general customer service training or vocational programs focused on English language/adult basic education
- A program that structures intentional connections among adult basic education, occupational training, and post-secondary education programs designed to meet the needs of both adult learners and employers
- Registered apprenticeships in the hospitality and banking fields
- Courses leading to college credits or industry-recognized certificates

## FY 2025 Community Mitigation Fund Guidelines

- Adult Basic Education (“ABE”) and vocationally based English for Speakers of Other Languages (“ESOL”) training programs; contextualized learning
- Integrated Education and Training and industry-recognized credentials
- Translation services to help with student success
- Transportation and childcare vouchers
- Technology related to participant access
- Administrative costs include activities related to management, oversight, reporting, and record keeping, and monitoring of the grant program. This amount may not exceed 7.5% of the grant.

### **Ineligible Expenses**

- Programs that are not directly or indirectly tied to the presence of a casino.



# FY 2025 Community Mitigation Fund Guidelines

## **4.0 OTHER GRANTS**

### **4.1 Emergency Mitigation Grants**

The Commission continues to set aside \$200,000 to cover newly identified impacts of an emergency nature that would cause significant harm to a community if it were not remedied in an expeditious fashion. The intent of this grant is to allow the Commission to be more responsive in addressing significant casino related issues that do not fall within the normal CMF timelines. This grant is not intended to circumvent the normal CMF processes.

### **4.2 Tribal Gaming Technical Assistance Grants**

The Commission continues to set aside \$200,000 of funding to assist in the determination of potential impacts that may be experienced by communities in geographic proximity to the potential Tribal Gaming facility in Taunton. Such funding will only be made available after approval of any application by SRPEDD or a comparable regional entity.

## **5.0 OTHER PROGRAM ELEMENTS**

### **5.1 Administrative Costs**

For FY 2025 administrative costs are eligible under the CMF. Grantees may use up to 7.5% of the grant for administrative purposes up to \$50,000. Administrative costs include activities related to management, oversight, reporting, record keeping, and monitoring of the grant program. The grant application must identify how much of the grant funding is being used for administrative purposes and must also outline what funds are being contributed by the entity, such as in-kind services. Workforce Development Grants are not subject to the \$50,000 cap.

### **5.2 Operational Costs**

Operational costs are intended to supplement existing departmental budgets impacted by the operation of a gaming facility. Examples of eligible items could include the cost of staff to run a program, overtime of public safety personnel; public safety equipment upgrades and/or supplies, increased demand on community regional water and sewer systems; and stresses on the community's housing.

### **5.3 Joint Applications**

Applicants are encouraged to work with other local municipalities in the development of joint applications. Applications should provide details regarding consultations with nearby communities for cooperative regional efforts for pooling CMF funds for a joint projects. For a joint application, the application must specify which community will be the fiscal agent for the grant. Each community must state how much and from which distribution category the funds are being drawn from. The administering entity would be responsible for all activities related to the management of the grant such as providing timely quarterly reports, preparing expenditures reports and all documentation needed as part of the Close-out Process. Each Community would list the joint applicant, specify which category, and how much each community is contributing. The funding may

# FY 2025 Community Mitigation Fund Guidelines

be requested only for the costs of a joint project being proposed by more than one community, not similar projects.

## 5.4 Regional Agencies

There are several Regional Planning Agencies which entities can use to provide services and resources. These agencies have expertise in planning, planning studies, development of mitigation plans for impacts, and can provide other technical assistance in its region.

## 5.5 Waivers and Variances

Applicants may request a waiver of a condition set forth in the Application for the Commission's consideration. All requests for waivers or variances shall be submitted with the Application. The Commission may in its discretion waive or grant a variance from any provision or requirement contained in these Guidelines where the Commission finds that:

- a. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K;
- b. Granting the waiver or variance will not adversely affect the public interest; and
- c. Not granting the waiver or variance would cause a substantial hardship to the community, governmental entity, or person requesting the waiver or variance.

The Waiver shall set forth the specific provision of the Guidelines to which the waiver or variance is sought. The Waiver Form can be found at: [www.massgaming.com/about/community-mitigation-fund/forms/](http://www.massgaming.com/about/community-mitigation-fund/forms/)

Applicant may contact Mary Thurlow at [mary.thurlow@massgaming.gov](mailto:mary.thurlow@massgaming.gov) with any questions.

The Commission may grant a waiver or variance, deny a waiver or variance, or grant a waiver or variance subject to such terms, conditions and limitations as the Commission may determine. The terms, conditions, covenants, duties and obligations contained in this Application may be waived only by written agreement executed by duly authorized representatives of the Commission and the Grantee. No waiver by either party of any term, condition, covenant, duty or obligation shall be construed as a waiver of any other term, condition, covenant, duty or obligation nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different section, subsection, paragraph, clause, phrase, or other provision of this Grant.

## 5.6 Requests for Changes to Components of Grant Awards

The Commission authorized MGC staff to approve requests for changes to components of grant awards provided that staff provides notice of such changes to all Commission members and provided further that such changes shall not exceed 10% of the grant award or \$25,000, whichever is smaller. Requests over this amount must be approved by a vote of the Commission.

# FY 2025 Community Mitigation Fund Guidelines

## 5.7 Application Review Process

### **Commission Process:**

The Commission may ask Applicants for supplementary materials, may request a meeting with Applicants, and reserves the ability to host a hearing or hearings on any Application. Depending on the content of the Application Commission Staff may consult with outside agencies with expertise in various areas to assist the review process. Staff provides detailed memoranda of considerations for the Commissioner's to review in a public meeting.

The Commission reserves the ability to fund only portions of requested projects and to fund only a percentage of amounts requested. The Commission also reserves the ability to place conditions on any award.

The Commission reserves the right to determine which requests to fund based on its assessment of a broad range of factors including the extent of public benefit each grant is likely to produce.

### **Evaluation Factors:**

- A demonstration that the impact is being caused by the gaming facility;
- The significance of the impact to be remedied;
- The potential for the proposed mitigation measure to address the impact;
- The feasibility and reasonableness of the proposed mitigation measure;
- A demonstration that any program to assist non-governmental entities is for a demonstrated public purpose and not for the benefit or maintenance of a private party;
- The significance of any matching funds including but not limited to the ability to compete for state or federal workforce, transportation or other funds;
- Any demonstration of regional benefits from a grant award;
- A demonstration that other funds from host or surrounding community agreements are not available to fund the proposed mitigation measure;
- A demonstration that such mitigation measure is not already required to be completed by the licensee pursuant to any regulatory requirements or pursuant to any agreements between such licensee and Applicant;
- The inclusion of a detailed scope, budget, and schedule for each mitigation request; and
- The inclusion of information detailing diversity in vendor/supplier spending practices relative to Minority Business Enterprises ("MBE"), Veteran's Business Enterprises ("VBE") and Women's Business Enterprises ("WBE").

## 5.8 Grant Award Process for Municipal Block Grants

The following is the anticipated process for the CMF Municipal Block Grants:

- a. Eligible municipalities will receive notification from the Commission regarding the amount of proposed grant funding for their community. This notification will be sent via email to their respective Town Manager/City Administrator/Grant Manager and current CMF Grant Managers noted on previous applications. **Entities should notify the Community Affairs Division of any additional people or changes to ensure that notifications are correctly distributed.**
- b. Municipalities will have until January 31, 2024 to submit their application for the proposed grant amount previously issued by the Commission. This will constitute their application for

# FY 2025 Community Mitigation Fund Guidelines

funds as required by 23K Section 61. These applications must detail how the municipality plans to use the funding.

- c. If applications are not submitted by January 31, 2024 the municipality forfeits the funds for that year.
- d. **After receipt of the Applications:** Members of the Review Team analyze, and develop recommendations on the applications for the Commission. The Review Team will review each communities' conformance with the Guidelines. Communities will be given the opportunity to modify their applications if the Review Team finds areas that do not comply with the Guidelines or require additional information.
- e. Once the applications are finalized, these will be brought to the Commission for final approval. Such decisions will be made prior to July 1, 2024.
- f. After the Commission's decision, grant instruments and contracts will be prepared and sent to the Applicants. These documents will be based on FY 2025.

## 5.9 Rescission of Grants

If a Grantee does not expend the funds in a timely manner, the Commission may rescind the grant and make those funds available in the next grant round for the Region in which the grant originated. Before any grant is rescinded, Commission staff will notify the Grantee that the expenditures on the grant are not timely and establish a timeline for the Grantee to either expend the funds or have the grant rescinded.

## 5.10 Program Staff Directory

CMF Applicants are encouraged to contact the Commission's staff with any questions or concerns. The Commission's Chief of the Division of Community Affairs, Joseph Delaney, can be reached at (617) 721-9198 or via e-mail at [joseph.delaney@massgaming.gov](mailto:joseph.delaney@massgaming.gov) or [MGCCMF](http://MGCCMF). The Commission's address is 101 Federal Street, 12<sup>th</sup> Floor, Boston, MA 02110.

<b>Joseph Delaney</b>	<b>617 721-9198</b>	<b>Joseph.Delaney@massgaming.gov</b>
<b>Mary Thurlow</b>	<b>617 979-8420</b>	<b>Mary.Thurlow@massgaming.gov</b>
<b>Lily Wallace</b>	<b>617 533-9715</b>	<b>Lily.Wallace@massgaming.gov</b>

# FY 2025 Community Mitigation Fund Guidelines

## ATTACHMENT A- CMF 2025 PROPOSED GRANT AMOUNTS BY REGION

### Region A – Encore Boston Harbor FY 2025 Proposed Grant Amounts

Total Funding Available - \$11.5 million

Community	Base Grant	HCA/SCA Status	Proximity to Casino	Traffic	Total
Everett (Host)	\$200,000	\$400,000	\$1,600,000	\$662,000	\$2,862,000
Boston	\$200,000	\$200,000	\$800,000	\$1,407,000	\$2,607,000
Cambridge	\$200,000	\$200,000	\$300,000	\$0	\$700,000
Somerville	\$200,000	\$200,000	\$400,000	\$310,000	\$1,110,000
Medford	\$200,000	\$200,000	\$400,000	\$248,400	\$1,048,400
Malden	\$200,000	\$200,000	\$400,000	\$82,800	\$882,800
Revere	\$200,000	\$0	\$400,000	\$62,100	\$662,100
Chelsea	\$200,000	\$200,000	\$400,000	\$227,700	\$1,027,700
Saugus	\$200,000	\$0	\$0	\$0	\$200,000
Lynn	\$200,000	\$0	\$0	\$0	\$200,000
Melrose	\$200,000	\$0	\$0	\$0	\$200,000
<b>Total</b>	<b>\$2,200,000</b>	<b>\$1,600,000</b>	<b>\$4,700,000</b>	<b>\$3,000,000</b>	<b>\$11,500,000</b>

### Category 2 – Plainridge Park Casino FY 2025 Proposed Grant Amounts

Available Funding - \$500,000

Community	Base Grant	HCA/SCA Status	Proximity to Casino	Traffic	Total
Plainville (Host)	\$25,000	\$50,000	\$50,000	\$28,300	\$153,300
Wrentham	\$25,000	\$25,000	\$20,000	\$6,800	\$76,800
Foxborough	\$25,000	\$25,000	\$10,000	\$4,500	\$64,500
Mansfield	\$25,000	\$25,000	\$10,000	\$3,000	\$63,000
North Attleborough	\$25,000	\$25,000	\$10,000	\$21,700	\$81,700
Attleborough	\$25,000	\$25,000	\$0	\$10,700	\$60,700
<b>Total</b>	<b>\$150,000</b>	<b>\$175,000</b>	<b>\$100,000</b>	<b>\$75,000</b>	<b>\$500,000</b>

**Region B –MGM Springfield FY 2025 Proposed Grant Amounts**

**Available Funds - \$4,300,000**

<b>Community</b>	<b>Base Grant</b>	<b>HCA/SCA Status</b>	<b>Proximity to Casino</b>	<b>Traffic</b>	<b>Total</b>
Springfield (Host)	\$75,000	\$150,000	\$666,000	\$512,700	\$1,403,700
West Springfield	\$75,000	\$75,000	\$281,000	\$87,300	\$518,300
Holyoke	\$75,000	\$75,000	\$84,000	\$60,000	\$294,000
Chicopee	\$75,000	\$75,000	\$142,000	\$49,100	\$341,100
Ludlow	\$75,000	\$75,000	\$84,000	\$10,900	\$244,900
Wilbraham	\$75,000	\$75,000	\$142,000	\$21,800	\$313,800
East Longmeadow	\$75,000	\$75,000	\$142,000	\$60,000	\$352,000
Longmeadow	\$75,000	\$75,000	\$142,000	\$32,800	\$324,800
Agawam	\$75,000	\$75,000	\$142,000	\$65,400	\$357,400
Hampden	\$75,000	\$0	\$0	\$0	\$75,000
Northampton	\$75,000	\$0	\$0	\$0	\$75,000
<b>Total</b>	<b>\$825,000</b>	<b>\$750,000</b>	<b>\$1,825,000</b>	<b>\$900,000</b>	<b>\$4,300,000</b>

# FY2025 Community Mitigation Fund Guidelines

## ATTACHMENT B- TRIP DISTRIBUTION MAPS REGION A ENCORE BOSTON HARBOR

### Encore Boston Harbor Patron Trip Distribution

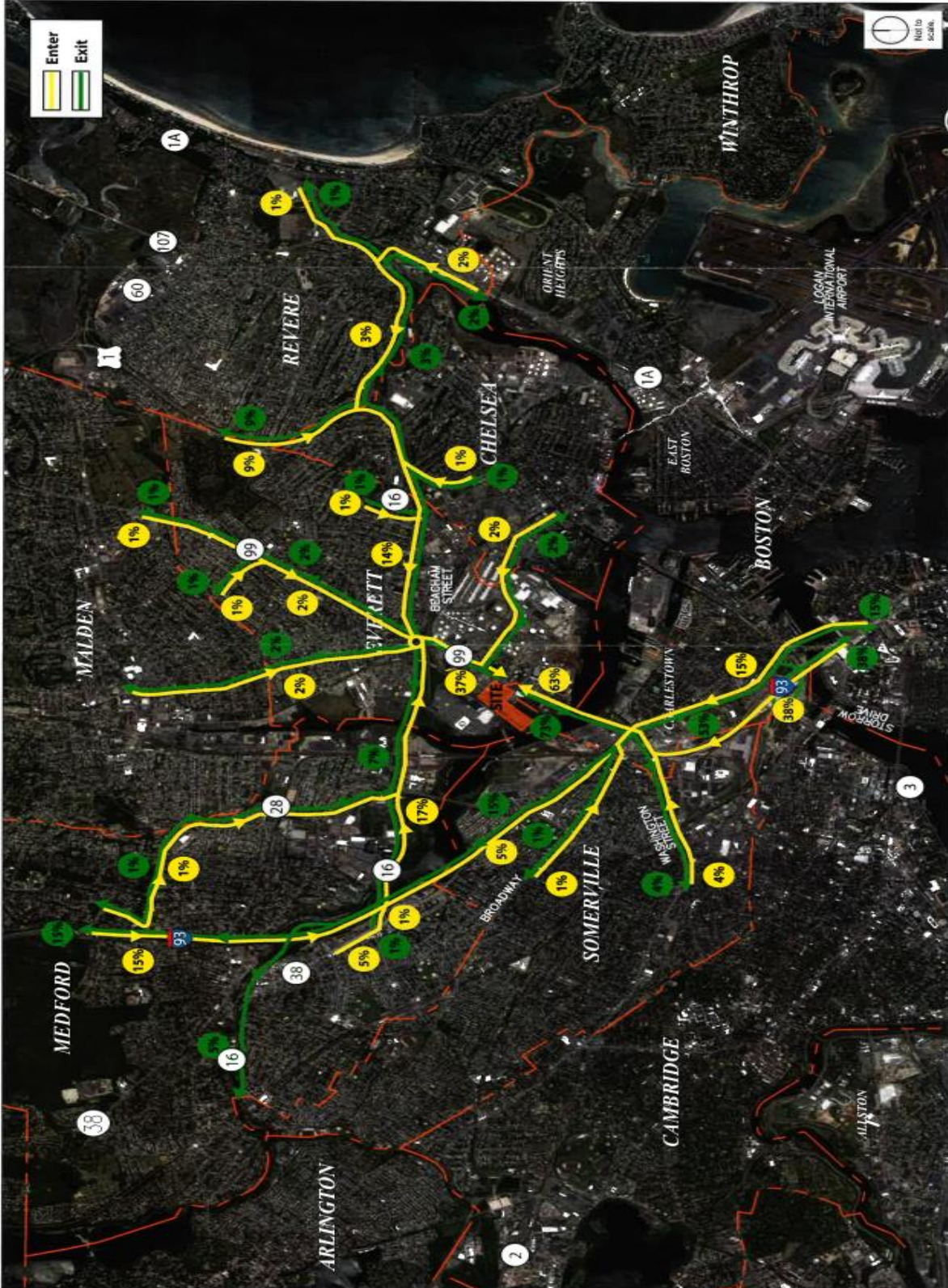


Figure 4-49  
Trip Distribution (Patrons)  
Source: Howard/Stein-Hudson Associates, Inc., 2013

# FY2025 Community Mitigation Fund Guidelines

## Encore Boston Harbor Employee Trip Distribution

Draft Environmental Impact Report

Wynn Everett

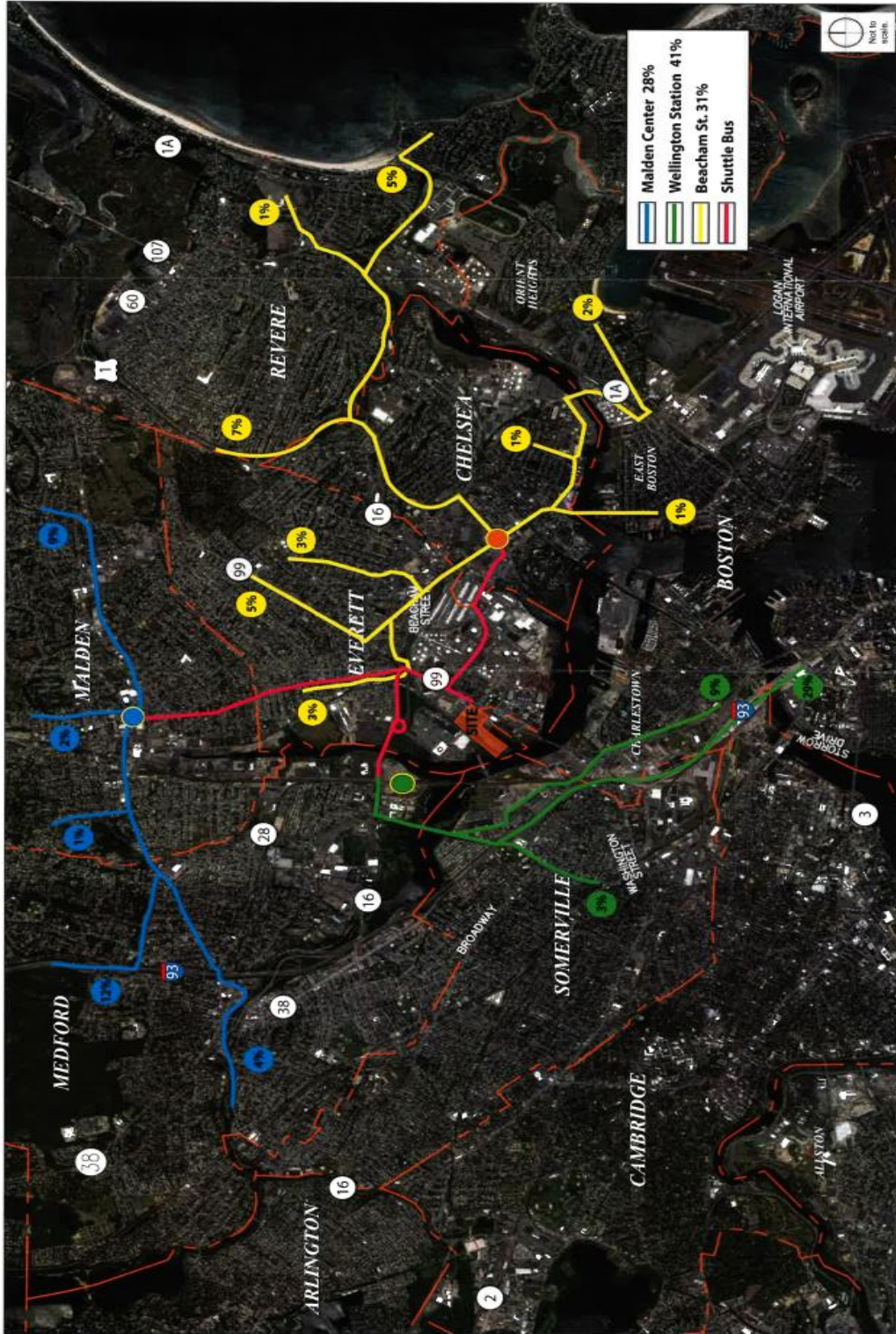


Figure 4-50

Trip Distribution (Employees)

Source: Howard/Stein-Hudson Associates, Inc., 2013

Wynn Everett  
Everett, Massachusetts



# FY2025 Community Mitigation Fund Guidelines

## Encore Boston Harbor Employee and Patron Composite Trip Distribution

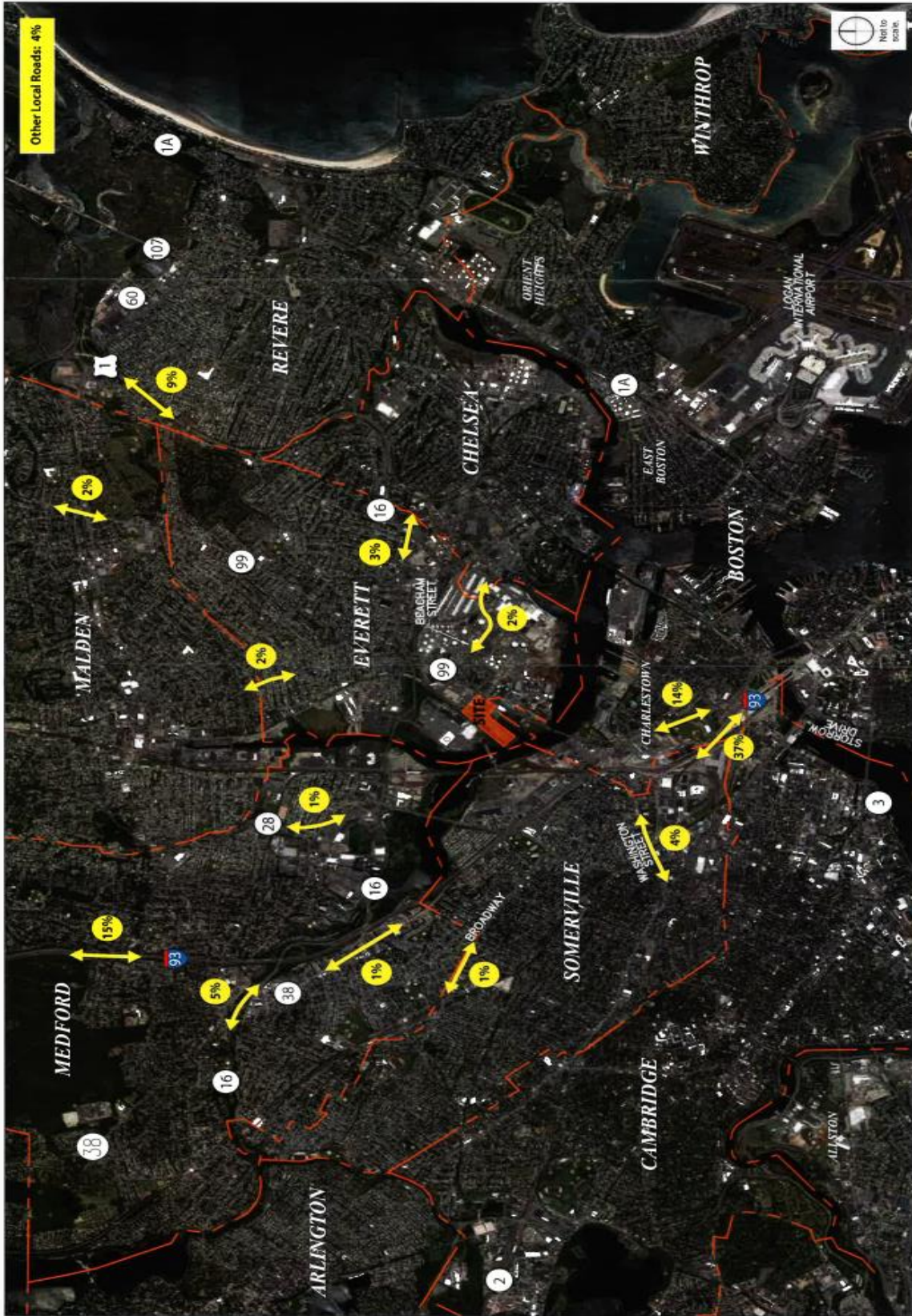


Figure 4-51  
Composite Trip Distribution (Patrons and Employees)  
Source: Howard/Stein-Hudson Associates, Inc., 2013

# FY2025 Community Mitigation Fund Guidelines

## Encore Boston Harbor Trip Distribution by Travel Corridor

Wynn Everett

Draft Environmental Impact Report

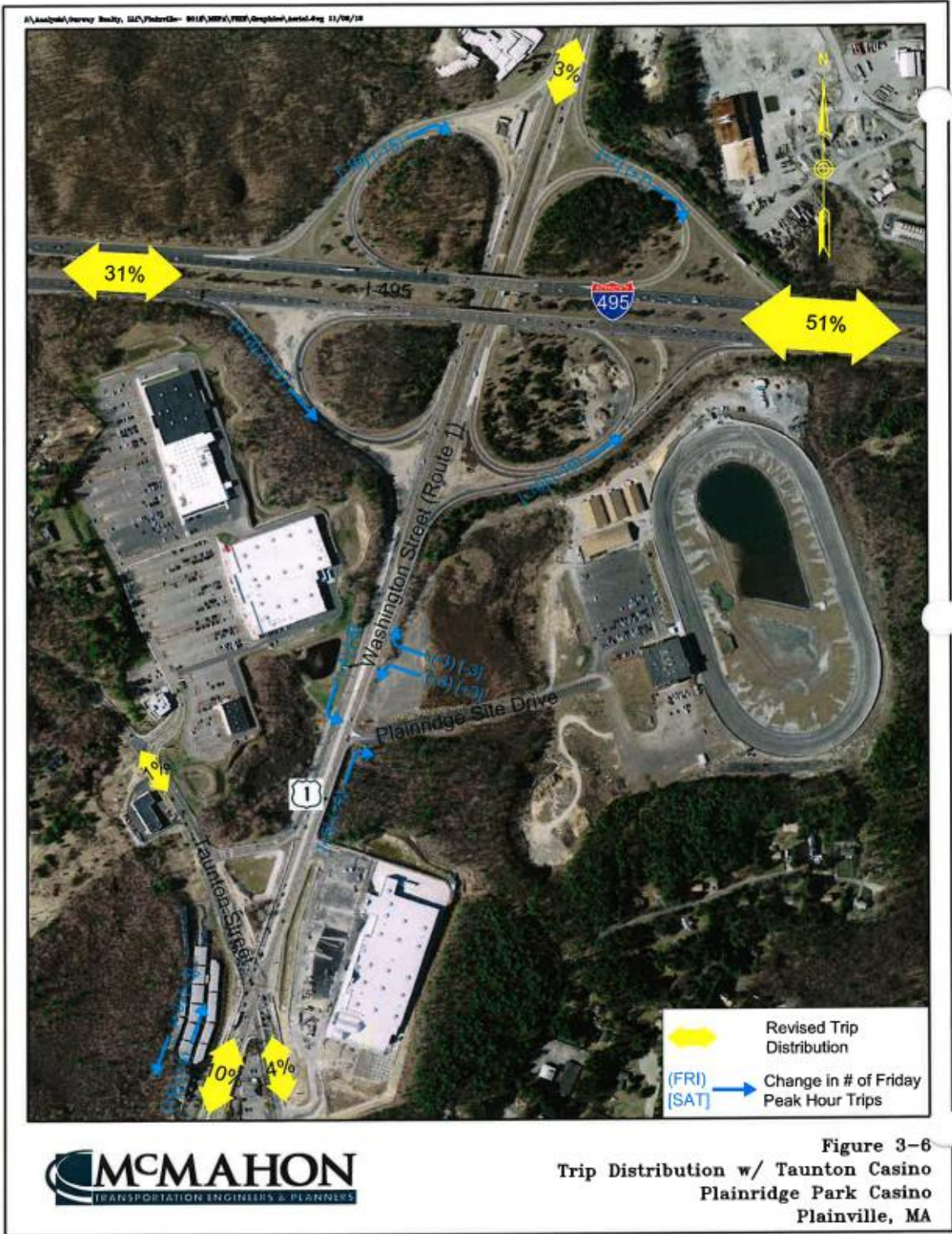
**Table 4-21, Vehicle Trip Distribution by Travel Corridor**

Travel Corridor	Patron Percent	Employee Percent	Composite Percent
I-93 North	15%	12%	15%
Route 16 West	5%	3%	5%
Route 38 West	1%	1%	1%
Broadway West	1%	1%	1%
Washington Street West	4%	3%	4%
I-93 South	38%	29%	37%
Rutherford Avenue	15%	9%	14%
Beacham Street East	2%	4%	2%
Route 16 East	3%	6%	3%
Route 1 North	9%	7%	9%
Route 99 North	2%	5%	2%
Main St (Everett Malden)	2%	3%	2%
Route 28 North	1%	1%	1%
Other Local	2%	16%	4%
Total	100%	100%	100%

The patron and employee trip distribution patterns were used to assign new Project vehicle trips to the area roadway network. Figure 4-51A and Figure 4-51B depict the Friday p.m. peak hour Project trip assignments at intersections 1-26, located in Everett. Figure 4-52 shows Friday p.m. peak hour Project trip assignments at intersections 27-32, located in Chelsea and Revere. Figure 4-53 shows the Friday p.m. peak hour Project trip assignments at intersections 33-44, located in Medford. Figure 4-54 shows the Friday p.m. peak hour Project trip assignments at intersections 45-57, located in Somerville, Boston, and Cambridge. Figure 4-55A and Figure 4-55B depict the Saturday afternoon peak hour Project trip assignments at intersections 1-26, located in Everett. Figure 4-56 shows the Saturday afternoon peak hour Project trip assignments at intersections 27-32, located in Chelsea and Revere. Figure 4-57 shows the Saturday afternoon peak hour Project trip assignments at intersections 33-44, located in Medford. Figure 4-58 shows the Saturday afternoon peak hour Project trip assignments at intersections 45-57, located in Somerville, Boston, and Cambridge.

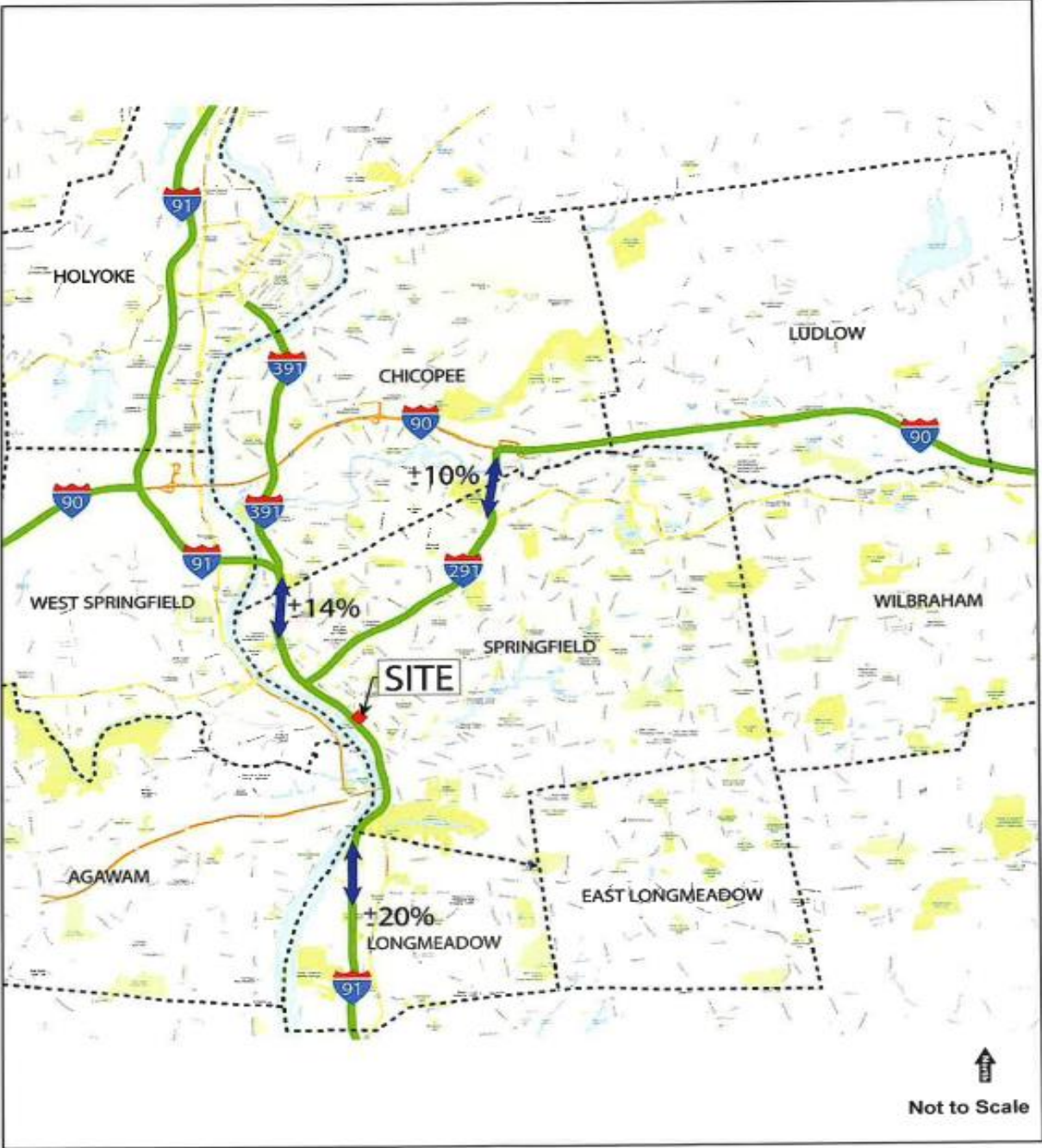
# FY2025 Community Mitigation Fund Guidelines

## Plainridge Park Casino Trip Distribution



# FY2025 Community Mitigation Fund Guidelines

## MGM Springfield Trip Distribution Freeway



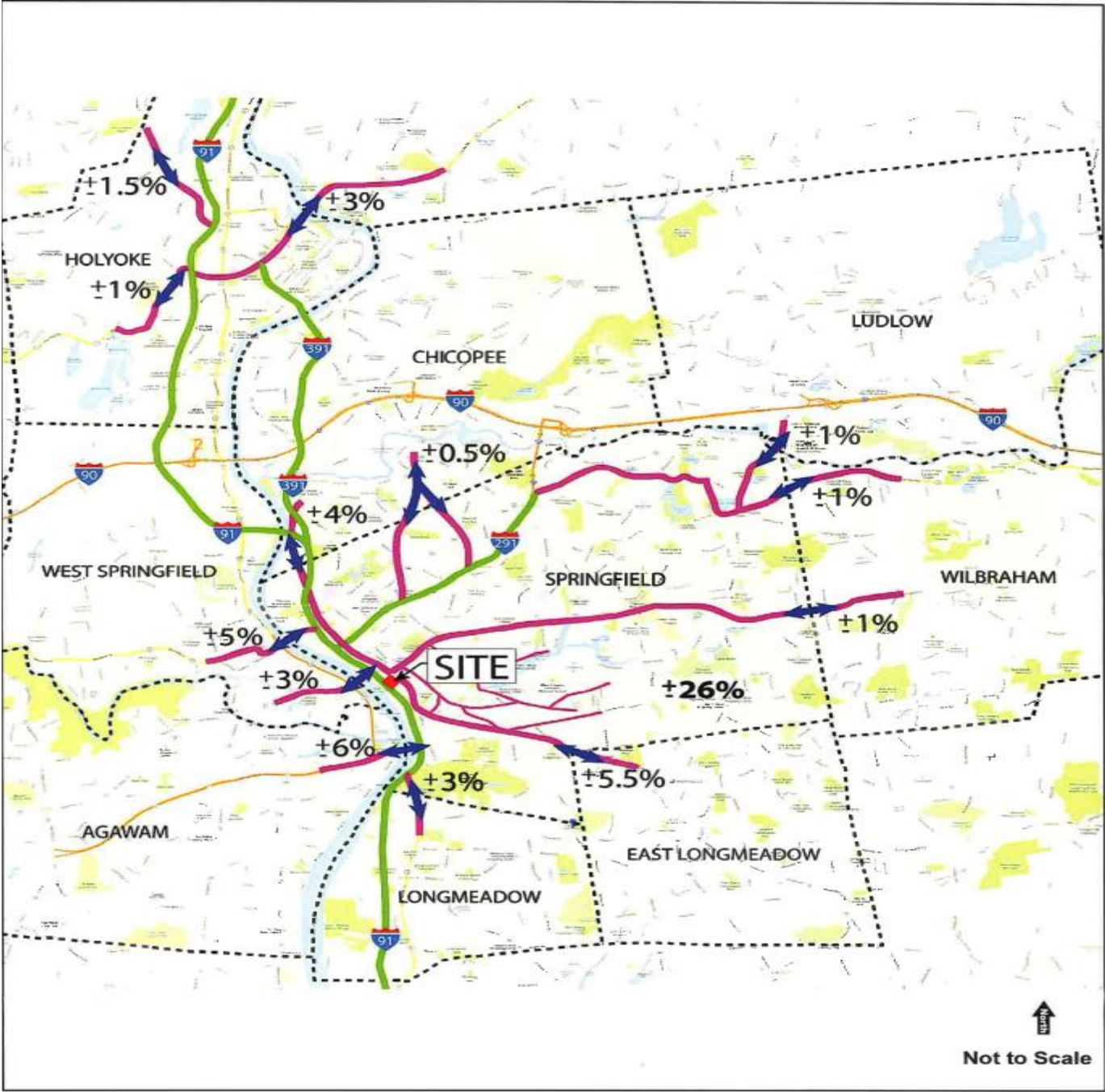
MGM Springfield Springfield, Massachusetts



Figure 6.2-9  
Total Site-Generated Trip Distribution - Freeway Corridors

# FY2025 Community Mitigation Fund Guidelines

## MGM Springfield Trip Distribution - Surface Roads



MGM Springfield Springfield, Massachusetts



Figure 6.2-8  
Total Site-Generated Trip Distribution - Surface Roads

# FY2025 Community Mitigation Fund Guidelines

## MGM Springfield Trip Distribution -Surface Roads

### Trip Distribution Summary

The resulting trip distribution by land use for the proposed development is summarized in Table 6.2-9. The site-generated traffic volume networks for each land use are presented in Appendix B-12. The regional scale distribution of trips is shown in Figures 6.2-8 and 6.2-9 for the local roadways and freeway corridors, respectively. The regional scale site-generated trip increases is shown in Figures 6.2-10 and 6.2-11 for local roadways and freeway corridors, respectively. The resulting site-generated traffic-volume networks for Friday evening and Saturday midday peak hours are shown in Figures 6.2-12 through 6.2-15.

Table 6.2-9 Trip Distribution Summary

Routes	Percentage from Route / Community				
	Casino / Hotel Patron	Casino / Hotel Employee & Armory Square Office	Armory Retail	Apartment	Total
Route 5 - Longmeadow	1.0%	3.9%	5.0%	0.6%	2.8%
Route 83 - East Longmeadow	3.9%	5.7%	7.2%	5.6%	5.4%
South End Bridge - Agawam	5.0%	5.0%	8.0%	3.2%	6.1%
Memorial Bridge - West Springfield	2.5%	4.0%	4.0%	3.7%	3.3%
North End Bridge - West Springfield	3.5%	5.0%	6.0%	6.3%	4.7%
Main Street - Chicopee	3.7%	5.5%	3.8%	5.5%	4.0%
Liberty St / St. James Ave - Chicopee	0.4%	0.8%	0.7%	0.7%	0.6%
Boston Road (Route 20) - Wilbraham	0.8%	4.0%	0.7%	1.5%	1.1%
Wilbraham St - Wilbraham	0.9%	0.9%	1.5%	0.2%	1.1%
Route 21 - Ludlow	0.6%	2.0%	1.2%	0.9%	1.0%
Route 141 - Holyoke	1.5%	1.9%	1.3%	0.5%	1.4%
Route 202 West - Holyoke	1.6%	0.8%	0.3%	1.0%	1.0%
Route 202/16 - Holyoke	3.5%	3.6%	1.6%	3.6%	2.8%
I-91 North*	22.0%	12.0%	6.0%	6.1%	14.3%
I-91 South	30.0%	2.0%	13.0%	0.0%	19.6%
I-291 Northeast	15.3%	7.3%	5.3%	1.1%	10.1%
City of Springfield	10.5%	41.9%	37.7%	64.7%	26.0%
Total*	100.0%	100.0%	100.0%	100.0%	100.0%

\*Note that all routes through Holyoke will also use I-91 North. Therefore, the percentages shown for I-91 North also include traffic from Holyoke.



TO: Chair Cathy Judd-Stein and Commissioners Eileen O'Brien, Bradford Hill, Nakisha Skinner and Jordan Maynard

FROM: Joseph Delaney, Mary Thurlow, and Lily Wallace

CC: Todd Grossman, Interim Executive Director

DATE: November 9, 2023

RE: Final FY 2025 Community Mitigation Fund Grant Amounts

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The Community Affairs Division is requesting a Commission vote on the final grant amounts for municipalities eligible for FY 2025 Community Mitigation Funds. The final amounts were calculated using the Municipal Block Grant formula that was presented to the Commission on October 19, 2023. The final grant amounts have not changed from those presented on October 19.

The following pages present the proposed grant amounts for each eligible municipality by region.



Massachusetts Gaming Commission

**Region A – Encore Boston Harbor**  
**FY 2025 Proposed Grant Amounts**  
**Total Funding Available - \$11.5 million**

Community	Base Grant	HCA/SCA Status	Proximity to Casino	Traffic	Total
Everett (Host)	\$200,000	\$400,000	\$1,600,000	\$662,000	\$2,862,000
Boston	\$200,000	\$200,000	\$800,000	\$1,407,000	\$2,607,000
Cambridge	\$200,000	\$200,000	\$300,000	\$0	\$700,000
Somerville	\$200,000	\$200,000	\$400,000	\$310,000	\$1,110,000
Medford	\$200,000	\$200,000	\$400,000	\$248,400	\$1,048,400
Malden	\$200,000	\$200,000	\$400,000	\$82,800	\$882,800
Revere	\$200,000	\$0	\$400,000	\$62,100	\$662,100
Chelsea	\$200,000	\$200,000	\$400,000	\$227,700	\$1,027,700
Saugus	\$200,000	\$0	\$0	\$0	\$200,000
Lynn	\$200,000	\$0	\$0	\$0	\$200,000
Melrose	\$200,000	\$0	\$0	\$0	\$200,000
<b>Total</b>	<b>\$2,200,000</b>	<b>\$1,600,000</b>	<b>\$4,700,000</b>	<b>\$3,000,000</b>	<b>\$11,500,000</b>

**Region B –MGM Springfield**  
**FY 2025 Proposed Grant Amounts**  
**Available Funds - \$4,300,000**

Community	Base Grant	HCA/SCA Status	Proximity to Casino	Traffic	Total
Springfield (Host)	\$75,000	\$150,000	\$666,000	\$512,700	\$1,403,700
West Springfield	\$75,000	\$75,000	\$281,000	\$87,300	\$518,300
Holyoke	\$75,000	\$75,000	\$84,000	\$60,000	\$294,000
Chicopee	\$75,000	\$75,000	\$142,000	\$49,100	\$341,100
Ludlow	\$75,000	\$75,000	\$84,000	\$10,900	\$244,900
Wilbraham	\$75,000	\$75,000	\$142,000	\$21,800	\$313,800
East Longmeadow	\$75,000	\$75,000	\$142,000	\$60,000	\$352,000
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Agawam	\$75,000	\$75,000	\$142,000	\$65,400	\$357,400
Hampden	\$75,000	\$0	\$0	\$0	\$75,000
Northampton	\$75,000	\$0	\$0	\$0	\$75,000
<b>Total</b>	<b>\$825,000</b>	<b>\$750,000</b>	<b>\$1,825,000</b>	<b>\$900,000</b>	<b>\$4,300,000</b>



Massachusetts Gaming Commission



**Category 2 – Plainridge Park Casino**

**FY 2025 Proposed Grant Amounts**

**Available Funding - \$500,000**

<b>Community</b>	<b>Base Grant</b>	<b>HCA/SCA Status</b>	<b>Proximity to Casino</b>	<b>Traffic</b>	<b>Total</b>
Plainville (Host)	\$25,000	\$50,000	\$50,000	\$28,300	\$153,300
Wrentham	\$25,000	\$25,000	\$20,000	\$6,800	\$76,800
Foxborough	\$25,000	\$25,000	\$10,000	\$4,500	\$64,500
Mansfield	\$25,000	\$25,000	\$10,000	\$3,000	\$63,000
North Attleborough	\$25,000	\$25,000	\$10,000	\$21,700	\$81,700
Attleborough	\$25,000	\$25,000	\$0	\$10,700	\$60,700
<b>Total</b>	<b>\$150,000</b>	<b>\$175,000</b>	<b>\$100,000</b>	<b>\$75,000</b>	<b>\$500,000</b>



Massachusetts Gaming Commission