



NOTICE OF MEETING AND AGENDA

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

Thursday | March 23, 2023 | 9:00 a.m.

VIA REMOTE ACCESS: 1-646-741-5292

MEETING ID/ PARTICIPANT CODE: 111 091 8331

All meetings are streamed live at www.massgaming.com.

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

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

PUBLIC MEETING - #444

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

2. Meeting Minutes

a. October 27, 2023

VOTE

3. Administrative Update – Karen Wells, Executive Director

a. Exclusion List Plan Approval Update

b. Casino Updates – Burke Cain, Interim Gaming Agents Chief

4. Finance – Derek Lennon, Chief Fiscal and Accounting Officer

a. 205 CMR 240—Definition and Application of Location/Resident Percentage
for Taxation of Daily Fantasy Sports

VOTE

5. Legal – Todd Grossman, General Counsel; Carrie Torrisi, Deputy General Counsel: Caitlin Monahan, Deputy General Counsel

a. 205 CMR 106: *Information and Filings* – Regulation and Amended Small
Business Impact Statement for final review and possible adoption

VOTE

b. 205 CMR 107: *Professional Practice* - Regulation and Amended Small Business
Impact Statement for final review and possible adoption

VOTE



Massachusetts Gaming Commission

- c. 205 CMR 109: *Emergency Action* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- d. 205 CMR 202: *Authority and Definitions* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- e. 205 CMR 213: *Withdrawal of an Application* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- f. 205 CMR 229: *Review of a Proposed Transfer of Interest* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- g. 205 CMR 232: *Discipline of Sports Wagering Operators and Other Licensees, and Registrants* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- h. 205 CMR 239: *Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- i. 205 CMR 241: *Surveillance and Monitoring* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- j. 205 CMR 256: *Sports Wagering Advertising* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**

6. Racing – Dr. Alex Lightbown, Director of Racing

- a. Plainridge Park Casino request for Promotional Fund Reimbursement for PENNULTIMATE Handicapping Contest-Chad Bourque, Chief Financial Analyst; Steve O'Toole, Director of Racing, Plainridge Park Casino **VOTE**
- b. Plainridge Park Racecourse Request for Approval of Racing Officials and Key Operating Personnel – Alex Lightbown, Director of Racing, Steve O'Toole PPC **VOTE**
- c. Plainridge Park Racecourse Request for Waiver of 205 CMR 3.12(6)-Qualifying Race Requirement - Alex Lightbown, Director of Racing, Steve O'Toole PPC **VOTE**
- d. Plainridge Park Casino request for Promotional Fund Reimbursement for SURVIVOR Handicapping Contest-Chad Bourque, Chief Financial Analyst; Steve O'Toole, Director of Racing, Plainridge Park Casino **VOTE**
- e. Suffolk Downs Request for Approval of DK Horse, LLC as an Account Wagering Provider - Alex Lightbown, Director of Racing, Michael Buckley, COO Suffolk Downs **VOTE**

7. Sports Wagering – Bruce Band, Director of Sports Wagering

- a. Clarification on Rules for Russian and Belarus Participants in Sports Wagering Events **VOTE**



Massachusetts Gaming Commission

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 and emailed to regs@sec.state.ma.us. Posted to Website: March 20, 2023 | 4 p.m. EST

March 20, 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.*



Massachusetts Gaming Commission



Massachusetts Gaming Commission Meeting Minutes

Date/Time: October 27, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
 VIA CONFERENCE CALL NUMBER: 1-646-741-5292
 PARTICIPANT CODE: 112 793 9916

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](#) (00:03)

Chair Judd-Stein called to order the 399th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Approval of the Meeting Minutes](#) (00:31)

a. March 14, 2022

Commissioner Hill moved that the Commission approve the public meeting minutes from the March 14, 2022, April 28, 2022, and July 12, 2022, that were included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters.

Commissioner O'Brien offered a friendly amendment to the motion; noting that there were different quorums for each set of minutes and there would need to be separate votes. Commissioner Skinner stated that she would have to abstain from the April 28, 2022, minutes as she was not present for the entirety of the meeting. Chair Judd-Stein stated that Commissioner

Skinner could vote to approve the minutes to the extent she was present and presided over the meeting.

Commissioner Hill then moved that the Commission approve the minutes from the March 14, 2022, Public Meeting that were included in the Commissioner's Packet, subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Abstain.

Commissioner Maynard: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously, 3-0 with two abstentions.

b. [April 28, 2022](#) (3:32)

Commissioner Hill moved that the Commission approve the minutes from the April 28, 2022, Public Meeting that were included in the Commissioner's Packet, subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner O'Brien.

Chair Judd-Stein suggested an edit to the minutes to remedy an error in transcription. Commissioner Hill noted that the edit had been made but was not reflected in the version included in the packet.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye, for so much of the meeting as she was present.

Commissioner Maynard: Abstain.

Chair Judd-Stein: Aye.

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

c. [July 12, 2022](#) (7:41)

Commissioner Hill moved that the Commission approve the minutes from the July 12, 2022, Public Meeting that were included in the Commissioner's Packet, subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner Skinner.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Abstain.

Chair Judd-Stein: Aye.

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

3. [Administrative Update](#) (8:25)

Executive Director Karen Wells reported that the Charles River Media Group had been hired to ensure that the Audio - Visual streaming equipment in the public meeting room was functional and adequate. She stated that once the streaming equipment was operational, the Commission staff could meet in the meeting room and invite outside stakeholders to join. She stated that virtual participation would still be available, but those joining remotely would only be present for their particular section of the meeting.

Commissioner O'Brien inquired about the limitations on non-Commission participants. Executive Director Wells stated that the Commission has a limited number of laptops for the specific purpose of streaming, and that Commission staff has priority. Chief of the Communications Division, Thomas Mills, stated that the cameras would connect to the production system rather than personal laptops. Executive Director Wells stated that as long as the open meeting law remains the same, the Commission could continue to use virtual meetings. Chief Mills stated that hybrid meetings were an option for the Commission as well but cautioned that they were not ideal.

a. [Casino Update](#) (14:08)

Executive Director Wells introduced Bruce Band, Assistant Director of the IEB and Gaming Agents Divisions Chief. Assistant Director Band stated that MGM Springfield ("MGM") was holding job fairs, replacing slot machines, and converting the slot machines in the poker room to poker slots. He stated that Plainridge Park Casino ("PPC") had a drawing on October 29th with prizes and contests for the public. He concluded by stating that Encore Boston Harbor ("EBH") had filmed the New England Sports Network's *Ultimate Betting Show* at the WynnBet sports bar.

Chair Judd-Stein stated that it was a big deal for MGM to replace all of its slot machines. Assistant Director Band stated that it was significant, but not uncommon as newer slot machines would likely attract customers.

b. [MGC Covid Policy Update](#) (16:09)

Human Resources Manager Trupti Banda explained that in early 2022, the Center for Disease Control ("CDC") reduced the number of quarantine days from ten to five within their Covid-19 Guidelines. At that time, the Commission undertook a conservative approach, and maintained the ten-day quarantine requirement. She stated that all employees and guests were required to be vaccinated, and that the Commission developed a reliable reporting system to ensure employee safety and proper notifications. She stated that the Commission was now looking to adopt the CDC Covid-19 Guidelines; which required a five-day quarantine and an additional five days of mask-wearing in the office, with a high-quality mask.

Chair Judd-Stein expressed support for aligning with the CDC Guidelines. Commissioner O'Brien noted that when the CDC first amended the Covid Guidelines, the Commission was conflicted due to staffing challenges, and stated that she was now more comfortable with the CDC Guidelines than when the issue arose previously.

Commissioner Skinner inquired whether the revised Covid-19 measures should also consider revisiting the vaccination requirement to keep it in line with CDC Guidelines. Executive Director Wells stated that the Commission had adopted all of the CDC Guidelines with the exception of the quarantine requirement, and that this change would bring the Commission fully in line with the CDC's Covid-19 Guidelines.

With that, Commissioner Maynard moved that the Commission adopt the CDC's COVID-19 Guidelines with respect to isolation, and precautions for people with COVID-19, and further moved that the Commission rescind any portion or portions of its existing COVID-19 policy that conflicted with the CDC's COVID-19 Guidelines with respect to isolation and precautions for people with COVID-19.

Commissioner O'Brien offered a friendly amendment to include language for those with "known exposure to COVID-19 in addition to those with COVID-19". Commissioner Maynard accepted the amendment.

Chair Judd-Stein offered an amendment to include language to identify that the Commission would adopt the CDC's overall guidelines with respect to isolation and precautionary measures. Commissioner Maynard accepted the amendment. Commissioner O'Brien seconded the motion as amended.

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. [Sire Stakes Finals Update](#) (28:49)

Executive Director Wells introduced the Director of Racing and Chief Veterinarian, Dr. Alex Lightbown.

Dr. Lightbown reported that the Sire Stakes Finals was the largest single-day purse in Massachusetts for horseracing. She explained that, with the help of PPC, one hundred horses' temperatures were scanned to ensure the health of horses prior to racing, given the heat. She stated that among the eight full field races and different divisions, there were winners among 16 owners, 8 trainers, 6 breeders, and 5 different drivers. She stated that the finals day had a

million-dollar purse, with \$125,000 awarded per race. She thanked the participants, PPC and the Standardbred Owners of Massachusetts for their cooperation.

4. [Sports Wagering Process Updates](#) (32:39)

a. Sports Wagering Studies Update

Executive Director Wells introduced Mark Vander Linden, Director of Research and Responsible Gaming. Director Vander Linden stated that General Law Chapter 23N, the Act Regulating Sports Wagering, extended the Commission's commitment to gaming research. He stated that the Commission was directed to develop an annual research agenda to understand the social and economic effects of sports wagering in Massachusetts, and obtain information relative to neuroscience, psychology, sociology, epidemiology, and etiology of gambling. He stated the G.L. Chapter 23N directed the sports wagering agenda to perform: an assessment of problem sports wagering and whether it co-occurs with problem gambling; an assessment of whether individuals participating in sports wagering are different from those participating in other forms of gaming or gambling; and an assessment of the impact of sports wagering on youth under the age of 25.

Director Vander Linden stated that this section of the sports wagering research agenda had yet to be fully adopted, but that the Research and Responsible Gaming Division had just finished data collection for the follow-up general population study that would provide a baseline understanding for the launch of sports wagering. He noted that the final report on the follow-up general population study was anticipated to be presented in Spring 2023.

Director Vander Linden stated that two studies were set to begin immediately. He explained that G.L. Chapter 23N, § 20 required a study examining the feasibility of allowing retail locations in the Commonwealth to operate sports wagering kiosks. He stated that the scoping document for this study was being developed and that research consultants were actively being recruited.

Director Vander Linden stated that per the Treasurer of the Commonwealth Deborah Goldberg's request during the September 8, 2022, public meeting, the study would consider the impacts of Sports Wagering on the lottery, as retail locations would offer lottery products in addition to sports wagering kiosks. He stated that the scoping document would inform the development of the competitive RFR, with an anticipated release in December.

Commissioner Skinner stated that Treasurer Goldberg's request went beyond what was noted in the memo in the Commissioner's Packet, and that her office also requested to participate in the preparation of the study. Director Vander Linden confirmed that his Division intended to include the Treasurer's Office in drafting the RFR for the study.

Commissioner Hill inquired how the Division would be interacting with retail operations and restaurant owners who wished to be involved in the study, as he had received calls from interested parties. Director Vander Linden explained that their involvement was considered in the scoping document, which discussed the methods that could be approached.

Director Vander Linden explained that a second study was required by G.L. c. 23N, § 25. He stated that the research study was required to study the participation of minority-owned business enterprises (“MBEs”), women-owned business enterprises (“WBEs”), and veteran-owned business enterprises (“VBEs”) in the sports wagering industry in the Commonwealth. He stated that the scoping document was being developed and that the study would include the assistance of two research consultants. He explained that because the study required the sports wagering industry to be active in the state, he would not recommend the RFR be released until later in 2023, or a date determined by the Commission.

Commissioner Maynard stated that it was important for the representatives in the research discussions to include MBEs, WBEs, and VBEs. Chair Judd-Stein stated that whoever was completing the study should be diverse as well and represent the interested parties. Director Vander Linden stated that while developing the competitive RFR, he would emphasize the importance of the diversity aspect.

Chair Judd-Stein stated that while the study would not take place until sports wagering was live, the Sports Wagering Operator application process included a separate section on diversity, and she welcomed innovation in finding diversity, including joint ventures. Chief People and Diversity Officer David Muldrew stated that he could meet with the Research and Responsible Gaming Division to be involved from a DEI standpoint.

Chair Judd-Stein inquired how the research team would follow up on sports wagering in respect to social and economic impacts. Director Vander Linden stated that the language in G.L. c. 23N, § 23 largely followed the process the Commission currently utilized within G.L. c. 23K, §71. He stated that he could consider advancing the community engaged research agenda and incorporate sports wagering into that line of research.

Director Vander Linden continued and stated that baseline data would be collected upfront to determine who was engaged in sports wagering and their ages. He noted that an area of research the Commission wasn’t currently working on was underage participants in sports wagering and the effects of that behavior. Commissioner O’Brien stated that she was glad to hear underage participants were being considered for a study and requested if that the study could consider daily fantasy sports wagering behavior, as the market doesn’t separate behaviors in the same way the statutes governing sports wagering and daily fantasy sports do.

Director Vander Linden noted that G.L. c. 23N, § 23 called for the assessment of whether those participating in sports wagering were different than those who participate in other forms of gambling, and that daily fantasy sports and wagering could be examined within that assessment.

b. [Public Comments Regarding Sports Wagering Application](#) (55:39)

Executive Director Wells presented public comments on the sports wagering application developed by the Commission, from FanDuel and Penn Entertainment. She stated that Commission staff met internally on this issue and provided recommendations to address the comments. The *Public Comments Regarding the Sports Wagering Application* were included in the Commissioner’s Packet on pages 37 through 67.

Referring to FanDuel's comments regarding public records disclosures, General Counsel Todd Grossman stated that 23N provided that all applications for operator licenses are public records, but that trade secrets and competitively sensitive or other proprietary information provided in the course of an application for operator's license, the disclosure of which -would cause the applicant to be at a competitive disadvantage-, may be withheld from disclosure.

Chair Judd-Stein noted that this exception only applied during the course of the application process. She noted that it would be hard for the Commission to guess what the applicant's trade secrets were at the outset, and that the Commission could request a redacted application from applicants.

General Counsel Grossman noted there were three options. The first option was that the Commission could determine what materials were exempt, but it would take a long time. The second option was for the applicants to flag and redact the parts of their submission they believed met the statutory exemption or any other exemption to the public records law. He stated that the third option was used in the RFA2 process, where the Commission determined which questions in the application presumptively called for the submission of information or documentation that would be exempt from the public records law.

Commissioner Maynard asked if there would be a legal review of the redacted material in the second option. General Counsel Grossman confirmed and stated that option two would still take some time reviewing the proposed redacted sections of the documents, but any information not flagged and redacted could presumptively be released.

Chair Judd-Stein noted that the balancing was not just of the time and privacy concerns, but also the transparency with public records requestors' access to materials. Executive Director Wells suggested the Commission adopt option two and stated that she would meet with potential applicants to communicate the expectations that there would only be good faith redactions appropriate under the public records law. Commissioner O'Brien suggested that the discussion be streamed for transparency.

Commissioner Skinner inquired if the redaction would occur when the Commission received a public records request. Executive Director Wells stated that applicants would submit a redacted application and their legal reasoning behind each redaction. General Counsel Grossman added that the Commission had already received a public records request for the scoping surveys.

Executive Director Wells stated that as public records requests were expected, the Commission could post the redacted applications on the website. Chair Judd-Stein agreed and added that the Secretary of the Commonwealth urges agencies to put frequently requested records online. The Commission reached unanimous consensus to adopt option two and have the applicants submit a redacted application, and then post redacted applications online for transparency.

Executive Director Wells stated that FanDuel commented that the Legislature did not identify economic developments or community engagement as considerations for licensure, and FanDuel

suggested striking that portion of the application. Commissioner Hill noted that the Commission discussed these issues at length and felt strongly about including these issues in the application. Commissioners O'Brien and Skinner voiced their agreement on this point as well.

Executive Director Wells reported that FanDuel commented that the requirements for the financial security and integrity section of the application were additional burdens. She stated that the Chief of Financial Investigations went through the requirements and found them to be necessary.

Executive Director Wells stated that the last two brief comments from FanDuel were regarding clarification of application requirements. She stated that section B(4) was examining readiness; or how ready the applicant was to move forward, and that a comment clarifying the question would be posted to the Commission website. She stated that section G(3) wanted a general summary of the applicants' experience with internal controls such as an audit committee; if minutes were maintained; and if there were any external controls over finances.

Director of the Investigations and Enforcement Bureau ("IEB") Loretta Lillios stated that companies of this nature are likely to have dealt with financial reporting and corporate governance, and that the application required summary information on the compliance structure, audit structure, and governance structure. Chair Judd-Stein asked if the application would need to be amended. Executive Director Wells stated that the application would not need to be amended, but a clarification of these questions could be posted on the Commission website.

Chair Judd-Stein asked if the Commission staff could begin consultation meetings with the applicants to clarify these questions. General Counsel Grossman stated that 205 CMR 218.00 allowed consultation meetings to give applicants guidance on application procedures. Commissioner O'Brien recommended that beginning the consultation meetings should wait until 205 CMR 218.00 was discussed later in the agenda.

Executive Director Wells stated that Penn Entertainment, LLC's ("PENN") comments were predominantly clarifications that would not require changes to the application. She stated that PENN recommended the addition of language to address that applicants have an additional 30 days to provide information requested by the Commission. She noted that the additional 30 days were handled by regulation, and no change was necessary to the application.

Executive Director Wells reported to the public and for potential applicants listening that the format of the electronic application should be a signed document, submitted in a searchable pdf format. She noted that PENN had asked about submitting a redacted table of calculations, which should be fine, given that the Commission had opined on having the applicant submit a redacted application. She added that PENN asked if parent company applicants could cross-reference each other's applications and stated that if the applicant believed information that pertained to their parent company, they should include it in their own application.

Executive Director Wells explained that with respect to B(3) of the application, the Commission was looking for an overview summary of the entities' operations, including who they are connected with and if there is current affiliation or integration with other sports wagering

operators. She noted that PENN’s question regarding B(4) was addressed during FanDuel’s comments, and that it would be posted on the Commission website. She clarified that section C(1) of the application was asking about job creation and the benefits to the Commonwealth.

Executive Director Wells stated that the Commission staff met internally and did not find that the effort to maximize revenue to the Commonwealth needed the qualifier of being in good faith, as it was self-explanatory. She stated that applicants could include information about spending outside of Massachusetts in their diversity, equity and inclusion responses, and stated she was unsure if additional language was needed. Chief Financial and Accounting Officer (“CFAO”) Lennon stated that information regarding diversity was not limited to Massachusetts, and could reflect the applicant’s commitment on a national level.

Executive Director Wells noted that some questions within the application may not apply to each category of operator, and they could respond “not applicable” if they do not have an answer. She clarified that the IEB would subsequently inform applicants of whom would be considered a qualifier.

Director Lillios stated that the IEB would not ask for a new submission of the multi-jurisdictional personal history disclosure form (“MJPHD”) if the applicants submitted the same information for another form of licensure.

Executive Director Wells stated that she would post clarifying responses to the Commission website and put out a request for redacted applications to address the public records request concerns.

c. [Divisional Updates](#) (1:33:00)

Director Vander Linden reported that the Research and Responsible Gaming Division was working on moving forward with studies and working with Gaming Laboratories International (“GLI”) on integrating responsible gaming measures into draft regulations.

Director Lillios reported that the IEB had received 24 online operator scoping survey responses and stated that the Licensing Division had reviewed each response. She stated that individuals and entities had been identified as qualifiers, and that the Licensing Division would send designation letters to each operator with the identified qualifiers by email the following day.

Director Lillios stated that entity qualifiers required the business entity disclosure form (“BED”), and individual qualifiers required the MJPHD and Massachusetts Supplemental form. She noted that certification regarding suitability would be codified in regulations later in the agenda, and that those who qualified as institutional investors could request a waiver from the Commission. She noted that applicants could submit BED and MJPHD forms they submitted in other jurisdictions within the past year.

Director Lillios stated that the designation email would have clarification on two BED questions; and instructions on how to submit the forms as one packet. She noted that the email would provide instructions on fingerprint cards where required, and information about where to submit

the non-refundable \$200,000.00 fee before the November 21, 2022, deadline. She invited the applicants to submit their applications earlier if possible and requested that the potential operators identify vendors they required to “go live” or launch their operations.

Director Lillios noted that the three casinos had already submitted their vendor lists, and that once the Licensing Division received the list of vendors, they would contact the applicants with instructions and details for the vendor licensing process. She noted that the regulation regarding vendors was promulgated by emergency, filed with the Secretary of the Commonwealth, and that it accommodated the launch dates anticipated by the Commission.

Executive Director Wells asked if the applicants were informed in writing about submitting the BED and MJPHD from other jurisdictions. Director Lillios stated she would review the communication and include the language if it was not already there.

General Counsel Grossman stated that the Legal Division continued to work on the sports wagering framework, and that today’s agenda included regulations regarding and application and evaluation process for the sports wagering applicants. He stated that regulations regarding technology standards would be presented shortly, and that the Legal Division was on schedule.

Executive Director Wells stated that Chief Information Officer Katrina Jagroop-Gomes was unavailable but would provide an update at the next meeting.

CFAO Lennon reported that three regulations were being considered to govern and implement the collection of assessments and fees by the Commission. He added that the Financial Division was working on setting up appropriations, revenue sources, and bank accounts that would be needed once the process was approved.

5. [Legal Division: Regulations](#) (1:58:49)

Deputy General Counsel Carrie Torrisi introduced attorneys Mina Makarious and Paul Kominers from Anderson and Krieger. Commissioner Skinner inquired whether the overview could discuss the substantive differences between the casino gaming regulations and the sports wagering regulations. Mr. Makarious stated that the overview would cover the differences, as the overall framework of the regulations was designed to mirror the RFA2 process within the gaming regulations.

Mr. Makarious noted that the suitability process for sports wagering was folded into the determination process rather than being a stand-alone process, which was a distinction due to the different timeline for sports wagering versus gaming. Chair Judd-Stein noted that suitability was a required first step under G.L. Chapter 23K.

Mr. Makarious stated that 205 CMR 212, 214, 215, and 218 were similar in their processes to the casino gaming regulations. He noted that 205 CMR 219 had no analog in the gaming regulations, as it was a requirement of Section 6 of the sports wagering act to provide for provisional licensure pending the completion of the remainder of the suitability review. He noted that 205 CMR 220, regarding the conditions of licensure, distinguished itself from 205 CMR 120, as

many conditions in the casino gaming context came from external processes such as Host-Community Agreements, impacted live entertainment venues, and the MEPA process. He stated that the key condition in 205 CMR 220 was that licensure does not permit operations until an operator's certificate was awarded. He stated that the operations certificate regulation is still being developed and was proposed to be 205 CMR 251.

Mr. Makarios stated that 205 CMR 221 largely mirrored 205 CMR 121. He noted that the statutory fees are \$1,000,000 for temporary licensure and \$5,000,000 for full licensure, and that 205 CMR 221 details how the fees are to be paid.

a. [Sports Wagering Operator Licensing Framework](#) (2:12:02)

i. 205 CMR 212: Additional Information Requested of Applicants and Continuing Duty for initial review, and possible emergency adoption

The *draft of 205 CMR 212* was included in the Commissioner's Packet on pages 71 through 73.

Mr. Makarios stated that 205 CMR 212 mirrored 205 CMR 112, and stated the requirements of applicants, licensees, and qualifiers to cooperate and provide additional information to the Commission, putting them on notice that the Commission may request that of them during the evaluation process.

Commissioner O'Brien inquired whether the regulation referred to business days or calendar days. General Counsel Grossman stated that if the number of days was over seven, it is calendar days, and business days if it was under seven.

Commissioner Skinner asked if language should specify for-cause terminations in paragraph 5(i). Director Lillios stated that the IEB wanted to know about all separation from qualifiers and employees, not just those for cause. She stated that language regarding for-cause terminations would be a follow-up question asked of applicants.

Commissioner Skinner asked why the fine listed in 5(k) began at \$250,000. Director Lillios stated that it was consistent with the gaming regulations, and that the number may be significant with SEC reporting as well.

ii. [205 CMR 214](#): Application and Investigation Fees for initial review and possible emergency adoption (2:21:58)

The *draft of 205 CMR 214* was included in the Commissioner's Packet on pages 74 through 75.

Mr. Makarios stated that 205 CMR 214 outlined the process for receiving application fees and additional fees for investigations. He noted that the Sports Wagering Control Fund was established in G.L. Chapter 23N, § 15. He stated that portions of the legislation contained a typographical error that mistakenly referred to as 'Section 14'. He stated that the method of establishing costs was the same as listed within 205 CMR 114.

- iii. [205 CMR 215](#): Suitability Determinations, Standards, and Procedures for initial review and possible emergency adoption (2:24:37)

The *draft of 205 CMR 215* was included in the Commissioner's Packet on pages 81 through 86.

Mr. Kominers explained that 205 CMR 215 was related to suitability determinations and the determination of qualifiers. He explained that the language was tweaked to account for items in G.L. Chapter 23K, that were not present in G.L. Chapter 23N.

Executive Director Wells suggested adding clarifying language to 205 CMR 215 to address the preliminary nature of the suitability. Mr. Kominers noted that the only other cross-reference to this section was a provision providing for the award of a temporary license, but that he would include 'preliminary' where relevant. Commissioner O'Brien agreed and stated that she believed the inclusion would assist in clarifying the regulation.

Commissioner O'Brien expressed concern that a "catch-all" approach with respect to findings of suitability similar to G.L. Chapter 23K was not present; and stated she wanted to ensure statutory provisions for G.L. Chapter 23K were not lost in the sports wagering regulations. Mr. Kominers stated that considerations under G.L. Chapter 23N § 6(e) as well as 23K, were not excluded from the Commission's considerations. Commissioner O'Brien stated that she would like to have the language included for clarity.

Commissioner Skinner asked if the references to 205 CMR 115.04 and 205 CMR 115.05 were intentional. Mr. Kominers explained that the regulations referenced were for the process of suitability determination in the gaming context, and the suitability determination process for sports wagering context should be consistent. Mr. Makarious stated that when developing the regulation, they wanted the process to be consistent without creating a new process altogether.

Chair Judd-Stein stated that the majority of suitability determinations would occur in public meeting, but she wanted the option to discuss sensitive topics in private, as she did not want the forum to hinder the Commission's ability to ask critically important questions. General Counsel Grossman stated that the Commission should be clear as to the process regarding suitability and whether the Commission envisioned the suitability review would be conducted during an adjudicatory proceeding or not. Chair Judd-Stein stated that the Commission had discussed doing the suitability review during an adjudicatory proceeding to keep it streamlined.

General Counsel Grossman stated that the adjudicatory proceeding on suitability would have to occur prior to reviewing the application, or the review would have to be paused while the suitability process occurred. He stated that it was important to recognize that there were two separate proceedings: an adjudicatory proceeding for suitability; and the proceeding in the public meeting reviewing the applications.

Chair Judd-Stein stated that a full suitability report would not be available at that point from the IEB. Director Lillios stated that a preliminary report on suitability would be available

summarizing self-disclosed areas on the application, and an open-source check into the applicant and qualifiers.

Commissioner O'Brien raised as a possibility the concern that the applicants may feel uncomfortable answering certain questions arising from public comment. Mr. Kominers stated that the regulation sets out what the Commission may act upon to have a preliminary finding of suitability, and it did not exclude the IEB from reporting to the Commission, or the Commission taking account or notice of information arising from other channels. He stated that if a question arises from public comment, the Commission could request additional information.

Chair Judd-Stein voiced concern that there could be confusion if the Commission did not delineate the two suitability processes. Mr. Makarios stated that part of the reason for including flexibility was because category 1 applicants had already been found suitable for gaming, and he was unsure the Commission would want to subject them to an additional adjudicatory proceeding. He stated that the processes could be split into temporary suitability and durable suitability, with the caveat that temporary suitability may not be a separate process.

Chair Judd-Stein stated that the Commission could only look at materials applicants submitted during the evaluative process. General Counsel Grossman stated that applicants do not have constitutional rights attached at the point of preliminary suitability, as it was an initial finding of suitability, and they are not entitled to an adjudicatory proceeding at that instance.

Commissioner Skinner asked what the Commission reviewed during the preliminary suitability evaluation. General Counsel Grossman answered that the Commission would review attestations, the IEB report, and publicly available information.

Commissioner Skinner asked if sensitive information was revealed during the process that would require an adjudicative hearing and an executive session, did language have to exist to allow for it in the temporary suitability process. Chair Judd-Stein answered that full suitability had constitutional stakes, but that preliminary suitability did not, and that the public meeting for temporary suitability did not have a method to enter an executive session.

General Counsel Grossman stated one executive session provision may apply, related to discussing one's reputation, but explained that the party would have to be present with counsel with restrictions on what could be discussed. Mr. Makarios then added that the language for full suitability referred back to the casino gaming regulations.

Chair Judd-Stein stated that the IEB could submit concerning information to the Commission for use on a comparative basis, but there would not be a finding of suitability at that time. Commissioner Skinner stated that the Commission might want to question the applicant on information discovered by the IEB, but had concerns about discussing sensitive information in a public form. General Counsel Grossman shared that the casinos had sensitive and uncomfortable information discussed in public during their evaluation process.

Mr. Makarios stated that applicants may be found not suitable upfront if there were false attestations or certifications found within their materials. Chair Judd-Stein asked if they would be

considered disqualified. Director Lillios stated that lack of truthfulness was an automatic disqualifier and was usually discovered in an independent verification process. Executive Director Wells stated that the Commission could return to discussing the issues in this subsection and review the remaining regulations on the meeting's agenda.

Mr. Kominers presented 205 CMR 215, Section 2. Chair Judd-Stein noted that the language in G.L. Chapter 23N was slightly different in regard to institutional investors. Director Lillios stated that under G.L. Chapter 23K institutional investors could not be waived if they controlled over fifteen percent of the entity, but that provision was not in G.L. Chapter 23N. She stated that the IEB maintained the fifteen percent threshold, but that the applicant has the ability to seek a waiver as an institutional investor. Mr. Kominers stated that those determined to be qualifiers, who believed they should not be, may appeal to the Commission.

iv. [205 CMR 219](#) - Temporary Licensing Procedures for initial review and possible emergency adoption (4:08:14)

The *draft of 205 CMR 219* was included in the Commissioner's Packet on pages 87 through 88.

Mr. Kominers stated that the regulation was designed to track the specific process set out in the sports wagering act for the issuance of temporary licenses. He stated that the subparagraphs cross-referenced to section 205 CMR 218 where the Commission could find the applicant preliminarily suitable or durably suitable.

Commissioner Skinner asked if the requirement that an applicant also obtain an operations certificate should be included in this regulation. Executive Director Wells stated that the untethered category three mobile sports wagering operators would be preliminarily picked; reducing the field down to up to seven operators. From there, the IEB would investigate individual qualifiers, and GLI would check their internal controls, house rules and other processes for the operations certificate.

Commissioner Skinner asked why that process wasn't embedded into the regulations presented. General Counsel Grossman stated that the technical standards and house rules subject to the operations certificate had not been developed yet. He stated that once the Commission made a licensing decision, if full suitability had not been completed, they will not receive a full operator's license, but would be eligible to request a temporary license by following the steps in this regulation.

Commissioner Skinner asked when the companion regulations would be presented, and asked if the vote on this regulation should be held until those regulations are received. General Counsel Grossman stated that administratively it made sense to move on the whole package of regulations presented in this meeting to the extent the Commission was comfortable. Mr. Kominers stated that the companion regulations would be presented soon.

Commissioner Skinner inquired whether the Commission could vote on each regulation separately to vote on the regulations that did not need additional information. General Counsel

Grossman stated that the Commission could approve them separately, but it was helpful to file all of the regulations together at the same time with the Secretary of the Commonwealth.

Mr. Makarious stated that drafting the operations certificate was not cumbersome as it would follow the process in 205 CMR 151, but that the Commission would have to ensure applicants knew what the application process entailed if they chose to wait until the operations certificate regulation to vote. Commissioner Skinner stated that she did not want to hold a vote on the entire regulation package, but she wanted to see the certificate of operations process before voting on 205 CMR 219.

Chair Judd-Stein noted that several regulations interact with each other. Commissioner O'Brien expressed that she shared Commissioner Skinner's hesitations, and asked if the operational regulations were still scheduled for internal review for the current week. She stated that if there was only a week's wait, the regulations could still be batched together.

Chair Judd-Stein asked if Commissioners could clarify if something was wrong with the regulation as written. Commissioner O'Brien stated that she had two concerns, that it wasn't explicitly made clear in the four-corners of the regulation that the operations certificate was required, and the terms of details regarding the operations certificate requirement regulations. Commissioner Skinner stated that she was comfortable with 205 CMR 219, but that she wanted to view it in conjunction with the regulation that would govern the operation certificate process.

Chair Judd-Stein agreed that language could be added to address the certificate of operations requirement. Mr. Kominers stated that the language existed in 205 CMR 218. Commissioner O'Brien stated that the language did not specifically say 'operations certificate,' but that it was broad enough to assume the operations certificate was included. Mr. Kominers stated that the regulation was drafted more expansively to not have any inadvertent exclusions. General Counsel Grossman stated that ideally, it would include specific regulations, but the regulation could not be filed with the Secretary's office with a cite to a regulation that did not yet exist.

Chair Judd-Stein inquired whether certificate of operations would be defined in the definitions regulation. Mr. Kominers stated that he would want further time to consider whether the operations certificate was considered a condition or independent requirement. He stated that he was confident there could be a way to incorporate it into this regulation but had to think about the overall structure of the regulations. He suggested moving to 205 CMR 220, and assessing the Commission's comfort after that discussion.

v. [205 CMR 220](#) - License Conditions for initial review and possible emergency adoption (4:30:44)

The *draft of 205 CMR 220* was included in the Commissioner's Packet on page 89.

Mr. Kominers explained that there were conditions placed on all licenses, that the operator must comply with all terms and conditions of the license, operations certificate, G.L. Chapter 23N, all rules and regulations of the Commission, and maintain suitability.

Commissioner O'Brien expressed discomfort with the five-year term of the temporary license. Deputy General Counsel Caitlin Monahan stated that the five-year period was in case of an unprecedented situation occurring during suitability evaluations. Commissioner O'Brien stated that five years seemed long. Director Lillios shared that the temporary license for primary vendors was three years.

Commissioner O'Brien stated she would want the Commission to receive an update prior to five years. Commissioner Skinner agreed with Commissioner O'Brien. Chair Judd-Stein asked if there was a way to address this concern, and give the Commission discretion.

Mr. Kominers stated that the Commission receives information from the IEB past the issuance of a temporary license, and stated that he was inclined to include the requirement in operational regulations rather than license issuance as it is an issue regarding existing operators.

Chair Judd-Stein stated that she thought the temporary license was only for one year under the statute. Commissioner Maynard stated that there should be a deadline for when full suitability should be complete as the temporary license was tied to suitability in the statute. Director Lillios stated she wanted to be cautious if there was an investigative issue that required more work such as interviews or subpoenas. She stated updates could be given to the Commission in a way to preserve impartiality.

Commissioner Maynard stated that there should be a target date with regular updates to the Commission. Commissioner O'Brien expressed an interest in a two and a half year to three-year range with language included for extensions to up to five years, provided that the IEB provides limited information updates. Director Lillios proposed a three-year range. Mr. Makarious stated that the regulation had a five-year range to prevent applicants from seeking a longer temporary licensing period.

Commissioner Skinner inquired whether G.L. Chapter 23N had language that would prevent the Commission from attaching conditions to the extension of a temporary license, such as the payment of additional fees. Mr. Makarious responded that some conditions could be imposed, but assigning a financial value to the temporary process would foreseeably be challenged. He stated that conditions could limit a full operator's license until further suitability was conducted.

Commissioner O'Brien stated that ideally, the temporary license would be annual, but the breadth of work conducted by IEB would make that unrealistic. She stated that she liked the three-year period, and would want updates during that time. Commissioner Hill stated that he would like a three-year range as well. Commissioner Maynard stated he would defer to Director Lillios, and that he was most comfortable with a shorter temporary process.

Commissioner O'Brien suggested that the temporary license be for no greater than three years unless the IEB returns to the Commission with grounds for continuance, and that the continuance not extend past five years. The Commission reached a unanimous consensus on a three-year temporary license.

vi. [205 CMR 221](#) - Licensing Fees for initial review and possible emergency

adoption (4:53:50)

The *draft of 205 CMR 221* was included in the Commissioner's Packet on pages 90 through 92.

Mr. Makarios explained that 205 CMR 221 regarded fees; requiring \$1,000,000 for temporary licenses and \$5,000,000 for full licenses. He explained that the payment of the licensing fee was upon award of the license, and that the \$1,000,000 fee was credited towards the \$5,000,000 payment. He stated that the process ensured the regulatory costs of the Commission were covered.

CFAO Lennon stated that the process followed the statute and referenced the budgetary process from 205 CMR 121. He stated that operators were required to contribute to the Public Health Trust Fund, with the exception of category one operators as they were already required to pay \$5,000,000 to the Public Health Trust Fund. Chair Judd-Stein asked if the contributions to the Public Health Trust Fund were prorated. CFAO Lennon stated that it was prorated to the operator's share of gross sports wagering receipts, based on anticipated gross sports wagering receipts as included in the application.

b. [Revisions to Sports Wagering License Evaluation](#) (4:58:19)

i. Draft 205 CMR 218: General Sports Wagering Application Requirements, Standards, and Procedures; and small business impact statement

General Counsel Grossman presented the amendments to the draft of 205 CMR 218 incorporating the Commission's comments from the previous week. The *amended draft 205 CMR 218 and small business impact statement* were included in the Commissioner's Packet on pages 105 through 120.

Executive Director Wells asked if the applicant could petition the Commission if they missed the deadline. General Counsel Grossman stated that it was discussed in 205 CMR 218.02(1)(a) and could be further clarified if the Commission wanted broader discretion to accept an application that was late and did not meet the listed requirements.

Commissioner Skinner asked about the rationale for substituting sufficiency for completeness. General Counsel Grossman stated that completeness suggested there would be a very thorough review, where the review is just high level to ensure everything is present. Mr. Kominers stated that the review was to ensure portions of the application were sufficient for the IEB to perform its job. Commissioner O'Brien stated that the shift to sufficient was to make the regulation more clear.

Chair Judd-Stein asked if the attorneys from Anderson and Krieger thought the amount of discretion afforded to the Commission in subsection six was acceptable. Mr. Kominers stated that there was a great deal of discretion embedded in that subsection. General Counsel Grossman clarified that there were not any adjustments to that subsection from the prior draft.

Chair Judd-Stein clarified that the Commission did not have to find any applicant unsuitable at this juncture of the application process and could deny the application. Mr. Kominers agreed and stated that many grounds for a finding of unsuitability were also grounds to deny a license.

Chair Judd-Stein stated that the first set of regulations should be presented once revisions had been made, but asked to vote on 205 CMR 218 to prevent a delay. General Counsel Grossman stated that a vote could be taken, and the regulation could wait to be filed with the Secretary of the Commonwealth with the rest of the regulations in the following week.

Chair Judd-Stein asked if waiting to file the regulation would affect the filing process. Deputy General Counsel Torrisi stated that delaying filing 205 CMR 218 would be ideal as it cross-cites the other regulations considered at this meeting and they would need to be filed together. Commissioner Skinner stated she would prefer to vote on all of the regulations at the same time.

Commissioner O'Brien asked if the Commission could vote on the small business impact statement and language discussed in this meeting, and include a motion for the emergency promulgation in the following week while approving the other regulations. Deputy General Counsel Torrisi explained that emergency regulations go into effect upon filing, and not when they are voted on. She added that the regulations could be voted on without filing, and then filed when the full set of regulations was voted on.

Commissioner O'Brien moved that the Commission approve the small business impact statement as well as the draft of 205 CMR 218, the *General Sports Wagering Application Requirements Standards and Procedures* as discussed and further edited here today. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

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

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously, 5-0.

Deputy General Counsel Torrasi explained that the Secretary of the Commonwealth's office stated that when the Commission files emergency regulations, if the intervening regulations had not yet been allocated, they would be published as reserved sections. Commissioner O'Brien asked when the reserved pages would expire. Deputy General Counsel Torrasi stated that it would be ninety days from the date of the emergency filing. Commissioner O'Brien asked if the emergency regulations were queued for public comment for the permanent process. Deputy General Counsel Torrasi stated that as soon as the emergency filing occurs, the Legal Division begins the permanent promulgation process, and uploads the regulation to the MGC website where the public can comment until the regulation is finalized.

Transcriber's note: Chair Judd-Stein stated that the remaining regulations under agenda item 5(c) would need to be discussed in a future meeting due to time constraints.

6. [Commissioner Updates](#) (5:42:59)

a. Discussion on Request from DraftKings for Reconsideration of Commission Vote on Staggered launch

Chair Judd-Stein stated that a letter was received from DraftKings, LLC requesting that the Commission reconsider its vote to allow Category 1 retail sports wagering operators to launch at the end of January prior to the Category 3 mobile sports wagering operators' launch in March. She stated that at the round table meeting of potential sports wagering operators on September 22, 2022, the online operators did not object to a staggered launch, provided that all online operators launched on the same day, with DraftKings being the only party that voiced objection. Chair Judd-Stein noted that Executive Director Wells and the Legal Division reviewed the request and believed that there had been no change in facts or circumstances since the Commission's vote.

Commissioner Hill expressed that he did not believe the launch dates had to be revisited. He noted that eighty percent of betting in other jurisdictions was done by mobile betting, and he did not agree that a staggered launch would provide an advantage to retail sports wagering operators based upon reports from other jurisdictions. Commissioner O'Brien agreed and stated that procedurally there were no new considerations or corrections of the record to warrant a new discussion. She stated that motions to reconsider were typically based off new information or a change in circumstances. Commissioner Skinner and Commissioner Hill agreed with Commissioner O'Brien's sentiments.

Commissioner Maynard expressed concern about potential equity issues if information could be gathered at a sports wagering kiosk by category one operators, and distributed to their tethered category three mobile operators to create an advantage. He stated that discussing the issue further could change the timelines and create problems for the March launch date, and that he wanted to stick to the staggered launch timeline the Commission had voted on.

The Commission reached a consensus to rely on the previous vote and not revisit the issue of a staggered sports wagering launch.

b. [Sports Wagering Evaluation Project Manager Update](#) (5:51:37)

CFAO Lennon stated that on October 24th, the Commission assembled a procurement team to draft a request for quotes for a statewide contract for project management consultant services. He listed the key items intended to be used in the quote including timeline, scope of work, procurement evaluation criteria, procurement questions, and vendor skills

Chair Judd-Stein stated that the attorneys from Anderson and Krieger had cautioned the Commission on using the word ‘scoring,’ and suggested that the term ‘assessment,’ be used instead. CFAO Lennon stated that the concern had been considered and the language in the request for quotation may have that language.

Commissioner O’Brien asked if there were concerns about Commission missing anything due to the truncated procurement process. CFAO Lennon stated that it was off of a statewide contract list, and the vendors on the list were in-depth. He stated that smaller vendors may be precluded due to not having the resources, however. Commissioner O’Brien asked if the smaller vendors could partner together and submit a bid. CFAO Lennon stated that if a vendor did not meet the requirements, they could partner with other vendors.

7. [Community Affairs](#) (6:05:29)

a. MGM Springfield (“MGM”) Quarterly Reports - Q2 and Q3

Joe Delaney, Chief of the Community Affairs Division introduced Vice President and Legal Counsel from MGM Augustine “Gus” Kim. Mr. Kim presented the MGM quarterly reports for Q2 and Q3 with topics including gaming revenue and taxes; lottery sales; diversity spend; local spend; compliance; employment numbers; community outreach; internal and external development; and entertainment. The *MGM Q2 and Q3 Reports* were included in the Commissioner’s Packet on pages 161 through 189.

Commissioner O’Brien inquired whether MGM had identified its vulnerability with the issue of minors accessing the game floor. Mr. Kim stated that the main issue was the floor plan, as there were multiple sources of entry available, and it was difficult to police every entry point. He stated that the open floorplan was constructed to be a family friendly venue. He confirmed that MGM was working with the IEB to minimize the issue. Commissioner O’Brien expressed an interest in getting an update on efforts to secure the floor from minors prior to the next quarterly update. Mr. Kim agreed.

Chair Judd-Stein noted to her fellow Commissioners that MGM had previously been fined for this issue, and that she wanted to hear from IEB about the coordination with MGM and possible solutions to address the issue as well. Chair Judd-Stein inquired how MGM would address youth

entering with cellphones and potentially placing sports wagering bets at kiosks. Mr. Kim stated that MGM would develop a plan to address that concern, and that MGM was still working on procedures and methodologies to prevent youth wagering.

Chair Judd-Stein asked about MGM's hiring initiatives. Mr. Kim stated that MGM had a diverse community they engaged with and was exploring different avenues for hiring. MGM's Director of Compliance Dan Miller stated that MGM hosted weekly hiring events in their hotel lobby, and job fairs. Commissioners thanked MGM representatives for their presentation.

8. [Other Business](#) (6:27:19)

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

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

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated October 20, 2022
2. [Commissioner's Packet](#) from the October 27, 2022, meeting (posted on massgaming.com)

Number of Games – March 2023

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	Encore Boston Harbor	MGM Springfield	Plainridge Park Casino	Massachusetts Total
Slot Machines	2,464	1,506	937	4,907
Table Games	203	48	N/A	251
Poker Games	24	14	N/A	38
Stadium Games	40	15	N/A	55
Sports Wagering Kiosks	118	18	20	156



Slot Machine Change

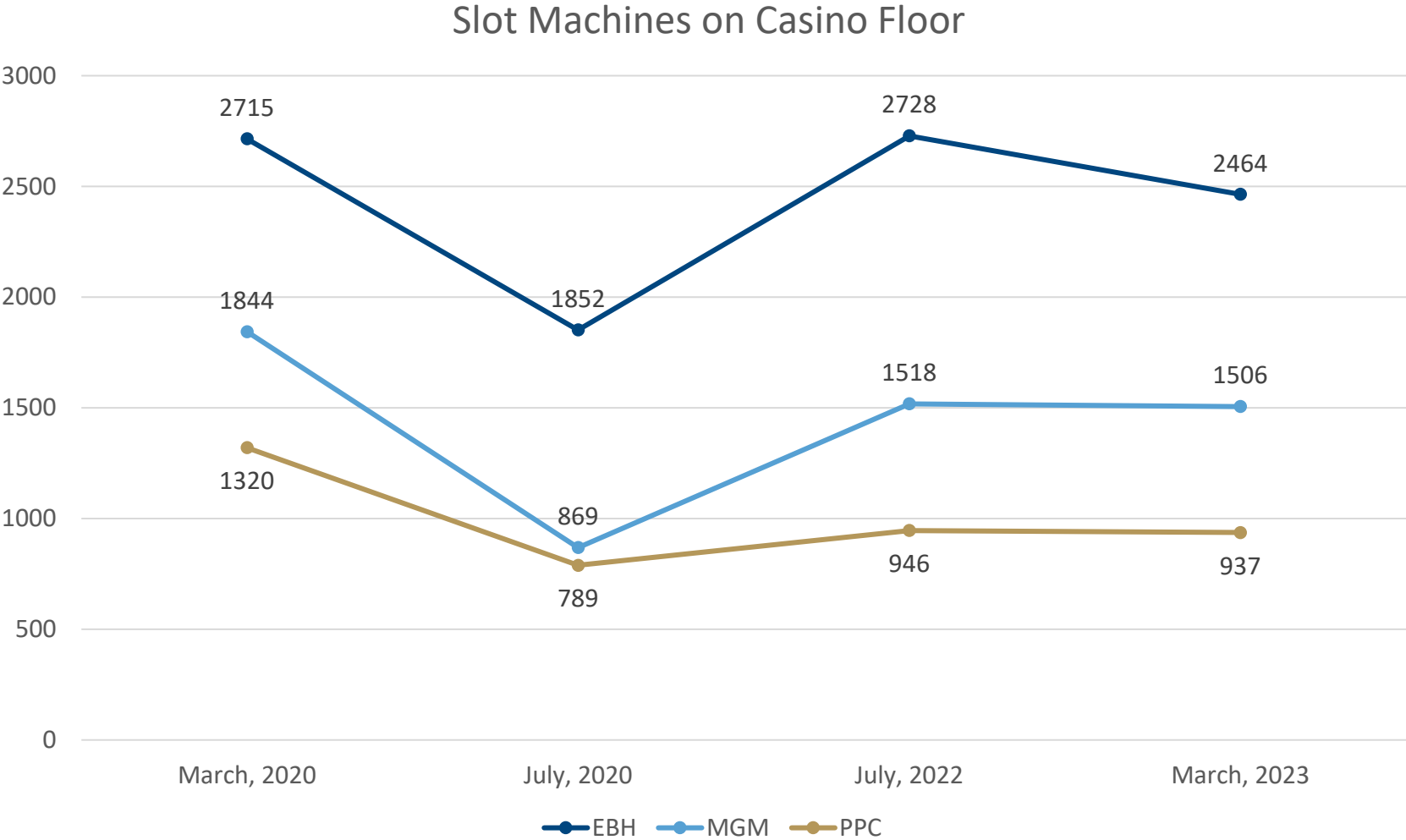
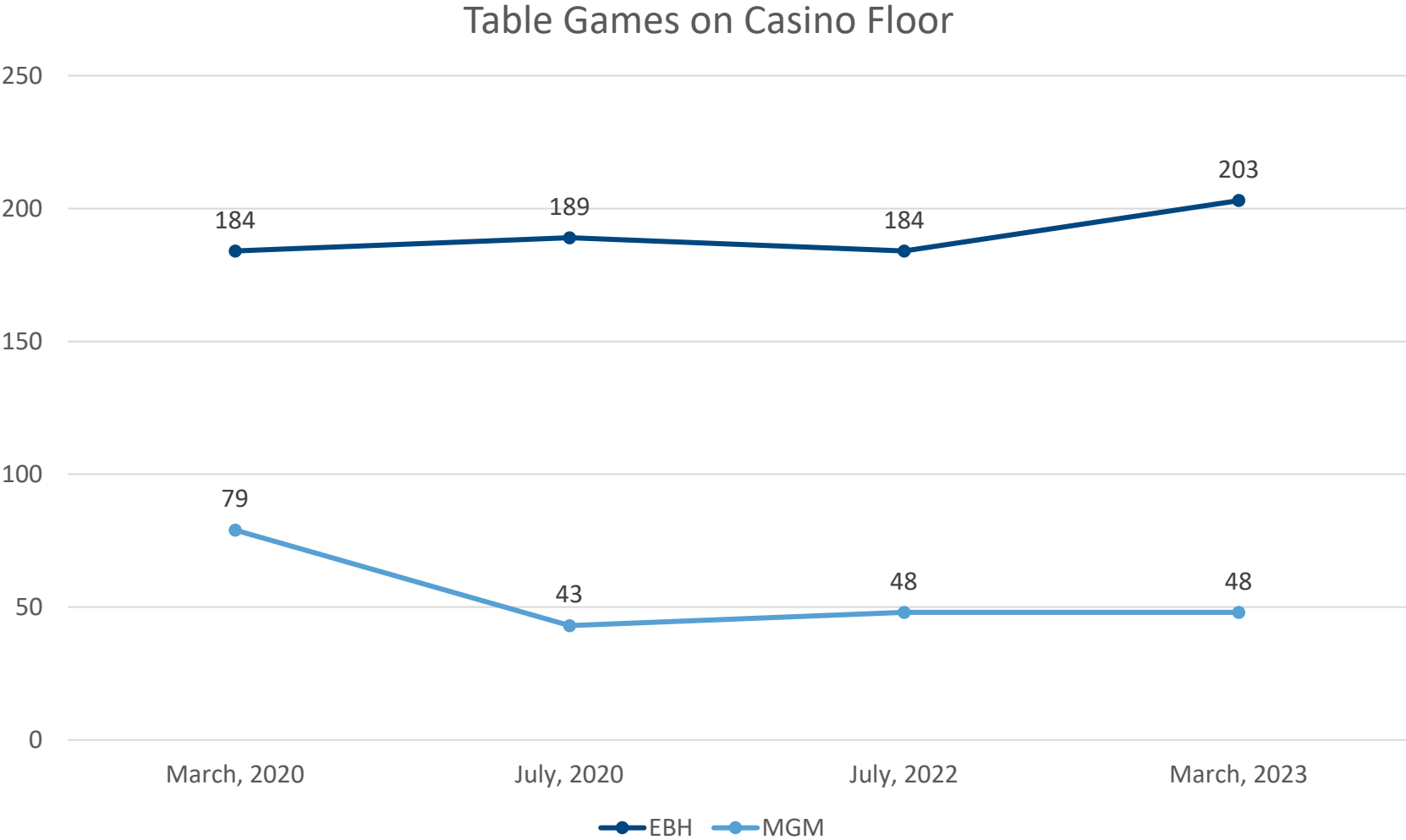


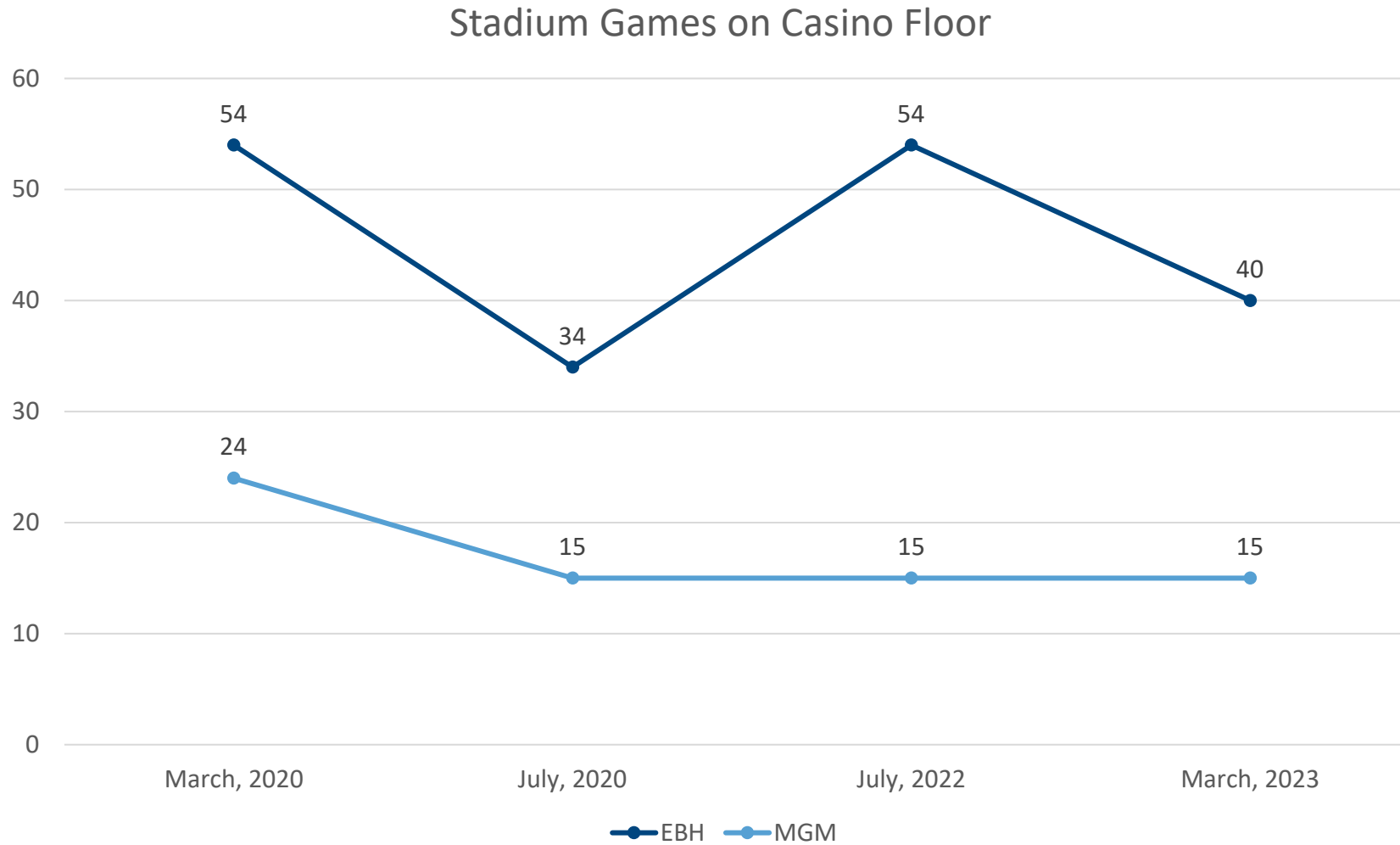
Table Game Change



Poker Change



Stadium Games Change





DAILY FANTASY SPORTS REVENUE ALLOCATION FOR TAXATION

MASSACHUSETTS GAMING COMMISSION

MARCH 23, 2023

Request for Revenue Allocation Model

Two daily fantasy sports (DFS) operators have requested that the Commission utilize the “Resident/Location Percentage Allocation” methodology for calculating and taxing Adjusted Gross Fantasy Wagering Receipts (AGFWR). The rationale for this request is the following:

- Aligns with other jurisdictions taxing DFS
- DFS contests are not state specific and have entrants and winners from varying states in the same contest
- Eliminates huge swings in taxes based on where winners are located

(Other states taxing based on Resident/Location Percentage Allocation-- Alabama; Arizona; Arkansas; Connecticut; Delaware; Iowa; Louisiana; Maine; Maryland; Michigan; Missouri; Mississippi; New Jersey; New York; Pennsylvania; and Tennessee)



c. 23N Statutory Definition

Adjusted Gross Fantasy Wagering Receipts:

The total gross receipts from fantasy contests as defined in section 11M1/2 of chapter 12, less only the total of all cash prizes paid to participants in the fantasy contests; provided, however, that the total of all cash prizes paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.



Location/Resident Percentage Allocation Example (For Discussion Only)

Facts for Impacts of Location/Resident Percentage Allocation Methodology vs. State Specific. (these examples were submitted by a DFS operator)

- Total DFS Entry Fees (All States) = \$1,000,000
- Total Payouts (All States) = \$900,000
- AGFWR All States = \$100,000
- Total DFS Entry Fees (MA Residents) = \$50,000



Location/Resident Percentage Allocation Example

Cont. (For Discussion Only)

Scenario #1 MA Players Win 10% of Total Payouts			
MA Entry Fees and Payouts Only Impact		Resident/Location Allocation Impact	
Total DFS Entry Fees (MA Only)	50,000.00	Total DFS Entry Fees (All States)	1,000,000.00
Total DFS Payouts (MA Only)	90,000.00	Total DFS Payouts (All States)	900,000.00
AGFWR (MA Only)	(40,000.00)	AGFWR (All States)	100,000.00
15% Tax on AGFWR	(6,000.00)		
		MA Total DFS Entry Fees	50,000.00
		MA Entry Fees as % of Total Fees	5.00%
		MA AGFWR	
		(MA Entry Fee % X AGFWR All States)	5,000.00
		15% Tax on AGFWR	750.00
Scenario #2 MA Players Win 2.5% of Total Payouts			
MA Entry Fees and Payouts Only Impact		Resident/Location Allocation Impact	
Total DFS Entry Fees (MA Only)	50,000.00	Total DFS Entry Fees (All States)	1,000,000.00
Total DFS Payouts (MA Only)	22,500.00	Total DFS Payouts (All States)	900,000.00
AGFWR (MA Only)	27,500.00	AGFWR (All States)	100,000.00
15% Tax on AGFWR	4,125.00		
		MA Total DFS Entry Fees	50,000.00
		MA Entry Fees as % of Total Fees	5.00%
		MA AGFWR	
		(MA Entry Fee % X AGFWR All States)	5,000.00
		15% Tax on AGFWR	750.00



Location/Resident Percentage In Other States

Alabama Code Section 8-19F-2(6) and (7) :

(6) GROSS FANTASY CONTEST REVENUES. The amount equal to the total of all entry fees that a fantasy contest operator collects from all fantasy contest players, less the total of all sums paid out as winning to all fantasy contest players multiplied by the location percentage for Alabama.

(7) LOCATION PERCENTAGE. The percentage, rounded to the nearest tenth of a percent, of the total of all entry fees collected from fantasy contest players located in Alabama, divided by the total entry fees collected from all fantasy contest players in fantasy contests.

Arizona Revised Statutes Section 5-1201(7) and (14):

7. "FANTASY SPORTS CONTEST ADJUSTED REVENUES" MEANS THE AMOUNT EQUAL TO THE TOTAL OF ALL ENTRY FEES THAT A FANTASY SPORTS CONTEST OPERATOR COLLECTS FROM ALL FANTASY SPORTS CONTEST PLAYERS MINUS THE TOTAL OF ALL SUMS PAID OUT AS PRIZES OR AWARDS TO ALL FANTASY SPORTS CONTEST PLAYERS, MULTIPLIED BY THE IN-STATE PERCENTAGE.

14. "IN-STATE PERCENTAGE" MEANS FOR EACH FANTASY SPORTS CONTEST, THE PERCENTAGE, ROUNDED TO THE NEAREST TENTH OF A PERCENT, EQUAL TO THE TOTAL ENTRY FEES COLLECTED FROM ALL IN-STATE PARTICIPANTS DIVIDED BY THE TOTAL ENTRY FEES COLLECTED FROM ALL PARTICIPANTS IN THE FANTASY SPORTS CONTEST, UNLESS OTHERWISE PRESCRIBED BY THE DEPARTMENT.

Arkansas Code Title 23, Chapter 116, Section 102(3) and (4):

(3) "Gross paid fantasy sports game revenues" means the amount equal to the total of all entry fees that a game operator collects from all game participants, less the total of all sums paid out as prizes to all game participants, multiplied by the location percentage for this state;

(4) "Location percentage" means, for each paid fantasy sports game, the percentage rounded to the nearest tenth of a percent of the total of entry fees collected from game participants located in this state, divided by the total of entry fees collected from all game participants in paid fantasy sports games;

Connecticut Public Act No. 21-23, Section 19:

Sec. 19. (NEW) (Effective July 1, 2021) (a) A master wagering licensee, if licensed to operate fantasy contests pursuant to section 3 or 4 of this act, shall pay to the state for deposit in the General Fund: Thirteen and three-quarters per cent of the gross receipts from fantasy contests. Each such licensee shall commence payments under this subsection not later than the fifteenth day of the month following the month that such licensee commences operation of fantasy contests, and shall make payments not later than the fifteenth day of each succeeding month, while such fantasy contests are conducted.

(b) For purposes of this section, (1) "gross receipts" means the amount equal to the total of all entry fees that a master wagering licensee collects from individuals who participate in a fantasy contest, less the total of all sums paid out as prizes to all fantasy contest participants, multiplied by the location percentage; and (2) "location percentage" means the percentage rounded to the nearest tenth of a per cent of the total of entry fees collected from fantasy contest participants located in the state, divided by the total of entry fees collected from all fantasy contest participants.

Delaware Code Title 29, Chapter 48, Section 4862(10) and (17):

(10) "Interactive fantasy sports gross revenue" means the amount equal to the total of all entry fees that a registrant collects from all players, less the total of all sums paid out as winnings to all players, multiplied by the resident percentage for Delaware.

(17) "Resident percentage" means, for each interactive fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, of the total entry fees collected from players located in Delaware, divided by the total entry fees collected from all players in interactive fantasy sports contests.

Iowa Code Section 99E.1(5) and (9):

5. "Internet fantasy sports contest adjusted revenues" means, for each internet fantasy sports contest, the amount equal to the total charges and fees collected from all participants entering the internet fantasy sports contest less winnings paid to participants in the contest, multiplied by the location percentage.

9. "Location percentage" means, for each internet fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, equal to the total charges and fees collected from all internet fantasy sports contest players located in this state divided by the total charges and fees collected from all participants in the internet fantasy sports contest.

Louisiana Revised Statutes Section 27:302(8) and (10):

(8) "Location percentage" means the percentage rounded to the nearest tenth of a percent of the total of entry fees collected from fantasy sports contest players located in the state of Louisiana, divided by the total entry fees collected from all fantasy sports contest players participating in fantasy sports contests.

(10) "Operator's net revenue" means, for all fantasy sports contests, the amount equal to the total entry fees collected from all participants entering such fantasy sports contests, less the winnings paid to participants in the contests.

Maine Revised Statutes Annotated Title 8, Chapter 33, Section 1101(7)(10):

7. Gross fantasy contest revenues. "Gross fantasy contest revenues" means the amount determined by subtracting the total of all sums paid out by a fantasy contest operator as cash prizes to all fantasy contestants from the total of all entry fees that the fantasy contest operator collects from all fantasy contestants and multiplying the result by the resident percentage. Sums paid out as prizes may not include the cash equivalent of any merchandise or something of value awarded as a prize.

10. Resident percentage. "Resident percentage" means, for each fantasy contest, the percentage, rounded to the nearest tenth of a percent, obtained by dividing the total amount of entry fees collected from fantasy contestants located in the State by the total amount of entry fees collected from all fantasy contestants.

Maryland State Government Article 9-1D-01(G) and (H):

(G) "LOCATION PERCENTAGE" MEANS, FOR A FANTASY COMPETITION, THE PERCENTAGE, ROUNDED TO THE NEAREST ONE-TENTH OF A PERCENT, OF THE TOTAL ENTRY FEES COLLECTED BY A FANTASY COMPETITION OPERATOR FROM FANTASY COMPETITION PLAYERS IN THE STATE DIVIDED BY THE TOTAL ENTRY FEES COLLECTED FROM ALL FANTASY COMPETITION PLAYERS, REGARDLESS OF THE PLAYERS' LOCATIONS, OF THE FANTASY CONTESTS.

(H) "PROCEEDS" MEANS, FOR A FANTASY COMPETITION, THE AMOUNT OF ENTRY FEES COLLECTED BY A FANTASY COMPETITION OPERATOR FROM ALL FANTASY COMPETITION PLAYERS ENTERING THE FANTASY COMPETITION, LESS WINNINGS PAID TO FANTASY COMPETITION PLAYERS, MULTIPLIED BY THE LOCATION PERCENTAGE.

Michigan – 2019 PA 157 MCL 432.502(e) and (l):

(e) "Fantasy contest adjusted revenues" means the amount equal to the total of all entry fees that a fantasy contest operator collects from all fantasy contest players minus the total of all sums paid out as prizes or awards to all fantasy contest players, multiplied by the in-state percentage.

(l) "In-state percentage" means for each fantasy contest, the percentage, rounded to the nearest tenth of a percent, equal to the total entry fees collected from all in-state participants divided by the total entry fees collected from all participants in the fantasy contest, unless otherwise prescribed by the board.

Revised Statutes of Missouri Chapter 313.910(9) and (13):

(9) "Net revenue", for all fantasy sports contests, the amount equal to the total entry fees collected from all participants entering such fantasy sports contests less winnings paid to participants in the contests, multiplied by the resident percentage;

(13) "Resident percentage", for all fantasy sports contests, the percentage, rounded to nearest one-tenth of one percent, of the total entry fees collected from Missouri residents divided by the total entry fees collected from all players, regardless of the players' location, of the fantasy sports contests;

Mississippi Code 1972 Annotated, Title 97, Chapter 33, Section 317(2):

(2) "Net Mississippi revenue" means the amount equal to the total of all fantasy contest entry fees that an operator collects from all players, less the total of all sums paid out as cash prizes to all fantasy contest players, multiplied by the location percentage for Mississippi. "Location percentage" means, for each fantasy contest, the percentage of the total entry fees collected from players located in Mississippi, divided by the total entry fees collected by that operator from all players in fantasy contests, rounded to the nearest one-hundredth of a percent (0.01%).

New Jersey Statutes Title 5, Chapter 20, Section 2(a):

"fantasy sports gross revenue" means, for each fantasy sports activity, the amount equal to the total of all entry fees that a fantasy sports operator collects from all participants less only the total of all prizes paid out as prizes to all participants multiplied by the location percentage for this State;

"location percentage" means, for each authorized fantasy sports activity, the percentage rounded to the nearest tenth of one percent (0.1%) of the total entry fees collected from players located in this State, divided by the total entry fees collected from all players in the fantasy sports activity;

New York – Racing, Pari-Mutuel Wagering and Breeding Law, Section 1401(9) and (16):

9. "Interactive fantasy sports gross revenue" shall mean the amount equal to the total of all entry fees not attributable to New York state prohibited sports events that a registrant collects from all players, less the total of all sums not attributable to New York state prohibited sports events paid out as winnings to all players, multiplied by the resident percentage for New York state; provided, however, that the total of all sums paid out as winnings to players shall not include the cash equivalent value of any merchandise or thing of value awarded as a prize.

16. "Resident percentage" shall mean, for each interactive fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, of the total entry fees collected from players located in New York state, divided by the total entry fees collected from all players in interactive fantasy sports contests not prohibited in New York state.

Pennsylvania – 4 Pa.C.S.A. Section 302:

"Fantasy contest adjusted revenues." For each fantasy contest, the amount equal to the total amount of all entry fees collected from all participants entering the fantasy contest minus prizes or awards paid to participants in the fantasy contest, multiplied by the in-State percentage.

"In-State percentage." For each fantasy contest, the percentage, rounded to the nearest tenth of a percent, equal to the total entry fees collected from all in-State participants divided by the total entry fees collected from all participants in the fantasy contest.

Tennessee Code Annotated, Title 67, Chapter 4, Section 3202(1) and (7):

(1) "Adjusted revenues" means, for each fantasy sports contest, the amount equal to the total entry fees collected from all participants entering the fantasy sports contest less winnings paid to participants in the contest, multiplied by the resident percentage;

(7) "Resident percentage" means, for each fantasy sports contest, the percentage, rounded to the nearest tenth of a percent (0.1 %), of the total entry fees collected from Tennessee consumers divided by the total entry fees collected from all players, regardless of the players' location, of the fantasy sports contest;

205 CMR 240.00: ADJUSTED GROSS SPORTS WAGERING AND ADJUSTED GROSS FANTASY WAGERING RECEIPTS TAX REMITTANCE AND REPORTING

Section

240.01 : Description of Tax

240.02 : Computation of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts

240.03: Remittance

240.04: Examination of Accounts and Records for Verification of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts

240.01 : Description of Tax

Pursuant to M.G.L. c. 23N, § 14, the following excise taxes relative to sports wagering and fantasy contests shall be calculated daily and remitted to the Commission on a monthly basis:

- (1) a monthly tax of 15% of the Operator's Adjusted Gross Sports Wagering Receipts from the operation of in-person sports wagering, computed in accordance with 205 CMR 240.02;
- (2) a monthly tax of 20% of the Operator's Adjusted Gross Sports Wagering Receipts from the operation of sports wagering through mobile applications and other digital platforms approved by the Commission, computed in accordance with 205 CMR 240.02; and
- (3) a monthly tax of 15% of the Adjusted Gross Fantasy Wagering Receipts of a person or entity that offers fantasy contests pursuant to M.G.L. c. 12, § 11M½ and 940 CMR 34.00: *Daily Fantasy Sports Contest Operators in Massachusetts*, computed in accordance with 205 CMR 240.02. Any person engaged in offering fantasy contests shall register with the Commission on a form approved and prescribed by the Commission. Failure to comply with M.G.L. c. 23N or 205 CMR 240.00 may result in civil consequences.

240.02 : Computation of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts

(1) Sports Wagering: In accordance with M.G.L. c. 23N, § 3, Adjusted Gross Sports Wagering Receipts shall be the total gross receipts from sports wagering less the sum of:

- (i) the total of all winnings paid to participants; and
- (ii) all excise taxes paid pursuant to federal law; provided, however, that the total of all winnings paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.
 - (a) Adjusted Gross Sports Wagering Receipts shall be calculated daily and in accordance with the Operator's approved system of internal controls.
 - (b) Any amount that an Operator is unable to collect pursuant to any credit issued to a patron to take part in sports wagering in accordance with 205 CMR, *et seq.* shall be deemed an amount actually received for purposes of calculating gross sports wagering receipts.
 - (c) Adjusted Gross Sports Wagering Receipts shall not include any amount received by an Operator from credit extended or collected by the Operator for purposes other than sports wagering.
 - (d) The accrual method of accounting shall be used for the purposes of calculating the amount of the tax owed.

(2) Fantasy Contests: In accordance with M.G.L. c. 23N, § 3, Adjusted Gross Fantasy Wagering Receipts shall be the total gross receipts from fantasy contests as defined in M.G.L. c. 12, § 11M½, less only the total of all cash prizes paid to participants in the fantasy contests multiplied by the "location percentage"; provided, however, that the total of all cash prizes paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.

- (a) Adjusted Gross Fantasy Wagering Receipts shall be calculated daily and in accordance with the person or entity offering fantasy contests' approved system of internal controls.
- (b) Any amount that a person or entity offering fantasy contests is unable to collect pursuant to any credit issued to a patron to take part in fantasy contests in accordance with 205 CMR, *et seq.* shall be deemed an amount actually received for purposes of calculating gross fantasy wagering receipts.

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(Mass. Register #1485, 12/23/2022)

240.02 : continued

(c) Adjusted Gross Fantasy Wagering Receipts shall not include any amount received by a person or entity offering fantasy contests from credit extended or collected by the person or entity for purposes other than fantasy contests.

(d) The accrual method of accounting shall be used for the purposes of calculating the amount of the tax owed.

(e) "location percentage" means, for each authorized fantasy contest, the percentage rounded to the nearest tenth of one percent (0.1%) of the total entry fees collected from players located in this State, divided by the total entry fees collected from all players in the fantasy contest;
~~(f)~~

240.03 : Remittance

(1) The excise taxes set out in 205 CMR 240.01 shall be due and payable to the Commission in monthly installments on or before 5:00 P.M. on the fifteenth calendar day following the calendar month in which the Adjusted Gross Sports Wagering Receipts or Adjusted Gross Fantasy Wagering Receipts were received by the Operator or person or entity offering fantasy contests, in accordance with 205 CMR 240.01.

(2) On or before the fifteenth calendar day of each month a monthly remittance report shall be filed with the Commission in a form prescribed by the Commission setting forth the following:

- (a) the total gross sports wagering receipts and Adjusted Gross Sports Wagering Receipts from the operation of sports wagering during that month;
- (b) the tax amount for which an Operator is liable;
- (c) the total gross fantasy wagering receipts and Adjusted Gross Fantasy Wagering Receipts from the offering of fantasy contests, as defined in M.G.L. c. 12, § 11M½, during that month;
- (d) the tax amount for which a person or entity that offers fantasy contests, as defined in M.G.L. c. 12, § 11M½, is liable; and
- (e) any additional information necessary for the computation and collection of the tax on Adjusted Gross Sports Wagering Receipts and Adjusted Gross Fantasy Wagering receipts required by the Commission.

(3) The tax shall be due and remitted by electronic funds transfer simultaneously with the filing of the remittance report.

(4) When a monthly total for Adjusted Gross Sports Wagering or Adjusted Gross Fantasy Wagering Receipts is negative, the Operator or person or entity that offers fantasy contests may carry over the negative amounts to returns filed in subsequent months provided that sufficient documentation, as determined by the Commission, is submitted in support of the offset.

240.04 : Examination of Accounts and Records for Verification of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts

(1) The Commission or its designee may perform audits of the books and records of an Operator or person or entity offering fantasy contests, at such times and intervals as it deems appropriate, in order to verify the tax amount reported and remitted for Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts.

(2) The Operator or person or entity offering fantasy contests shall permit duly authorized representatives of the Commission to examine the accounts and records for the purpose of verifying Adjusted Gross Sports Wagering and Adjusted Fantasy Wagering Receipts. In the event that any records or documents deemed pertinent by a Commission examiner are in the possession of another person or entity, the Operator or person or entity offering fantasy contests shall be responsible for making those records or documents available to the Commission examiner within the time period provided by the Commission.

(3) The Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering tax verification process may incorporate audit work performed by an Operator's or person or entity offering fantasy contests' internal audit department or its independent accountant or auditor provided that:

- (a) Such audit work is conducted in accordance with minimum standard internal audit procedures which have been submitted to and approved by the Commission including, at a minimum, a detailed description of the audit tests to be performed;
- (b) The Operator or person or entity offering fantasy contests submits to the Commission

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by January 31st of each year an audit plan specifying the scheduled audit dates for verification of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts that upcoming calendar year; and

240.04: continued

(c) The Operator or person or entity offering fantasy contests submits to the Commission no later than March 15th of each year, copies of all internal audit reports and any other reports directly relating to the reporting of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts for the preceding tax year.

(4) The Commission shall notify the Operator or person or entity offering fantasy contests of any Adjusted Gross Sports Wagering or Adjusted Gross Fantasy Wagering Receipt tax deficiencies disclosed during the verification process. Any additional amounts due by the Operator or person or entity offering fantasy contests shall be remitted within 15 days of completion of the audit, except that in the event the Operator or person or entity offering fantasy contests disagrees with the Commission's audit results, the time for payment shall be extended for an additional 30 days during which time the Operator or person or entity offering fantasy contests shall be provided an opportunity to respond to the Commission's audit results.

REGULATORY AUTHORITY

205 CMR 240: M.G.L. c. 23N, § 14

205 CMR 106.00: INFORMATION AND FILINGS

Section

- 106.01: Offices; Hours
- 106.02: Communications; Notices
- 106.03: Electronic Filing by Applicants during RFA-1 and RFA-2 Processes
- 106.04: Petitions for Adoption, Amendment or Repeal of Regulations
- 106.05: Advisory Services and Advisory Rulings

106.01: Offices; Hours

The commission will post on its website and update the address of the main office and the office hours of the commission and the bureau and the address and contact information for public information about the commission.

106.02: Communications; Notices

- (1) Except as otherwise provided by 205 CMR 101.00, ~~et seq. through 131.00~~ or as specified by the commission on its website, all applications, papers, process or correspondence relating to the commission or the bureau shall be addressed to, submitted to, filed with or served upon the commission or the bureau, respectively, at its main office.
- (2) Service of process upon the commission or the bureau shall be made in accordance with Mass. R. Civ. P. 4(d)(3).
- (3) Service of all papers, documents, notices and pleadings in adjudicatory proceedings conducted by or on behalf of the commission or the bureau shall be made in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.
- (4) Except as set forth in 205 CMR 106.03, all other applications, papers, documents, notices, correspondence or filings shall be deemed to have been received by the commission when delivered to the main office of the commission or to the chair, a commissioner, or such employee or employees of the commission as may be designated by the chair and posted on the commission's website. Except as set forth in 205 CMR 106.03, all other applications, papers, documents, notices, correspondence or filings shall be deemed to have been received by the bureau when delivered to the main office of the bureau or to the deputy director or such employee, employees, or agents of the bureau as may be specified by 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* or as may be designated by the deputy director as posted on the commission's website.
- (5) Except as otherwise specifically provided by M.G.L. ~~chs. 23K, 23N~~ or 205 CMR 101.00, ~~et seq. through 131.00~~, the commission or the bureau as applicable:

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

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

(6) Any applicant or person or entity holding a license or registration issued by the ~~Commission~~ shall have an ongoing duty to report any change of mailing address, email address, or other contact information to the ~~Commission~~. The contact information on file at the ~~Commission~~ shall be deemed accurate for purposes of service of any notification required to be provided including that required by 205 CMR, M.G.L. c.30A, and/or M.G.L. ~~chs. 23K and 23N~~.

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

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

(1) The commission shall develop and post on its website administrative procedures pursuant to which all applications, papers, documents, correspondence and other information submitted by an applicant to the commission or the bureau during the RFA-1 process pursuant to 205 CMR 115.00: *Phase 1 Suitability Determinations, Standards and Procedures* and the RFA-2 process described in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications* must be filed by electronic means as provided therein. Any document required by 205 CMR 101.00, ~~et seq. through 131.00~~ to be signed or notarized shall be signed or notarized, scanned and submitted in PDF form. All applicants must comply with those administrative procedures.

(2) All such electronic submissions shall be made in PDF format. Subject to technological limitations, all such submissions shall be machine-readable and text searchable.

(3) In accordance with the administrative procedures, electronic submission may be made via the internet or by filing at the main office of the commission or the bureau, as applicable, a disk containing the electronic submission. For electronic submissions via the internet, the commission or the bureau will electronically transmit a Notice of Electronic Filing which will constitute confirmation of the filing of the submission with the commission or the bureau as applicable. In the event the applicant does not receive a Notice of Electronic Filing, it is the applicant's duty to take appropriate measures to confirm timely receipt of the electronic submission by the commission or the bureau as applicable.

(4) Electronic filing via the internet will be generally available 24 hours a day; however, that availability shall not alter any filing deadline, whether set by regulation, commission or bureau order, or the RFA itself. All electronic submissions of documents must be completed prior to 5:00 P.M. to be considered timely filed that day.

106.04: Petitions for Adoption, Amendment or Repeal of Regulations

(1) Any interested person may file a petition with the commission pursuant to M.G.L. c. 30A, § 4, for the adoption, amendment or repeal of any regulation. Such petition shall be in writing, be signed by the petitioner or petitioner's attorney, be submitted to the commission at its main office, and include the following information:

- (a) The name and address of the petitioner and the petitioner's attorney;
- (b) The substance of the requested adoption, amendment or repeal of a regulation;
- (c) The reasons for the request;
- (d) The specific interest of the petitioner affected by the requested regulation;
- (e) Reference to the statutory authority under which the commission may take the requested action; and
- (f) Such data, views and arguments as the petitioner thinks pertinent to the request.

(2) After receipt of a petition for the adoption, amendment or repeal of a regulation submitted in accordance with 205 CMR 106.04(1), the commission may consider the petition at an open meeting pursuant to M.G.L. c. 30A, § 20, and determine, in its discretion, whether or not to take any action on or as a result of the petition. At the meeting the commission may, but shall not be required to, entertain comments or questions from members of the public pursuant to M.G.L. c. 30A, § 20(f). Within 20 days after the meeting, the commission will notify the petitioner as to its determination, if any, concerning the petition. The commission may, but is not required to, explain the reasons for any determination on a petition.

(3) The submission of a petition for the adoption, amendment or repeal of any regulation pursuant to 205 CMR 106.04(1), and any action, inaction, determination or notice by the commission pursuant to 205 CMR 106.04(2) with respect thereto, shall not constitute a regulation and shall confer no legal rights, duties or privileges whatsoever on the petitioner or any other person. 106.05: Advisory Services and Advisory Rulings The commission may, in its discretion, provide advisory services pursuant to M.G.L. c. 23K, § 4(7), or make advisory rulings pursuant to M.G.L. c. 30A, § 8.

REGULATORY AUTHORITY

G.L. c. 23K, § 4 and G.L. c. 23N, §4



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 106.00: Information and Filings**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 106.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23K and G.L. c. 23N.

The amendments to 205 CMR 106.00 apply to sports wagering operators and the Commission. Accordingly, this regulation is not anticipated to have a negative impact on small businesses.

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

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

This regulation amendment relates to sports wagering operators who are licensed by the Commission and therefore, unlikely to impact small businesses. There are no less stringent compliance or reporting requirements established for small businesses in this regulation.

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

There are no schedules or deadlines for compliance or reporting requirements within 205 CMR 106.00 that specifically pertain to small businesses.

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

This regulation does not impose compliance and reporting requirements on small businesses.

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



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No standards applicable to small businesses are set forth. Provided standards are performance standards.

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

This regulation amendment is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

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

This regulation amendment does not create an adverse impact upon small businesses.

Massachusetts Gaming Commission
By:

/s/ Ying Wang
Ying Wang
Associate General Counsel

Dated: Dated: March 23, 2023



Massachusetts Gaming Commission

205 CMR 107.00: PROFESSIONAL PRACTICE

Section

- 107.01: General Provisions
 107.02: The Practice of Law
 107.03: Notice of Appearance by Attorney

107.01: General Provisions

No person may practice law, accountancy, architecture, professional engineering, land surveying or any other profession or occupation regulated by the laws of the Commonwealth of Massachusetts before the commission in any manner other than in accordance with law, the ethical standards applicable to the particular profession and 205 CMR 101.00, ~~et seq. through 131.00~~. Practice shall include any matter connected with the representation of the interest of a client, including the making of any appearance and the preparing or filing of any necessary written document, correspondence or other paper relative to such interests.

107.02: The Practice of Law

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

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

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

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

(c) ~~he or she~~ the attorney has read and is familiar with M.G.L. chs. 23K, 23N and 205 CMR 101.00, ~~et seq. through 131.00~~; and provided further, that the attorney's ~~his or her~~ application for leave to practice before the commission is on request of a member, in good standing, of the bar of the Commonwealth of Massachusetts, who shall:

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

2. appear of record in the particular matter; and

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

(3) A natural person who is not a member of the bar and to whom 205 CMR 107.02(1) and (2) are not applicable may appear and practice before the commission only in ~~his or her~~ the person's own behalf.

107.03: Notice of Appearance by Attorney

(1) Each attorney practicing law before the commission shall promptly file with the commission a notice of appearance in each particular matter and on behalf of each client represented and may be required to file evidence of ~~his~~ the attorney's authority to act in such capacity. The address of each attorney, telephone number, and e-mail address shall be stated. The signature of an attorney to a document shall constitute an appearance by the attorney who signs it, unless the paper states otherwise, and shall constitute a certificate that the attorney has read the document and that to the best of ~~his or her~~ the attorney's knowledge, information, and belief there is a good ground to support it.

(2) In the event ~~of a change in the attorney's~~ an attorney changes his or her address during a particular matter in which ~~he or she~~ the attorney has appeared, the attorney shall immediately notify the commission in writing. Unless otherwise provided by 205 CMR 107.00, an attorney may withdraw from a particular matter by filing written notice of withdrawal with the commission, together with proof of service on ~~his or her~~ the attorney's client and any other parties to the particular matter.

REGULATORY AUTHORITY

G.L. c. 23K, §4 and G.L. c. 23N, §4



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 107.00: Professional Practice** for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 107.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23K and G.L. c. 23N.

205 CMR 107.00 governs professional practice before the Commission. Accordingly, this regulation is not anticipated to have a negative impact on small businesses.

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

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

This regulation amendment does not address small businesses and thus there are no compliance or reporting requirements established for small businesses.

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

There are no schedules or deadlines for compliance or reporting requirements within 205 CMR 107.00.

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

This regulation does not impose reporting requirements.

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

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

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



Massachusetts Gaming Commission

This regulation is about professional practice, including the practice of law. It is unlikely to deter or encourage the formation of new businesses in the Commonwealth as it

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

This regulation does not create adverse impact upon small businesses.

Massachusetts Gaming Commission
By:

/s/ Ying Wang
Ying Wang
Associate General Counsel

Dated: Dated: March 23, 2023



Massachusetts Gaming Commission

205 CMR 109.00: AUTHORITY OF THE COMMISSION TO ACT IN AN EMERGENCY SITUATION

Section

109.01: Authority of the Commission to Act in an Emergency Situation

109.01: Authority of the Commission to Act in an Emergency Situation

(1) Consistent with the principles outlined in M.G.L. c. 23K, § 1 and M.G.L. c. 23N, § 4 and in furtherance of the Commission's broad superintendence powers established in M.G.L. c. 23K, § 1, ~~and~~ M.G.L. c. 23K, § 4 and M.G.L. c. 23N, § 4, in an emergency situation the Commission ~~and/or~~ the Bureau may, in furtherance of the provisions of M.G.L. c. 23K, §§ 23(b) and 35 and M.G.L. c. 23N, §§ 4(g), 16(i) and 21(b), in its discretion, take any action it deems necessary to preserve the health and safety of its employees, the gaming licensees, sports wagering operators and their employees, ~~and/or patrons of the gaming establishments~~. An emergency situation may include, but not be limited to:

(a) A state of emergency declared by the Governor of the Commonwealth pursuant to St. 1950, c. 639, § 5;

(b) A national emergency declared by the President of the United States pursuant to 50 U.S.C. 1601 et seq.;

(c) A local, national, or global public health emergency as declared by the Massachusetts Department of Public Health, the Federal Centers for Disease Control and Prevention, the World Health Organization, or a similarly situated local or national agency or organization having expertise in public health;

(d) A natural disaster; or

(e) Any situation that presents an immediate threat of serious physical harm to the health or well-being of the public that requires action without delay.

(2) During Such Emergency Situation.

(a) The Bureau or the Commission may issue an order to cease and desist activity pursuant to M.G.L. c. 23K, § 35(a) or § 35(e) and M.G.L. c. 23N, §§ 4(g), 16(i) and 21(b) or an order of suspension of the gaming or sports wagering operator license pursuant to M.G.L. c. 23K, § 35(e) and M.G.L. c. 23N, §§ 4(g), 16(i) and 21(b), and may make recommendations to the Commission to issue orders to condition, suspend, or revoke a gaming or sports wagering operator license pursuant to M.G.L. c. 23K, § 35(d) and M.G.L. c. 23N, §§ 4(g), 16(i) and 21(b); ~~and/or~~

(b) The Commission may issue orders and/or establish procedures to be followed by the gaming licensees and sports wagering operators as a condition of licensure pursuant to M.G.L. c. 23K, §§ 21(a)(19) and (c) M.G.L. c. 23N, §§ 4(a) – (b) and as a requirement of its operations certificate pursuant to M.G.L. c. 23K, § 25 and M.G.L. c. 23N, § 5 that may include, but not be limited to, orders regarding operations relative to gaming, ~~and non-gaming activity,~~ sports wagering and non-sports wagering activity at the gaming establishment, sports wagering facility or sports wagering platform. The Commission may also issue orders that include, but are not limited to, cessation of gaming, ~~or non-gaming,~~ sports wagering or non-sports wagering activities or closure of the gaming establishments, sports wagering facility or sports wagering platforms in whole or in part.

(3) Hearings.

(a) If the Bureau takes action pursuant to 205 CMR 109.01(1) and (2), and M.G.L. c. 23K, § 35 and M.G.L. c. 23N, §§ 4(g), 16(i) and 21(B), it may take such action immediately and, in the event of a closure of the gaming establishment, sports wagering facility, or sports wagering platform shall coordinate with the licensee to execute a safe and orderly closure. If the Bureau issues an order to cease and desist activity pursuant to M.G.L. c. 23K, § 35(a) or § 35(e), M.G.L. c. 23N, §§ 4(g), 16(i) and 21(b) or an order of suspension of the gaming or sports wagering operator license pursuant to M.G.L. c. 23K, § 35(e) or M.G.L. c. 23N, §§ 4(g), 16(i) and 21(b), the licensee shall have the right to an adjudicatory hearing before the Commission on such order in accordance with M.G.L. c. 30A ~~and M.G.L. c. 23K, § 35(f)~~. Such hearing shall be convened as soon as practicable, but in no case later than seven days from the date of the Bureau's action ~~in accordance with M.G.L. c. 23K, § 35(f)~~.

(b) If the Commission intends to take action pursuant to 205 CMR 109.01(1) and (2), ~~and~~ M.G.L. c. 23K, § 23(b)(v) and M.G.L. c. 23N, §§ 16(i)(vi) and 21(b)(vi) that will limit or cease gaming, ~~or non-gaming,~~ sports wagering and non-sports wagering operations or result in closure of the gaming establishment, sports wagering facility, or sports wagering platform in whole or in part, it shall provide reasonable notice of hearing in accordance with M.G.L. c. 30A. In the event of an emergency situation, notice shall be deemed reasonable if it is provided as promptly as the emergency allows.

REGULATORY AUTHORITY

G.L. c. 23K, §4 and G.L. c. 23N, §4

From: [Monahan, Caitlin](#)
To: [Mina S. Makarios](#); [Paul Kominers](#); [Annie E. Lee](#)
Subject: FW: Regulations Public Comment Submission
Date: Friday, March 10, 2023 9:59:07 AM

Caitlin W. Monahan
Deputy General Counsel

Massachusetts Gaming Commission

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From: MGC Website <massgamingcomm@gmail.com>
Sent: Thursday, March 9, 2023 5:18 PM
To: Monahan, Caitlin <caitlin.monahan@massgaming.gov>
Subject: Regulations Public Comment Submission

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

BETMGM LLC

Name

Jess Panora

Email

jess.panora@betmgm.com

Regulation

205 CMR 109.00: AUTHORITY OF THE COMMISSION TO ACT IN AN EMERGENCY SITUATION

Subsection

109.01(2)(a)

Comments

Proposing to add "but no licenses shall be conditioned, suspended, or revoked unless the operator has received notice and an opportunity to respond" at the end of this sentence

BetMGM Comment: It would be unduly prejudicial to operators if their license could be suspended in an emergency situation without even knowing about that possibility in advance.



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 109.00: Authority of The Commission to Act in an Emergency Situation**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 109.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23K and G.L. c. 23N.

205 CMR 109.00 governs the Commission’s authority to act in an emergency situation. Accordingly, this regulation is not anticipated to have a negative impact on small businesses.

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

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

As a general matter, no small businesses will be negatively impacted by this amendment as it relates to sports wagering operators who are licensed by the Commission. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

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

There are no schedules or deadlines for compliance or reporting requirements within 205 CMR 109.00 that pertain to small businesses.

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

This regulation does not impose reporting requirements.

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

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



Massachusetts Gaming Commission

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

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

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

This regulation does not create adverse impact upon small businesses.

Massachusetts Gaming Commission
By:

/s/ Ying Wang
Ying Wang
Associate General Counsel

Dated: Dated: March 23, 2023



Massachusetts Gaming Commission

PRIVILEGED AND CONFIDENTIAL

03.17.2023 A&K Revisions

205 CMR 202: SPORTS WAGERING AUTHORITY AND DEFINITIONS

Sections

202.01: Authority
 202.02 : Definitions
 202.03 : Construction and Amendments

202.01: Authority

205 CMR 202.00, *et seq.* are issued pursuant to M.G.L. c. 23K, §§ 4(42) and 5 and M.G.L. c. 23N, §§ 4(a), 4(b) and 5, unless otherwise specified.

202.02: Definitions

As used in 205 CMR ~~202.00, *et seq.*~~, 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 205 CMR 102.00, if any, unless the context clearly requires otherwise:

Adjusted Gross Fantasy Wagering Receipts means as defined in M.G.L. c. 23N, § 3.

Adjusted Gross Sports Wagering Receipts means as defined in M.G.L. c. 23N, § 3.

Affiliate means as defined in M.G.L. c. 23N, § 3.

Annual Assessment means the annual assessment required to be paid by Operators pursuant to M.G.L. c. 23N, § 15(c).

Applicant means as defined in M.G.L. c. 23N, § 3.

Breaks means as defined in M.G.L. c. 23N, § 3.

Cash means as defined in 205 CMR 238.01.

Cash Equivalent means as defined in 205 CMR 238.01.

Category 1 Sports Wagering License means a Category 1 License as defined in M.G.L. c. 23N, § 3.

Category 2 Sports Wagering License means a Category 2 License as defined in M.G.L. c. 23N, § 3.

Category 3 Sports Wagering License means a Category 3 License as defined in M.G.L. c. 23N, § 3.

Check means as defined in 205 CMR 238.01.

Chief Sports Wagering Executive means as defined in 205 CMR 238.01.

Close Associate means as defined in M.G.L. c. 23N, § 3.

Collegiate Sport or Athletic Event means as defined in M.G.L. c. 23N, § 3.

Collegiate Tournament means as defined in M.G.L. c. 23N, § 3.

Commission means as defined in M.G.L. c. 23N, § 3.

Electronic Sports or eSports means as defined in M.G.L. c. 23N, § 3.

Governmental Authority means as defined in M.G.L. c. 23N, § 3.

House Rules means comprehensive house rules for game play governing sports wagering transactions with an Operator's patron as required pursuant to M.G.L. c. 23N, § 10.

License means as defined in M.G.L. c. 23N, § 3.

Mobile Application means a Sports Wagering Platform accessible through an application on a mobile phone or other mobile device through which an individual is able to place a Sports Wager.

National Criminal History Background Check means as defined in M.G.L. c. 23N, § 3.

Non-Sports Wagering Vendor means a Person who offers to an Operator goods or services which are not directly related to Sports Wagering and who does not meet the definition of a Sports Wagering Vendor.

Occupational License means as defined in M.G.L. c. 23N, § 3.

Official League Data means as defined in M.G.L. c. 23N, § 3.

Operation(s) Certificate means a certificate of compliance issued by the Commission to an Operator.

Operator or Sports Wagering Operator means as defined in M.G.L. c. 23N, § 3.

Operator License means as defined in M.G.L. c. 23N, § 3.

Person means as defined in M.G.L. c. 23N, § 3.

Personal Biometric Data means as defined in M.G.L. c. 23N, § 3.

Players Association means as defined in M.G.L. c. 23N, § 3.

Professional Sport or Athletic Event means as defined in M.G.L. c. 23N, § 3.

Promotional Gaming Credit means as defined in M.G.L. c. 23N, § 3.

Qualified Gaming Entity means as defined in M.G.L. c. 23N, § 3.

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. 23N and 205 CMR 200 *et seq.*

Responsible Gaming Messaging means as defined in 205 CMR 256.06(2).

Segregated Account means as defined in 205 CMR 238.01.

Sports Event or Sporting Event means as defined in M.G.L. c. 23N, § 3.

Sports Governing Body means as defined in M.G.L. c. 23N, § 3.

Sports Wager means as defined in M.G.L. c. 23N, § 3.

Sports Wagering means as defined in M.G.L. c. 23N, § 3.

Sports Wagering Account means as defined in M.G.L. c. 23N, § 3.

Sports Wagering Area means the part of a Gaming Establishment operated by a Category 1 Sports Wagering Licensee and approved by the Commission for in-person Sports Wagering.

Sports Wagering Control Fund means the fund established pursuant to M.G.L. c. 23N, § 15.

Sports Wagering Counter means as defined in 205 CMR 238.01.

Sports Wagering Equipment means, an electronic, electrical or mechanical contrivance, machine, or system used in connection with Sports Wagering.

Sports Wagering Facility means a facility operated by a Category 2 Sports Wagering Licensee and approved by the Commission for in-person Sports Wagering.

Sports Wagering Fund means the fund established pursuant to M.G.L. c. 23N, § 17.

Sports Wagering Kiosk means any self-service automated kiosk, terminal, machine or other device which a Person may use to place or redeem a Wager.

Sports Wagering License means a Category 1 Sports Wagering License, Category 2 Sports Wagering License, or Category 3 Sports Wagering License.

Sports Wagering Platform means a website, application, widget or other digital platform accessible via the internet, or mobile or wireless technology on which a Person may place or redeem a Wager.

Sports Wagering Registrant means a Non-Sports Wagering Vendor or Subcontractor required to register with the Commission pursuant to 205 CMR 234.01(2).

Sports Wagering Subcontractor means a Person that contracts with a Sports Wagering Vendor or Sports Wagering Registrant to provide goods or services necessary to fulfill the licensed sports wagering vendor's contract with an Operator.

Sports Wagering Vendor. A Person that is not required to be licensed as an Operator or Sports Wagering Operator under M.G.L. c. 23N, or as a gaming vendor under M.G.L. c. 23K, who regularly provides goods or services to an Applicant for an Operator License or an Operator; which goods, software, or services directly relate to Sports Wagering operations, including but not limited to:

- a. Sports Wagering platform design, operation or maintenance;
- b. line and odds setting;
- c. Sports Wagering risk management;
- d. geolocation;
- e. customer verification;
- f. integrity monitoring;
- g. Sports Wagering kiosks;
- h. sportsbook data;
- i. testing and certification; or
- j. third-party marketing entities.

Sports Wagering Vendor License means a license issued by the Commission pursuant to 205 CMR 234.00 that permits the licensee to act as a vendor to a Sports Wagering Operator.

Temporary License means a Sports Wagering License issued pursuant to M.G.L. c. 23N, § 6(c) and 205 CMR 219.

Tethered Category 3 License. A Category 3 License connected to a Category 1 or Category 2 License pursuant to M.G.L. c. 23N, § 6.

Tier 1 Sports Wager means as defined in M.G.L. c. 23N, § 3.

Tier 2 Sports Wager means as defined in M.G.L. c. 23N, § 3.

Ticket Writer means as defined in 205 CMR 238.01.

Ticket Writer Station means as defined in 205 CMR 238.01.

Untethered Category 3 License. A Category 3 License not connected to a Category 1 or Category 2 License pursuant to M.G.L. c. 23N, § 6.

Wager means as defined in M.G.L. c. 23N, § 3.

Wager Category means a specific type of sporting event or other event governed by a specific Sports Governing Body or other oversight body (for example, professional basketball governed by the National Basketball Association).

202.03 Construction and Amendments

(1) The principles of regulatory construction and interpretation specified in 205 CMR 102.03 shall also include construction in accordance with the principles of statutory construction set forth in M.G.L. 23N, and avoidance of conflict with any provision of M.G.L. 23N.

(2) Where the Commission waives or grants a variance from any provision or requirement contained in 205 CMR 200 *et seq.*, not specifically required by law, the waiver or variance shall be conditioned on a finding of the requirements specified in 205 CMR 102.03(4) and a finding that granting the waiver or variance is consistent with the purposes of M.G.L. c. 23N.

~~REGULATORY AUTHORITY~~

~~M.G.L. c. 23N § 4.~~

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AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 202.00: Sports Wagering Authority and Definitions**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 202.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23N, §4.

The adoption of 205 CMR 202.00 creates definitions that will be used throughout the sports wagering-related regulations. Accordingly, this regulation is unlikely to have an impact on small businesses.

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

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

This regulation amendment contains definitions and does not establish compliance and reporting requirements for small businesses.

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

There are no schedules or deadlines for compliance or reporting requirements.

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

This regulation amendment does not impose any reporting requirements.

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

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



Massachusetts Gaming Commission

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

This regulation amendment is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

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

This regulation amendment does not create adverse impact upon small businesses.

Massachusetts Gaming Commission

By:

/s/ Ying Wang
Ying Wang
Associate General Counsel

Dated: Dated: March 23, 2023



Massachusetts Gaming Commission

205 CMR 213: WITHDRAWAL OF AN APPLICATION**213.01 Withdrawal of Application**

- (A) Except as provided in 205 CMR 213.01(2), a written notice of withdrawal of an application or renewal papers may be filed by an Applicant, Qualifier, licensee or registrant at any time prior to final commission action thereon.
- (B) Withdrawal requests submitted in accordance with 205 CMR 213.01(2) shall be permitted without the need for Commission approval except under the following conditions, in which cases no withdrawal will be allowed without express Commission approval upon a finding of good cause:
 - (a) If a hearing, or evaluation in accordance with 205 CMR 215.01(2)(c), on an initial application or renewal has been requested by a party or directed by the Bureau or Commission;
 - (b) If the Commission has made a determination to hear the application or renewal matter directly; or
 - (c) If the application or renewal matter has been assigned to any other hearing examiner authorized by law to hear such matter.
- (C) If the Commission agrees to grant withdrawal under any of the circumstances in 205 CMR 213.01(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 may not re-apply.
- (D) The provisions of 205 CMR 111.05(4) governing the surrender of credentials shall govern the surrender of any credential issued under G.L. 23N or the sections of 205 CMR governing sports wagering.

REGULATORY AUTHORITY

M.G.L. c. 23N § 4.



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 213.00: Withdrawal Of An Application**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 213.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23N, §4.

205 CMR 213.00 is part of the sports wagering operator licensing framework and specifically governs the process by which an applicant may withdraw their application for licensure. Accordingly, this regulation is not anticipated to have a negative impact on small businesses.

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

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

As a general matter, no small businesses will be negatively impacted by this amendment as it relates to sports wagering operators who are licensed by the Commission. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

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

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

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

This regulation does not impose reporting requirements.

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



Massachusetts Gaming Commission

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

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

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

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

This regulation does not create adverse impact upon small businesses.

Massachusetts Gaming Commission
By:

/s/ Ying Wang
Ying Wang
Associate General Counsel

Dated: Dated: March 23, 2023



Massachusetts Gaming Commission

205 CMR 229: REVIEW OF A PROPOSED TRANSFER OF INTERESTS

229.01	Notice
229.02	Approval
229.03	Interim Authorization
229.04	Review of a Proposed Transfer of Interests
229.05	Fees for Review of Transfer

229.01 Notice

- (1) Pursuant to M.G.L. c. 23N, § 6(h), no person shall transfer, or enter into an agreement to transfer, a Sports Wagering License, or a direct or indirect interest in such a license, or a personal or pecuniary interest in such a license, or enter into an option contract, management contract or other agreement or contract providing for such transfer in the present or future, or enter into an agreement granting the retention of a security interest in property delivered to the Sports Wagering Licensee, without prior notification to the Bureau.
- (2) Notwithstanding 205 CMR 229.01(1), the following transactions shall not be considered transfers subject to M.G.L. c. 23N, § 6(h), and do not require prior notification to the Bureau:
 - (a) The open market transfer of a publicly traded interest in a Sports Wagering Licensee, or holding, parent or intermediary company of a Sports Wagering Licensee where such transfer results in the transferee holding less than a 10% interest in the holding, parent or intermediary company.
 - (b) The granting of a security interest in return for financing to a bona fide banking institution, as defined in M.G.L. c. 167A, § 1, or a commercial financial institution as defined in M.G.L. c. 63, § 1, so long as the bona fide banking institution or the commercial financial institution does not, by virtue of its security interest, possess the intention to influence or affect the affairs or operations of a Sports Wagering Licensee or applicant or Qualifier for a Sports Wagering Licensee. The Sports Wagering Licensee, applicant, or Qualifier shall however, provide notice of the transaction promptly to the Bureau upon its consummation.

229.02 Approval

- (1) Any transfer subject to M.G.L. c. 23N, § 6(h) that does not result in a new qualifier being designated in accordance with 205 CMR 215.02 may be approved by the Commission in a public meeting.
- (2) Any transfer subject to M.G.L. c. 23N, § 6(h) that results in a new qualifier being designated in accordance with 205 CMR 215.02 must be approved by the Commission, ~~which~~. Said approval shall be subject to the provisions of 205 CMR 229.04. Both the transferor and transferee shall be jointly and severally

responsible for the payment of the investigatory and other fees provided for in 205 CMR 214.02(2).

- (3) The Commission may reject any transfer requiring approval pursuant to 205 CMR 229.01(1) that it finds would be injurious to the interests of the Commonwealth of Massachusetts. A Without implied limitation, a transfer may be considered injurious to the interests of the Commonwealth if the Commission determines that the proposed transferee does not satisfy the applicable considerations set forth in M.G.L. c. 23N, §§ 5, 6, or 9(a); 205 CMR 215.00; or any other applicable provisions of M.G.L. cc. 23K, 23N or 205 CMR, or if the transferee does not satisfy the provisions of 205 CMR 229.04.
- (4) The Commission shall not approve the transfer of a Sports Wagering License for one year after the initial issuance of the license unless one of the following has occurred:
 - (a) the parent, holding company, or intermediary company of the Sports Wagering Licensee experiences a change in ownership resulting in a change of control;
 - (b) the Sports Wagering Licensee fails to maintain suitability; or
 - (c) the Commission determines that other circumstances exist which affect the Sports Wagering Licensee's ability to operate the Sports Wagering Platform -successfully.
- (5) Limitations on Certain Transfers
 - (a) The Commission shall not approve of any transfer that would result in:
 - (i) a Category 1 Operator holding more than one Category 1 License or more than two Tethered Category 3 Licenses; or
 - (ii) a Category 2 Operator holding a Category 1 License, more than one Category 2 License, or more than one Tethered Category 3 License.
 - (b) A Category 1 Sports Wagering License may only be transferred in connection with:
 - (i) the transfer of the licensee's gaming license issued under Chapter 23K; and
 - (ii) the transfer of any Tethered Category 3 Licenses connected to the Category 1 Sports Wagering License to be transferred.
 - (c) A Category 2 Sports Wagering License may only be transferred in connection with:

- (i) the transfer of the licensee's license under Chapter 128A to conduct a live horse racing meeting, or rights as authorized by applicable law to conduct simulcast wagering; and
- (ii) the transfer of any Tethered Category 3 License connected to the Category 2 Sports Wagering License to be transferred.

229.03 Interim Authorization

- (1) Contractual Transfers. Whenever any person contracts to transfer a Sports Wagering License or an ownership interest in a Sports Wagering Licensee or its parent, holding or intermediary company, or any property relating to a sports wagering operation, under circumstances which require that the transferee obtain licensure or be found qualified pursuant to 205 CMR 215.00 and/or M.G.L. c. 23N, the contract shall not specify a closing or settlement date which is earlier than 121 days after the submission of a completed transfer application. Said application shall consist of:
 - (a) For the transferee, the survey described at 205 CMR 211.01(1)(a);
 - (b) For the transferee and each new qualifier, the materials described at 205 CMR 211.01(1)(c)-(e), as appropriate;
 - (c) For the transferee and each new qualifier, any attestation forms required by the Bureau;
 - (d) A fully executed trust agreement in accordance with 205 CMR 229.03(6) which shall be subject to Commission approval. Any contract provision which specifies a closing or settlement date sooner than 121 days after submission of the transfer application shall be void for all purposes.
- (2) Transfers of Publicly Traded Securities. Whenever any Person, as a result of a transfer of publicly traded securities of a Sports Wagering Licensee or its parent, holding or intermediary company, is required to be qualified under 205 CMR 215.02 and/or M.G.L. c. 23N, the Person including all related qualifiers shall, within 30 days after a Schedule 13D or 13G is filed with the U.S. Securities and Exchange Commission, or after the Bureau notifies the Person that qualification is required, or within such additional time as the Bureau may for good cause allow, file a completed transfer application as described in 205 CMR 229.03(1). No extension of the time for filing a completed transfer application shall be granted unless the Person submits a written acknowledgement recognizing the jurisdiction of the commission and the obligations imposed by M.G.L c. 23N and 205 CMR. If a proposed transferee, including all related qualifiers, fails to timely file a complete transfer application, such failure shall constitute a per se negative finding of suitability to continue to act as a security holder, and the Commission shall take appropriate action including requiring divestiture by the transferee or redemption of the securities by the transferor.

- (3) If a prospective transferee files a complete transfer application in a timely manner the Commission shall hold a hearing in accordance with 205 CMR 101.01(2)(d) and render a decision on the interim authorization of the proposed transferee within 120 days after such filing or, if it is a contractual transfer, prior to the proposed closing or settlement date. If interim authorization is approved for a transfer governed by 205 CMR 229.03(1) then the closing or settlement may occur, and the prospective transferee may hold the securities or interests subject to the provisions of 205 CMR 229.03(4) until a final determination of suitability is made by the commission. If interim authorization is approved for a transfer governed by 205 CMR 229.03(2) then the prospective transferee may continue to hold the securities or interests subject to the provisions of 205 CMR 229.03(4) until a final determination of suitability is made by the Commission.
- (4) If, after a hearing, the Commission denies interim authorization, there shall be no closing or settlement of a contract to transfer an interest governed by 205 CMR 229.03(1) until the Commission makes a final determination on the suitability of the transferee in accordance with 205 CMR 215.01(1). If the Commission denies interim authorization for a proposed transfer subject to 205 CMR 229.03(2), all securities and interests subject to the transfer shall be promptly transferred into the trust. If the commission grants interim authorization for any transfer, it may at any time thereafter order all securities and interests subject to the transfer transferred into the trust if it finds reasonable cause to believe that the proposed transferee may be found unsuitable. If a prospective transferee fails or refuses to timely transfer securities and interests into the trust upon direction from the Commission said transferee shall be issued a negative determination of suitability.
- (5) After determining that a person is required to be qualified in accordance with 205 CMR 215.02, the Bureau shall commence an investigation into the suitability of the transferee, which may be limited to a review of the information required to be reviewed in an investigation undertaken in accordance with 205 CMR 215.01(2)(b). The Bureau shall produce and forward to the Commission an interim authorization report no later than 90 days after the date that a complete transfer application is submitted by the proposed transferee. The commission may approve interim authorization if it finds that:
 - (a) The transferee has submitted a complete transfer application;
 - (b) The transferee has submitted a fully executed trust agreement in accordance with 205 CMR 229.03(6);
 - (c) The trustee or trustees required under section 205 CMR 229.03(6) have satisfied the qualification criteria applicable to qualifiers;
 - (d) There is no preliminary evidence of anything that would serve to disqualify the transferee from licensure in accordance with M.G.L. c. 23N, M.G.L. c. 23N, §§ 5, 6, and/or 9(a) or 205 CMR 215.00, nor is there any

other reason known at the time why a positive determination of suitability may not ultimately be achieved;

- (e) The transfer would not violate 205 CMR 229.02(3) or (4);
- (f) It is in the best interests of the Commonwealth for the Sports Wagering Operation to continue to operate pursuant to interim authorization; and
- (g) If the transfer will result in a change of control, the transferee has agreed in writing in accordance with 205 CMR 229.04: Review of a Proposed Transfer of Interests to comply with all of the transferor's existing license obligations or has otherwise petitioned the Commission for modification or elimination of one or more of those obligations.

If the Commission approves interim authorization, during the period of interim authorization, the Bureau shall continue its suitability investigation as may be necessary for a determination of the suitability of the person granted interim authorization. Within nine months after the interim authorization decision, which period may be extended by the Commission for one three-month period, the Commission shall hold a hearing and render a determination on the suitability of the applicant in accordance with 205 CMR 215.01(1).

- (6) Trust Agreements. A trust agreement required to be submitted with a transfer application in accordance with 205 CMR 229.03(1) and (2) shall be fully executed upon submission and contain, at a minimum, the following:
 - (a) A provision for the transfer and conveyance to the trustee of all of the transferee's proposed present and future right, title and interest in the sports wagering licensee, or its parent, holding or intermediary company, including all voting rights in securities upon the occurrence of an event described in 205 CMR 229.033(4) or if otherwise directed to do so by the Bureau in its discretion, pending a final suitability determination by the Commission.
 - (b) A provision consistent with the provisions of 205 CMR 229.03 for the distribution of any trust res upon a positive determination of suitability, negative determination of suitability, or at the direction of the Commission in accordance with 205 CMR 229.03(8).
 - (c) A provision identifying the trustee(s) and requiring the trustee to timely submit the materials described in 205 CMR 211.01(1)(c)-(f), as applicable, in order to be found qualified by the Commission in accordance with 205 CMR 215.01(1).
 - (d) A provision identifying the compensation for the service, costs and expenses of the trustee(s), which shall be made subject to the approval of the Commission.

- (e) A mechanism by which the trustee may effectuate divestiture or redemption of securities, or a like process, in the event of a negative determination of suitability being issued to the transferee.
 - (f) Any additional provisions the Commission deems necessary and desirable.
- (7) The trustee of the trust shall exercise all rights incident to the ownership of the property subject to the trust, and shall be vested with all powers, authority and duties necessary to the unencumbered exercise of such right, and the transferee shall have no right to participate in the earnings of the Sports Wagering Licensee or receive any return on its investment or debt security holdings during the time the securities or interest are in the trust. Earnings may, however, accrue to or into the trust.
- (8) The trust agreement shall remain operative until the Commission issues the transferee a positive determination of suitability in accordance with 205 CMR 215.01(1)(e) (and in the event the interest has been placed into the trust, the trustee distributes the trust res) or the Commission issues the transferee a negative finding of suitability and the trust res is disposed of in accordance with 205 CMR 229.03(9). The trust shall otherwise only be revocable prior to a determination of suitability being issued upon Commission approval at the request of the settlor. In the event of such a request the Commission may direct the trustee to dispose of the trust res in accordance with 205 CMR 229.03(9).
- (9) If the Commission issues a negative determination of suitability in accordance with 205 CMR 215.01(1)(e)(1), a contract for the transfer of interests shall thereby be terminated for all purposes without liability on the part of the transferor. In the event of such negative determination, where the subject interests have been transferred into a trust in accordance with 205 CMR 229.03(4), the trustee shall endeavor and be authorized to attempt to sell, assign, convey or otherwise dispose of all trust res in accordance with the means established in accordance with 205 CMR 229.03(6)(e) or as otherwise directed by the commission. Any subsequent transferee must be appropriately licensed or qualified in accordance with 205 CMR 229.00. The disposition of trust res by the trustee shall be completed within 120 days of the denial of qualification, or within such additional time as the Commission may for good cause allow. The proceeds of such disposition shall be distributed to the unsuitable transferee only in an amount not to exceed the lower of the actual cost of the assets to such unsuitable transferee, or the value of such assets calculated as if the investment had been made on the date the assets were transferred into the trust, and any excess remaining proceeds shall be paid to the Massachusetts Sports Wagering Control Fund in accordance with M.G.L. c. 23N, § 15.

229.04 Review of a Proposed Transfer of Interests

- (1) If a proposed transfer of interests subject to 205 CMR 229 will result in a change of control as defined in 205 CMR 102.02, the proposed transferee shall, as a

condition of the transfer, unless otherwise allowed by the Commission in accordance with 205 CMR 229.01(2), provide the Commission with a written agreement to assume all obligations of the Sports Wagering Licensee including, but not limited to, commitments made in the Sports Wagering License Application, all terms and conditions contained in the Sports Wagering License, Operation Certificate, and all permits, licenses, and other approvals issued by any federal, state, and local governmental agencies. Additionally, the written agreement shall include an attestation from the transferor and transferee, accompanied by relevant supporting documentation, that said transfer comports with all applicable terms and conditions of the aforementioned instruments.

- (2) Prior to submitting the written agreement referenced in 205 CMR 229.04(1), a proposed transferee may petition the Commission to allow for the modification of any terms, conditions, or agreements applicable to the Sports Wagering License or Operation Certificate held by the transferor, provided that the modifications are not inconsistent with any applicable provisions of M.G.L. c. 23N and 205 CMR.
- (3) Notwithstanding 205 CMR 229.04(1):
 - (a) The Commission may in its discretion require submission of any additional application material as described in 205 CMR 211.00, 215.00, or 218.00 to assist in its determination as to whether to allow a modification in accordance with 205 CMR 229.04(2) and/or approve a transfer of interests in accordance with 205 CMR 229.02.
 - (b) A proposed transferee shall have the same duty to cooperate with such requests for information as does an Applicant under 205 CMR 212.01.

229.05 Fees for Review of Transfer

- (1) Pursuant to M.G.L. c. 23N, § 6(h), the transferor shall be responsible for paying to the Commission all costs incurred by the Commission, directly or indirectly, for reviewing any transfer that requires prior notification to the Bureau.
- (2) For purposes of 205 CMR 229.05, the costs associated with reviewing the transfer shall include, without limitation:
 - (a) All costs for conducting an investigation into any new qualifiers, the transferee, the trustee, and any other person subject to the jurisdiction of the Commission under M.G.L. c. 23N relating to the transfer in question; and
 - (b) All fees for services, disbursements, out of pocket costs, allocated overhead, processing charges, administrative expenses, professional fees, and other costs directly or indirectly incurred by the Commission, including without limitation all such amounts incurred by the Commission to and through the Bureau, the Division, the Gaming Enforcement Unit, the Gaming Liquor Enforcement Unit, and any contract investigator.

- (3) If, pursuant to 205 CMR 214.02(3), the Commission establishes a schedule of fees, wages, and other charges for the cost of investigating applicants, said schedule shall also govern the assessment of costs under this 205 CMR 229.05.
- (4) The Commission shall assess to the transferor all other costs paid by or for the Commission, directly or indirectly, to any other Person for conducting an investigation into ~~an~~ transferor plus an appropriate percent for overhead, processing and administrative expenses.
- (5) Other Requirements for Review Fees
 - (a) All required review fees pursuant to 205 CMR 229.05 shall be non-refundable, due and payable notwithstanding the withdrawal, abandonment, or denial of any transfer application.
 - (b) The transferor and the transferee shall be jointly and severally liable for any amounts chargeable to the transferor pursuant to 205 CMR 229.05.
 - (c) All fees in this section 205 CMR 229.05 shall be deposited into the Sports Wagering Control Fund established in M.G.L. c. 23N, § 15.



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 229.00: Review of a Proposed Transfer of Interest**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 229.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23N, §4.

205 CMR 229.00 governs the transfer of ownership interests in a sport wagering license awarded pursuant to 205 CMR and G.L. c. 23N. Accordingly, this regulation is not anticipated to have a negative impact on small businesses.

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

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

As a general matter, no small businesses will be negatively impacted by this amendment as it relates to Sports Wagering Operators who are licensed by the Commission. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

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

There are no schedules or deadlines for compliance or reporting requirements within 205 CMR 229.00 that pertain to small businesses.

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

This regulation does not impose reporting requirements.

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



Massachusetts Gaming Commission

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

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

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

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

This regulation does not create adverse impact upon small businesses.

Massachusetts Gaming Commission

By:

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

Dated: Dated: March 23, 2023



Massachusetts Gaming Commission

205 CMR 232: DISCIPLINE OF SPORTS WAGERING OPERATORS AND OTHER LICENSEES, AND REGISTRANTS

Section

- 232.01 General Commission Authority
- 232.02 Discipline of a Sports Wagering Operator
- 232.03 Discipline of Others Involved in Sports Wagering Operations

232.01 General Commission Authority

- (1) Investigatory Authority. The Commission retains the authority (i) to assign to the Bureau or to any other party and (ii) to direct that an investigation be made of, any suspected or asserted violation of G.L. c. 23N and 205 CMR. The Commission may establish internal policies setting out reporting requirements for any investigations which it has directed the Bureau or any other party to undertake.
- (2) Disciplinary Authority. Notwithstanding any other provision of this 205 CMR 232, the Commission also retains the authority to, following an adjudicatory hearing conducted pursuant to 205 CMR 101, condition, suspend or revoke a Sports Wagering Operator license, Occupational License, Sports Wagering Vendor license or registration, or any other license issued pursuant to G.L. c. 23N, or to issue a civil administrative penalty in accordance with G.L. c. 23N, § 16(n).

232.02 Discipline of a Sports Wagering Operator

- (1) Grounds for Action. In addition to any other grounds specifically provided throughout G.L. c. 23K and 23N or 205 CMR, and without limiting the Commission's, the Bureau's or any other entity's ability to require compliance with M.G.L. c. 23N or 205 CMR through any other method, a Sports Wagering Operator License may be conditioned, suspended, or revoked, or the Operator assessed a civil administrative penalty, if the Commission, either on its own, or pursuant to a finding or recommendation of the Bureau in accordance with this Section 205 CMR 232 determines that:
 - (a) The Operator engaged in an act or practice that caused irreparable harm to the security and integrity of the Sports Wagering Operation or the interests of the Commonwealth in ensuring the security and integrity of Sports Wagering;
 - (b) Circumstances have arisen that render an Operator unsuitable under M.G.L. c. 23N, §§ 6 or 9;
 - (c) An Operator failed to comply with its approved system of Internal Controls;
 - (d) An Operator refused or was unable to separate itself from an unsuitable qualifier;
 - (e) As provided in M.G.L. c. 23N, § 21(b), an Operator:
 1. has committed a criminal or civil offense under M.G.L. c. 23N or under any other laws of the commonwealth;
 2. is not in compliance with 205 CMR;

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- 3. is under criminal investigation in another jurisdiction;
 - 3. has breached a condition of licensure;
 - 4. has affiliates, close associates or employees that are not qualified or licensed under M.G.L. c. 23N and 205 CMR with whom the Operator continues to conduct business with or employ;
 - 5. is no longer capable of maintaining Sports Wagering operations; or
 - 6. whose business practice, upon a determination by the Commission, is injurious to the policy objectives of M.G.L. c. 23N; or
- (f) An Operator failed to abide by any provision of M.G.L. c. 23K, 23N or 205 CMR, a condition of the Sports Wagering License, or an order of the Commission.
- (2) Bureau Recommendations of Discipline. If the Bureau finds that an Operator has violated a provision of 205 CMR 232.02(1), it may issue a written recommendation that the Commission suspend, revoke, or condition said Operator's license. Either in conjunction with or in lieu of such a recommendation, the Bureau may also recommend that the Commission assess a civil administrative penalty upon said Operator in accordance with M.G.L. c. 23N, §§ 16 and 21 and 205 CMR 232.02(3). Such recommendation shall be provided to the Commission and the Operator in writing and shall include:
- (a) a concise statement of the alleged act or omission for which such action is sought to be taken;
 - (b) each law, regulation, order, license or approval that has not been complied with as a result of such alleged act or omission;
 - (c) the proposed action to be taken by the Commission, including the amount that the Commission seeks to assess as a civil administrative penalty for each alleged act or omission;
 - (d) a statement of the Operator's right to an adjudicatory hearing on the proposed action or assessment;
 - (e) the requirements the Operator shall comply with to avoid being deemed to have waived the right to an adjudicatory hearing; and
 - (f) the manner of compliance, including payment of a penalty if the Operator elects to pay the penalty and waive an adjudicatory hearing.
- (3) Commission Decision. An Operator may request a hearing on the Bureau's recommendation within ten (10) business days of the Bureau's issuance of a recommendation pursuant to 205 CMR 232.02(2). Such a review shall proceed as an adjudicatory hearing pursuant to 205 CMR 101.00. During review under this 205 CMR 232.02(3), the Commission may adopt or reject the discipline imposed by the Bureau or order such other discipline as it may find appropriate.

If an Operator does not request a hearing within such time, the Commission shall, at its next scheduled meeting, review the Bureau's recommendation and either:

- (a) adopt the recommendation as its final decision; or

(b) reject the Bureau's recommendation and issue a notice of its intent to adopt a separate recommendation following an adjudicatory hearing to be conducted in accordance with 205 CMR 101.

- (4) Notice of Commission Decision. The Commission shall cause to be served upon the Operator, by service in hand or by certified mail, return receipt requested a written notice of its decision pursuant to 205 CMR 232.01(3).
- (5) Assessment of Penalties. After written notice of noncompliance or intent to assess a civil administrative penalty has been given by the Commission, each day thereafter during which noncompliance occurs or continues shall constitute a separate offense and shall be subject to a separate civil administrative penalty if reasonable efforts have not been made by the operator to promptly come into compliance.

232.03 Discipline of Others Involved in Sports Wagering.

- (1) Grounds for Disciplinary Action. In addition to the grounds specifically provided throughout G.L. c. 23K and 23N or 205 CMR, and without limiting the Commission's, the Bureau's or any other entity's ability to require compliance with M.G.L. c. 23N or 205 CMR through any other method, any Occupational License or Sports Wagering Vendor license or registration issued under 205 CMR may be conditioned, suspended, or revoked, or a civil administrative penalty assessed, if the Commission or the Bureau determines that the licensee or registrant has:
 - (a) been arrested or convicted of a crime and failed to report the charges or the conviction to the Commission;
 - (b) failed to comply with any provision of M.G.L. c. 23N or 205 CMR pertaining to licensees and registrants, including failure to act in conformance with an applicable provision of the Sports Wagering Operator's system of Internal Controls.
- (2) Bureau Finding and Decision. If the Bureau finds that an Occupational Licensee or Sports Wagering Vendor licensee or registrant has violated a provision of 205 CMR 232.03(1), it may issue a written notice of its intent to reprimand, suspend, or revoke said license or registration, or to assess a civil administrative penalty on a license or registrant. Such notice shall be provided in writing to the licensee or registrant and the Commission and contain the information required by 205 CMR 232.02(2). It shall further advise the licensee or registrant of their right to a hearing and their responsibility to request a hearing in accordance with 205 CMR 232.03(3), if they so choose, and that failure to do so may result in the discipline automatically being imposed. Mailing of the notice to the address on record with the Commission, or emailing the notice to the address provided to the commission by the licensee/registrant shall be deemed satisfactory service of the notice.
- (3) Review of Bureau Decision. Any person aggrieved by a decision made by the Bureau pursuant to 205 CMR 232.03(2) may request review of said decision within thirty (30) days of receiving the Bureau's decision. Such review shall proceed in accordance with the procedures in 205 CMR 101.00. Failure to request such review may result in the decision automatically being imposed. During such review the Commission may adopt or reject the discipline imposed by the Bureau or order such other discipline as it may find appropriate.

In addition, the Commission may, upon receiving the notice required pursuant to 205 CMR 232.03(2), and within the same time period for appeal, issue written notice to the Bureau and the licensee or registrant that it will review the Bureau's decision in accordance with the provisions of 205 CMR 232.02(3)-(5) applicable to discipline of Sports Wagering Operators.

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- (4) Assessment of Penalties. After written notice of noncompliance or intent to assess a civil administrative penalty has been given by the Bureau, each day thereafter during which noncompliance occurs or continues shall constitute a separate offense and shall be subject to a separate civil administrative penalty if reasonable efforts have not been made by the licensee or registrant to promptly come into compliance.

REGULATORY AUTHORITY

M.G.L. c. 23N §§ 4 and 9.

**Public Comments Pertaining to
205 CMR 232: Discipline of Sports Wagering Operators and Other
Licensees, and Registrants**

Subsection	Comment	Comment er	Entity
232.01(1)	<p>Proposing to add “knowingly” to the following to state:</p> <p>(a) The Operator knowingly engaged in an act or practice that caused irreparable harm to the security and integrity of the Sports Wagering Operation or the interests of the Commonwealth in ensuring the security and integrity of Sports Wagering;</p> <p>(c) An Operator knowingly failed to comply with its approved system of Internal Controls;</p> <p>(d) An Operator knowingly refused or was unable to separate itself from an unsuitable qualifier;</p> <p>(e) As provided in M.G.L. c. 23N, § 21(b), an Operator:</p> <ol style="list-style-type: none"> 1. has committed a criminal or civil offense under M.G.L. c. 23N or under any other laws of the commonwealth; 2. is knowingly not in compliance with 205 CMR; 3. has knowingly breached a condition of licensure; 4. has affiliates, close associates or employees that are not qualified or licensed under M.G.L. c. 23N and 205 CMR with whom the Operator knowingly continues to conduct business with or employ; 	<p>Jess Panora</p> <p>jess.panora@betmgm.com</p>	BetMGM

	<p>(f) An Operator knowingly failed to abide by any provision of M.G.L. c. 23K, 23N or 205 CMR, a condition of the Sports Wagering License, or an order of the Commission.</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>		
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AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed adoption of **205 CMR 232.00: Discipline of Sports Wagering Operators and Other Licensees, and Registrants**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 232.00 was developed within the Commission's regulatory framework, governing the operation of Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23N, §§ 4 and 9.

205 CMR 232.00 will govern the process describing the discipline of Sports Wagering Operators, licensed and registered vendors, and occupational licensees by the Commission and the Investigations and Enforcement Bureau. Accordingly, this regulation is unlikely to have a significant impact on small businesses.

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

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

The Commission does not anticipate that small businesses will be negatively impacted by this amendment as it relates to Sports Wagering Operators and other licensees under Chapter 23N. Accordingly, less stringent compliance or reporting requirements for small businesses have not been established.

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

There are no schedules or deadlines for compliance or reporting requirements within 205 CMR 232 regulation that would chiefly pertain to small businesses.

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

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

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



Massachusetts Gaming Commission

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

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

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

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

The provisions of 205 CMR 232.00 have been drafted to minimize adverse impact or hardships upon on small businesses.

Massachusetts Gaming Commission
By:

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

Dated: Dated: March 23, 2023



Massachusetts Gaming Commission

205 CMR 239: CONTINUING DISCLOSURE AND REPORTING OBLIGATIONS OF SPORTS WAGERING LICENSEES

Section

239.01	Access to and Maintenance and Production of Operator Records
239.02	Fiscal Year
239.03	Reports and Information to be Filed with the Commission
239.04	Reports and Information to Be Compiled and Maintained by the Operator
239.05	Quarterly Reports
239.06	Annual Audit and Other Reports
239.07	Audit of Operator Operations by Commission

239.01 Access to and Maintenance and Production of Operator Records

- (1) The Commission shall have access to, and may inspect, the premises of a Category 1 Sports Wagering License or Category 2 Sports Wagering License Operator.
- (2) An Operator shall maintain complete, accurate, and legible records of all transactions pertaining to the revenues and costs associated with its Sports Wagering operation, including those required in accordance with 205 CMR. General accounting records shall be maintained on a double entry system of accounting with transactions recorded on the accrual basis. Detailed, supporting, subsidiary records sufficient to meet the requirements of 205 CMR shall also be maintained.
- (3) The Commission may request the production of records of an Operator in accordance with the provisions of 205 CMR 142.00 and 205 CMR 241.

239.02 Fiscal Year

The Operator shall establish a fiscal year for accounting purposes and shall advise the Commission of such.

239.03 Reports and Information to be Filed with the Commission

- (1) The following reports and information shall be filed with the Commission, or its designee, in the manner and time provided:
 - (a) A detailed annual, and at other times as directed by the Commission, statistical report on the number, job titles, benefits, race, gender, veteran status, and salaries of employees hired and retained in employment in the Commonwealth by the Operator;
 - (b) A detailed annual, and at other times as directed by the Commission, statistical report on the total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises by the Operator. The annual statistical report shall also identify the

amounts so contracted as a percentage of the total dollar amounts contracted with and actually paid to all firms;

- (c) On an annual basis, and at other times as directed by the Commission, a report explicitly stating the Operator's progress on meeting each of the stated goals and stipulations put forth in its application for a Sports Wagering Operator License;
- (d) Any ~~Reports~~reports prescribed by the Commission relative to Occupational Licenses;
- (e) Quarterly reports in accordance with 205 CMR 239.05;
- (f) Documents and other materials required to be submitted in accordance with the terms of the Sports Wagering Operator License;
- (g) An Operator's House Rules, system of internal controls, amendments thereto, and any documents or information required to be submitted in accordance with the approved system of internal controls;
- (h) Any declared event of default related to any debt obligation maintained by the Operator, affiliate, holding company or intermediary company thereof shall be immediately reported to the Commission, in writing, along with any plans to address or cure such default;
- (i) A bi-monthly ~~Disbursement-disbursement~~ Report-report relative to vendors licensed or registered in accordance with 205 CMR 234, which shall contain the same information as is required in a ~~Disbursement-risbursement~~ Report report filed pursuant to 205 CMR 138.06(2);
- (j) An annual problem gaming plan in accordance with M.G.L. c. 23N, § 4(2)(vii);
- (k) Daily, monthly, and annual Adjusted Gross Sports Wagering Receipts and Adjusted Gross Fantasy Sports Receipts remittance and reconciliation reports as required in accordance with 205 CMR 240.00;
- (l) An underage person report containing the information required in accordance with 205 CMR 250.05; and
- (m) A quarterly report, covering all complimentary services offered or engaged in by the Operator during the immediately preceding quarter. The reports shall identify regulated complimentary services or items including, but not limited to, food and beverage, hotel and travel accommodations, and promotional Sports Wagering credits. The reports shall be aggregated by, at a minimum, the costs of the complimentary services or items, and the number of people who received each service or item for the quarter. The report shall also document

any services or items valued in excess of \$2,000 that were provided to patrons, including detailed reasons as to why they were provided. Valuation shall be performed in accordance with M.G.L. c. 23K, § 28(c).

- (2) Promptly upon discovery, the Operator shall notify the Commission or its designees assigned to the Operator of any violation, or suspected violation, of M.G.L. c. 23N, 205 CMR, or any Sports Wagering related law and file any requested written report. In accordance with M.G.L. c. 23N, § 12(a)(i), “suspected violations” shall include irregularities in volume or changes in odds that could signal suspicious activities.
- (3) An Operator shall promptly notify the Commission or its designees assigned to the Operator if an individual on the voluntary self-exclusion list established in accordance with 205 CMR 233.00 is found to have engaged in Sports Wagering.

239.04: Reports and Information to Be Compiled and Maintained by the Operator

The following reports and information shall be compiled and maintained by the Operator, or where applicable the Operator’s holding company, intermediary company, qualifying subsidiary, or entity qualifier thereof, in the manner provided as follows or as required by the governing body responsible for the oversight of the subject information, and shall be made available and provided upon request by the Commission, or its designee:

- (1) Up to date records regarding the business structure, capital structure, and controlling interest of the Operator, where applicable, and the Operator’s holding company, intermediary company, qualifying subsidiary, or entity qualifier thereof including, at a minimum:
 - (a) Certified copies of incorporation and formation documents and any amendments thereto;
 - (b) By-laws, shareholders agreements, governing and/or operating agreements or documents, partnership agreement, intercompany transactions, joint venture agreements, merger and acquisition agreements, and other relevant corporate documents
 - (c) Current listing of officers, directors, members, partners;
 - (d) Minutes of all meetings of shareholders;
 - (e) Detailed records regarding all record and beneficial owners of any class of non-publicly traded securities, including both equity and debt securities, issued by the Operator, its holding company, intermediary company, qualifying subsidiary or entity qualifier thereof, including the names and addresses of record and beneficial owners of such equity or debt securities, date(s) acquired and the number of equity securities held or face amount of debt securities held, as applicable;
 - (f) Detailed records regarding all record and beneficial owners of 5% or more of any class of publicly traded securities, including both equity and debt securities, issued

by the Operator, its holding company, intermediary company, qualifying subsidiary or entity qualifier thereof, including the names and addresses of record and beneficial owners of such equity or debt securities held in street name or other name, date(s) acquired and the number of equity securities held or face amount of debt securities held, as applicable;

- (g) Detailed records regarding distributions to equity holders holding 5% or more of the entity;
 - (h) Detailed records regarding all remuneration paid to officers, directors, partners and members;
 - (i) (for the Operator only) Detailed records regarding all capital contributions;
 - (j) (for the Operator only) Detailed records regarding any equity transfers;
 - (k) Essential details of any debt obligations including loans, covenants, borrowings, installment contracts, guarantees, leases, or any other debt; and
 - (l) Any other records as the Commission deems appropriate.
- (2) Copies of any securities filings submitted to federal, state, or other domestic or foreign securities regulatory authorities, regarding any of the securities, either in existence or proposed, including, but not limited to, United States Securities and Exchange Commission forms S-1, 8-K, 10-Q and 10-K, proxy or information statements and all registration statements filed by the Operator, or holding company, intermediary company, qualifying subsidiary and entity qualifier thereof.
 - (3) Copies of any United States Securities and Exchange Commission Schedules 13D or 13G served upon the Operator, or holding company, intermediary company, qualifying subsidiary and entity qualifier thereof.
 - (4) Copies of the federal and state tax returns and any related forms filed by the Operator, and its holding company, intermediary company, qualifying subsidiary or entity qualifier thereof.
 - (5) The system of financial accounting, in accordance with generally accepted accounting principles, to be utilized by the Operator designed to ensure the accurate recording and reporting its assets, liabilities, equity, revenue and expenses. The Operator's system of financial accounting shall provide a level of detail so as to allow it to accurately compute Adjusted Gross Sports Wagering Receipts, and to report the Operator's drop, win, and hold percentage for each form of Sports Wagering activity, the value of complimentary goods or services and promotional credits issued during the accounting period, and any other information necessary to allow the Commission to understand the Operator's results of operations. The Operator shall maintain detailed information and documentation to support all amounts reported to the Commission as being the Operator's assets, liabilities, equity, revenue and expenses.
 - (6) Data derived from the Operator's player card/rewards card/loyalty program, player tracking

software, sports wagering equipment or other similar information systems including:

- (a) The amount of money spent and lost on Sports Wagering (excluding the value of promotional credits wagered, but including any amounts that were subject to discretionary discounting for marketing or other similar purposes) by patrons who have been issued a player card or rewards card or sports wagering account, aggregated by, at a minimum, the patron's age, gender and home zip code provided by the patron and compiled on an annual basis or as otherwise directed by the Commission; and
 - (b) Information, compiled by year, on player characteristics for patrons of the Operator including, but not limited to, gender, age and region of residence, player behavior including, but not limited to, frequency of wagering, amounts wagered and characteristics of sporting events and wager categories wagered on.
- (7) An annual business plan for the Operator, which will include financial projections in format as prescribed by the Commission no later than 30 days prior to the commencement of the fiscal year.
 - (8) A compliance plan and any amendments thereto, for the Operator and its holding company or intermediary company outlining the practices and protocols implemented, or to be implemented, designed to ensure compliance with all applicable federal or state laws.
 - (9) Copies of the minutes of all board of directors or equivalent governing authority meetings and committee meetings, for the Operator or holding company or intermediary company thereof.

239.05: Quarterly Reports

- (1) On a quarterly basis, the Operator shall create and file with the Commission a report that provides a continuing view of the Operator's financial position including key performance measures, and narrative commentary on operating results. The quarterly report shall be attested to by any two of the following: the Chief Executive Officer, Chief Financial Officer, Treasurer, Financial Director, Controller, or their functional equivalent.
- (2) The quarterly report required in accordance with 205 CMR 239.05(1) shall be accompanied by a statement attested to by the Operator's Chief Financial Officer, or their functional equivalent, that the Operator satisfies the following:
 - (a) It has maintained for the previous quarter, and has the ability to maintain for the upcoming quarter, a gaming bankroll or equivalent provisions adequate to pay winning wagers to Sports Wagering patrons when due.
 - (b) It has paid in the previous quarter and has the ability to pay when due all local, state and federal taxes, including the tax on Adjusted Sports Wagering Receipts imposed and any fees imposed under M.G.L. c. 23N or 205 CMR.
 - (c) It has the ability to pay, exchange, refinance or extend debts, including long-term

and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts.

239.06: Annual Audit and Other Reports

- (1) On an annual basis an Operator shall, at its own expense, cause an audit to be prepared by an independent certified public accountant of its financial statements relevant to the operation of its Massachusetts Sports Wagering Operations. The Operator may satisfy this requirement by submission of the audit of the consolidated financial statement, including applicable notes, of the Operator's holding company or intermediary company provided that such audit is accompanied by a supplemental information, appendix, or other financial information section specific to the Operator which includes an audited financial statement containing, at a minimum, a balance sheet, income statement, and a statement of cash flows for the Operator. In either event, the independent certified public accountant shall attest to the financial condition of the Operator, disclose whether the accounts, records and control procedures examined are maintained by the Operator as required by M.G.L. c. 23N and 205 CMR, and opine as to whether there are material weaknesses in the Operator's system of internal controls.
- (2) In the event that the audit makes recommendations to improve the system of internal controls, or to increase the Operator's level of compliance, the Operator's Chief Financial Officer shall respond, in writing, to the recommendations of the independent certified public accountant and provide the Commission with a copy of its response.
- (3) To ensure the independence of the annual audit, at least every five years an Operator, whose holding company or intermediary company is not publicly traded, shall rotate the lead (or coordinating) audit partner having primary responsibility for the audit, and the audit partner responsible for reviewing the audit. For an Operator, whose holding company or intermediary company is publicly traded, lead (or coordinating) audit partner rotation shall comply with the requirements of federal law, including the requirements of the United States Securities and Exchange Commission and/or the Public Company Accounting Oversight Board.
- (3) In the event the annual audited financial statements differ from financial statements maintained by the Operator throughout the year, the Operator shall provide a summary of these differences as part of the annual audit.
- (4) The annual audit and associated statements required in accordance with 205 CMR 239.06(1) shall be filed with the Commission within three months following the end of the quarter following the end of the Operator's fiscal year.
- (5) In cases where an Operator's parent or holding company is not publicly traded, in the event the Operator's independent certified public accountant shall resign or be

removed as the Operator's principal accountant or auditor, the Operator shall submit a written report to the Commission within 20 days of such resignation or removal, signed by its Chief Financial Officer and Chair of its Audit Committee, outlining the cause or nature of the resignation or removal, stating whether the resignation or removal was related to material differences between the parties as to financial statement presentation issues, disclosures, or the adequacy of the Operator's system of internal accounting control and, if so, a complete and detailed description of the differences for consideration by the Commission. The Operator shall submit as an exhibit to this report a letter from the former independent certified public accountant stating whether they agree with the statements made by the Operator in the report submitted to the Commission.

- (6) In cases where an Operator's parent or holding company is publicly traded, the Operator shall file with the Commission copies of such information and documents as are required to be filed with the United States Securities and Exchange Commission and/or the Public Company Accounting Oversight Board upon the resignation or removal of the publicly traded holding company's independent certified public accountant.
- (7) To the extent possible, any adjustments resulting from the annual audit required in accordance with 205 CMR 239.06 shall be recorded in the accounting records of the year to which the adjustment relates. In the event the adjustments were not reflected in the Operator's quarterly report for the fourth quarter and the Commission concludes the adjustments are significant, a revised quarterly report for the fourth quarter may be required from the Operator. The revised filing shall be due within 30 calendar days after notification to the Operator, unless an extension is granted by the Commission.

239.07: Audit of Operator Operations by Commission

The Commission shall audit on an annual basis, and at other times the Commission, or the Bureau, determines necessary the accounts, programs, activities, and functions of an Operator or any aspect of Sports Wagering Operation and compliance with any provision of the Operator's system of internal controls. To conduct the audit, authorized officers and employees of the Commission shall be given access by the Operator to such accounts at reasonable times and may require the production of books, documents, vouchers and other records relating to any matter within the scope of the audit; provided however, that an Operator's tax returns will not be audited by the Commission. All audits shall be conducted in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants and the standards established by the Public Company Accounting Oversight Board. In any audit report of the accounts, funds, programs, activities and functions of an Operator issued by the Commission containing adverse or critical audit results, the Commission may require a response, in writing, to the audit results. Such a response shall be forwarded to the Commission within 15 days of notification by the Commission. Where possible, efforts will be made not to audit areas that were the subject of, and satisfactorily addressed by, the annual audit required in accordance with 205 CMR 239.06.

**Public Comments Pertaining to
205 CMR 239: Continuing Disclosure and Reporting Obligations of
Sports Wagering Licensees**

Subsection	Comment	Commenter	Entity
239.03 (1)(i)	<p>A bi-monthly Disbursement Report relative to vendors licensed or registered in accordance with 205 CMR 234, which shall contain the same information as is required in a Disbursement Report filed pursuant to 205 CMR 138.06(2);</p> <p>Comment: Is there a reason this is required bi-monthly? Could we make this a monthly exercise?</p>	<p>Jess Panora</p> <p>jess.panora@betmgm.com</p>	BetMGM
239.03 (4)	<p>Daily, monthly, and annual Adjusted Gross Sports Wagering Receipts and Adjusted Gross Fantasy Sports Receipts remittance and reconciliation reports as required in accordance with 205 CMR 240.00</p> <p>Comment: The remittances are on a monthly basis, so daily reporting would put a strain on resources for little value. Can we make this monthly?</p>	<p>Jess Panora</p> <p>jess.panora@betmgm.com</p>	BetMGM
239.03 (6)	<p>A quarterly report, covering all complimentary services offered or engaged in by the Operator during the immediately preceding quarter. The reports shall identify regulated complimentary services or items including, but not limited to, food and beverage, hotel and travel accommodations, and promotional Sports Wagering credits. The reports shall be aggregated by, at a minimum, the costs of the complimentary services or items, and the number of people who received each service or item for the quarter. The report shall also</p>	<p>Jess Panora</p> <p>jess.panora@betmgm.com</p>	BetMGM

	<p>document any services or items valued in excess of \$2,000 that were provided to patrons, including detailed reasons as to why they were provided. Valuation shall be performed in accordance with M.G.L. c. 23K, § 28(c)</p> <p>Comment: Why are promotional wagering credits included here?</p>		
239.04(7) and (9)	<p>(7) An annual business plan for the Operator, which will include financial projections in format as prescribed by the Commission no later than 30 days prior to the commencement of the fiscal year.</p> <p>(9) Copies of the minutes of all board of directors or equivalent governing authority meetings and committee meetings, for the Operator or holding company or intermediary company thereof.</p> <p>Comment: Annual business plan along with all of our board and committee minutes would contain very sensitive competitive information that does not relate to our business in the Commonwealth. Given that we are already notifying the Commission of significant events affecting our business in the Commonwealth, I'd like to propose that these are not included in the final regulations.</p>	<p>Jess Panora</p> <p>jess.panora@betmgm.com</p>	BetMGM

239.06(1)	<p>On an annual basis an Operator shall, at its own expense, cause an audit to be prepared by an independent certified public accountant of its financial statements relevant to the operation of its Massachusetts Sports Wagering Operations. The Operator may satisfy this requirement by submission of the audit of the consolidated financial statement, including applicable notes, of the Operator's holding company or intermediary company provided that such audit is accompanied by a supplemental information, appendix, or other financial information section specific to the Operator which includes an audited financial statement containing, at a minimum, a balance sheet, income statement, and a statement of cash flows for the Operator. In either event, the independent certified public accountant shall attest to the financial condition of the Operator, disclose whether the accounts, records and control procedures examined are maintained by the Operator as required by M.G.L. c. 23N and 205 CMR, and opine as to whether there are material weaknesses in the Operator's system of internal controls.</p> <p>Comment: BetMGM management does not allocate capital to specific states, so we do not prepare a state-specific balance sheet or cash flow statement. This regulation reads as if the auditors will express two opinions: one on the consolidated financials, and another on stand-alone financial statements for the state. Other jurisdictions typically ask that we provide our consolidated audited financial statements along with a supplemental income statement for state-specific operations. Would this be sufficient?</p>	<p>Jess Panora jess.panora@betmgm.com</p>	BetMGM
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From: [MGC Website](#)
To: [Young, Judith](#)
Subject: Regulations Public Comment Submission
Date: Thursday, March 9, 2023 5:18:55 PM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

BETMGM LLC

Name

Jess Panora

Emailjess.panora@betmgm.com**Regulation**205 CMR 239: CONTINUING DISCLOSURE AND REPORTING OBLIGATIONS OF SPORTS
WAGERING LICENSEES**Subsection**

239.04(6)(a) and (b)

Comments

BetMGM Comment: We ask that any patron information obtained by MGC through this process be promptly deleted, erased, or destroyed once that information is no longer needed.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:32:12 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Email

d.prestwood@draftkings.com

Regulation

Rule 205 CMR 239 – Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees

Subsection

239.06(1)

Comments

DraftKings respectfully requests an amendment to this section.

As DraftKings' operations are not limited to Massachusetts, including the full scope of financial statements in an independent audit will provide a much clearer view of the financial health of the company as whole. An operator's performance in Massachusetts alone will not provide a useful picture of the financial health of that operator.

If the Commission is concerned with activity specific to Massachusetts, that information will already be available by reviewing the operator's tax statements to the commonwealth.

Proposed Final Rule Language (strike "to the operation of its Massachusetts Sports Wagering Operations" and replace with "in accordance with generally accepted accounting principles"):

(1) On an annual basis an Operator shall, at its own expense, cause an audit to be prepared by an independent certified public accountant of its financial statements relevant in accordance with generally accepted accounting principles. The Operator may satisfy this requirement by submission of the audit of the consolidated financial statement, including applicable notes, of the Operator's holding company or intermediary company provided that such audit is accompanied by a supplemental information, appendix, or other financial information section specific to the Operator which includes an audited financial statement containing, at a minimum, a balance sheet, income statement, and a statement of cash flows for the Operator. In either event, the independent certified public accountant shall attest to the financial condition of the Operator, disclose whether the accounts, records and control procedures examined are maintained by the Operator as required by M.G.L. c. 23N and 205 CMR, and opine as to whether there are material weaknesses in the Operator's system of internal controls.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Monday, March 20, 2023 12:31:08 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Email

d.prestwood@draftkings.com

Regulation

205 CMR 239 – Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees

Subsection

239.03(1)(i)

Comments

DraftKings respectfully requests that Massachusetts align with other jurisdictions that require disbursement reports, and require a vendor disbursement report on a quarterly basis, rather than bi-monthly. Additionally, “bi-monthly” is vague, in that it may mean either once every two months, or twice each month.

Proposed Final Rule Language:

(i) A quarterly Disbursement Report relative to vendors licensed or registered in accordance with 205 CMR 234, which shall contain the same information as is required in a Disbursement Report filed pursuant to 205 CMR 138.06(2); and



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed adoption of **205 CMR 239.00: Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees**, for which a public hearing was held on March 21, 2023.

205 CMR 239.00 was developed within the Commission's regulatory framework, governing the operation of Sports Wagering in the Commonwealth. This regulation is governed largely G.L. c. 23N, §§ 4 and 12(a)(i), and G.L. c. 23K, § 28(c).

205 CMR 239.00 will apply to the Commission and Sports Wagering Operators licensed under 205 CMR as well as Chapter 23N. Accordingly, this regulation is unlikely to have an impact on small businesses.

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

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

There are no less stringent compliance or reporting requirements, as the Commission does not anticipate this regulation affecting small business.

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

There are no schedules or deadlines for compliance or reporting requirements within 205 CMR 239.00 would directly pertain to small businesses.

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

While there are reporting requirements with 205 CMR 239.00, they pertain to licensees, and not small businesses, respectively.

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

Standards within in the proposed regulation are not applicable to small businesses.



Massachusetts Gaming Commission

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

This regulation is unlikely to either deter or encourage the formation of new businesses within the Commonwealth.

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

205 CMR 239.00 chiefly pertains to Sports Wagering Operators, however the regulation has been drafted to minimize the impacts on small businesses, that may be affected by it.

Massachusetts Gaming Commission

By:

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

Dated: March 23, 2023



Massachusetts Gaming Commission

205 CMR 241.00: SURVEILLANCE AND MONITORING

Section

241.01: Surveillance of the Sports Wagering Area and Sports Wagering Facility

241.02: Regulatory Monitoring and Inspections

241.01: Surveillance of the Sports Wagering Area and Sports Wagering Facility

A Sports Wagering Operator shall have the same responsibilities relative to the surveillance of the Sports Wagering Area or Sports Wagering Facility as gaming licensees have relative to a gaming establishment pursuant to 205 CMR 141.00.

241.02: Regulatory Monitoring and Inspections

The Commission shall have the same authority relative to the administrative monitoring and inspections of Sports Wagering Areas and Sports Wagering Facilities as it does with respect to gaming establishments pursuant to 205 CMR 142.00.

REGULATORY AUTHORITY

G.L. c. 23N, §4



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed adoption of **205 CMR 241.00: Surveillance and Monitoring**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 241.00 was developed within the Commission's regulatory framework, governing the operation of Sports Wagering in the Commonwealth. This regulation is governed by G.L. c. 23N, §4.

205 CMR 241.00 applies to Sports Wagering Operators and the Commission, and sets forth requirements governing how sports wagering is monitored, where it is offered; and discusses the Commission’s ability to inspect those premises. Accordingly, this regulation is unlikely to impact small businesses.

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

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

As a general matter, no small businesses will be negatively impacted by this amendment as it governs licensed Sports Wagering Operators and the Commission.

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

There are no schedules or deadlines for compliance or reporting requirements within 205 CMR 241.00 that would pertain to small businesses.

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

Reporting requirements and compliance requirements within this regulation do not affect small businesses.

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

This regulation utilizes performance-based standards for licensees.



Massachusetts Gaming Commission

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

205 CMR 241.00 is not likely to deter or encourage the formation of new businesses in the Commonwealth, as it is limited in its impact on the business community.

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

The final draft of 205 CMR 241.00 has been evaluated to have minimal to no impact upon small businesses.

Massachusetts Gaming Commission
By:

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

Dated: March 23, 2023



Massachusetts Gaming Commission

DRAFT**205 CMR 256: SPORTS WAGERING ADVERTISING****Section**

256.01:	Third Parties
256.02:	Application
256.03:	Internal Controls
256.04:	False or Misleading Advertising
256.05:	Advertising to Youth
256.06:	Advertising to Other Vulnerable Persons
256.07:	Self-Excluded Persons
256.08:	Disruption
256.09:	Endorsement
256.10:	Records
256.11:	Enforcement

256.01: Third Parties

- (1) Each Sports Wagering Operator shall be responsible for the content and conduct of any and all Sports Wagering advertising, marketing, or branding done on its behalf or to its benefit whether conducted by the Sports Wagering Operator, an employee or agent of the Sports Wagering Operator, or an affiliated entity or a third party pursuant to contract, regardless of whether such party is also required to be licensed or registered as a Sports Wagering Vendor or Non-Sports Wagering Vendor.
- (2) Each Sports Wagering Operator shall provide a copy of the regulations contained herein to all advertising, marketing, branding and promotions personnel, contractors, agents, and agencies retained by the Sports Wagering Operator or its agents and shall ensure and require compliance herewith.
- (3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.
- (4) Any advertisement for Sports Wagering shall disclose the identity of the Sports Wagering Operator.

256.02: Application

- (1) The provisions of this section shall apply to all advertising, marketing, and branding for Sports Wagering aimed at, published, aired, displayed, disseminated, or distributed in the Commonwealth; provided, however, that nothing herein shall be construed as limiting a Person's obligations to comply with any other federal, state or local law applicable to advertising, marketing and branding.
- (2) Sports Wagering advertisements may only be published, aired, displayed, disseminated, or distributed in the Commonwealth by or on behalf of Sports

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Wagering Operators licensed to offer Sports Wagering in the Commonwealth, unless the advertisement clearly states that the offerings are not available in the Commonwealth or otherwise makes clear that the offerings are not intended for use in the Commonwealth. Sports Wagering Operators and their agents, employees, or any third party conducting advertising or marketing on their behalf shall not advertise forms of illegal gambling in the Commonwealth.

- (3) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering on any billboard, or other public signage, which fails to comply with any federal, state or local law.

256.03: Internal Controls

Each Sports Wagering Operator shall include in its internal controls submitted pursuant to 205 CMR 138 and 238 provisions to ensure compliance with the requirements of 205 CMR 256.00.

256.04: False or Misleading Advertising

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any unfair or deceptive advertising, marketing, or branding for Sports Wagering. ~~Advertising, marketing, or branding that is unfair or deceptive includes, but is not limited to, advertising, marketing, or branding that would reasonably be expected to confuse and mislead patrons in order to induce them to engage in Sports Wagering.~~
- (2) No Sports Wagering Operator shall obscure or fail to disclose any material fact in its advertising, marketing, or branding for sports wagering or use any type, size, location lighting, illustration, graphic, depiction or color resulting in the obscuring of or failure to disclose any material fact in any advertising, marketing, or branding.
- (3) All Sports Wagering advertisements must clearly convey the material conditions under which Sports Wagering is being offered, including information about the cost to participate and the nature of any promotions ~~or~~ to assist patrons in understanding the odds of winning. Any material conditions or limiting factors must be clearly and conspicuously specified in the advertisement. Additional, non-material terms and conditions may be otherwise made available on a website or application if an advertisement is not of sufficient size or duration to permit inclusion of the additional information.
- (4) No employee ~~or vendor~~ of any Sports Wagering Operator (or an employee of any Sports Wagering Vendor) shall advise or encourage individual patrons to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities. ~~which may require a patron to place a specific wager type, kind, subject, or amount in order for patron to receive a promotional benefit.~~
- (5) A Sports Wagering Operator that engages in any promotion related to Sports Wagering shall clearly and concisely explain the terms of the promotion and adhere

to such terms. If a Sports Wagering Operator offers complimentary items or promotional credit that are subject to terms, conditions or limitations in order to claim the item or redeem the item or credit, the Operator shall fully disclose all ~~such~~material terms, conditions or limitations through the following methods: provided that additional, non-material terms and conditions, may be otherwise made available on a website or application if an advertisement is not of sufficient size or duration to permit inclusion of information.

- (a) In all advertisements or inducements where the complimentary item or promotion are advertised;
 - (b) If being added to a Sports Wagering Account, through the use of a pop-up message either while the complimentary item or promotional credit is being added or when the patron next logs in to the Account, whichever is earlier; and
 - (c) If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron's own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free.
- (6) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall:
- (a) Promote irresponsible or excessive participation in Sports Wagering;
 - (b) Suggest that social, financial, or personal success is guaranteed by engaging in event wagering;
 - (c) Imply or promote Sports Wagering as free of risk in general or in connection with a particular promotion or Sports Wagering offer;
 - (d) Describe Sports Wagering as "free", "cost free" or "free of risk" if the player needs to incur any loss or risk their own money to use or withdraw winnings from the Wager;
 - (e) Encourage players to "chase" losses or re-invest winnings;
 - (f) Suggest that betting is a means of solving or escaping from financial, personal, or professional problems;
 - (g) Portray, suggest, condone or encourage Sports Wagering behavior as a rite of passage or signifier of reaching adulthood or other milestones;

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- (h) Portray, suggest, condone or encourage Sports Wagering behavior that is socially irresponsible or could lead to financial, social or emotional harm;
- (i) Imply that the chances of winning increase with increased time spent on Sports Wagering or increased money wagered;
- (j) Be placed on any website or printed page or medium devoted primarily to responsible gaming;
- (k) Offer a line of credit to any consumer.

256.05: Advertising to Youth

- (1) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall state that patrons must be twenty-one years of age or older to participate.
- (2) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed at individuals under twenty-one years of age.
- (3) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator for Sports Wagering shall contain images, symbols, celebrity or entertainer endorsements, or language designed to appeal primarily to individuals younger than twenty-one years of age.
- (4) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator for Sports Wagering shall be published, aired, displayed, disseminated, or distributed:
 - (a) in media outlets, including social media platforms, that are used primarily by individuals under twenty-one years of age;
 - (b) in media outlets, including social media platforms, to the extent not prohibited by 205 CMR 256.05(4)(a), unless adequate controls are in place to prevent the display, dissemination or distribution of such advertising, marketing, branding or other promotional materials to individuals under twenty-one years of age including by use of age category exclusions and similar mechanisms;
 - ~~(b)(c)~~ (d) at events aimed at minors or where 25% or more of the audience is reasonably expected to be under twenty-one years of age;
 - ~~(c)(d)~~ (e) at any elementary, middle, and high school, or at any sports venue exclusively used for such schools;

~~(d)~~(e) on any college or university campus, or in college or university news outlets such as school newspapers and college or university radio or television broadcasts; ~~or, except for advertising, including television, radio, and digital advertising that is generally available, and primarily directed at an audience, outside of college and university campuses as well; or~~

~~(e)~~(f) to any other audience where 25% or more of the audience is presumed to be under twenty-one years of age.

- (5) No ~~sports~~Sports Wagering advertisements, including logos, trademarks, or brands, shall be used, or licensed for use, on products, clothing, toys, games, or game equipment designed or intended for persons under twenty-one years of age.
- (6) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator for Sports Wagering shall depict an individual who is, or appears to be, under twenty-one years of age, except live footage or images of professional athletes during sporting events on which sports wagering is permitted. Any individual under the age of twenty-one may not be depicted in any way that may be construed as the underage individual participating in or endorsing sports gaming.
- (7) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator for Sports Wagering shall depict students, schools or colleges, or school or college settings.

256.06: Advertising to Other Vulnerable Persons

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed exclusively or primarily at groups of people that are at moderate or high risk of gambling addiction. A Sports Wagering Operator shall not ~~intentionally~~ use characteristics of at-risk or problem bettors to target potentially at-risk or problem bettors with advertisements.
- (2) Advertising, marketing, ~~branding~~, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health ~~and/or~~ such other Responsible gaming information ~~regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”).~~
- (3) Such advertising, marketing, branding and other promotional materials shall not use a font, type size, location, lighting, illustration, graphic depiction or color obscuring ~~conditions or limiting factors associated with~~ the advertisement of such Problem Gambling Helpline Information.

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- (4) Information regarding ~~the Problem Gaming Helpline and any other required responsible gaming information~~ (“Responsible Gaming Messaging”) must also meet the following requirements:
- (a) For signs, direct mail marketing materials, posters and other print advertisements, the height of the font used to advertise Responsible Gaming Messaging must be the greater of:
 - i. The same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; or
 - ii. 2% of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement.
 - (b) For billboards, the height of the font used for Responsible Gaming Messaging must be at least 5% of the height or width, whichever is greater, of the face of the billboard.
 - (c) For digital billboards, Responsible Gaming Messaging must be visible for the entire time the rest of the advertisement is displayed.
 - (d) For video and television, Responsible Gaming Messaging must be visible for either:
 - i. The entire time the video or television advertisement is displayed, in which case the height of the font used for Responsible Gaming Messaging must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.
 - ii. From the first time Sports Wagering Equipment, a Sports Wagering Facility, a Sports Wagering Area or Sports Wagering is displayed or verbally referenced, and on a dedicated screen shot visible for at least the last three (3) seconds of the video or television advertisement. If the Operator elects to utilize this option, the height of the font used for Responsible Gaming Messaging:
 - 1. During the advertisement must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.
 - 2. On the dedicated screen shot must be at least 8% of the height or width, whichever is greater, of the image that will be displayed.
 - (e) For web sites, including social media sites:
 - i. Responsible Gaming Messaging must be posted in a conspicuous location on each ~~webpage~~website or profile page and on a gaming related advertisement posted on the webpage or profile page.

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- ii. The height of the font used for Responsible Gaming Messaging must be at least the same size as the majority of the text used in the webpage or profile page.
- iii. For advertisements posted on the webpage or profile page, the height of the font used for Responsible Gaming Messaging must comply with the height required for signs, direct mail marketing materials, posters and other print advertisements,

256.07: Self-Excluded Persons

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for sports wagering that is aimed at persons who have enrolled in a Self-Exclusion Program pursuant to 205 CMR 233.
- (2) No Sports Wagering Operator shall direct text messages or unsolicited pop-up advertisements on the internet to an individual in the Self-Exclusion Program or shall allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions.
- (3) All direct advertising, marketing, or promotional materials shall include a clear and conspicuous method allowing patrons to unsubscribe from future advertising, marketing, or promotional communications.

256.08: Disruption to Viewers

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that obscures the game play area ~~of a sporting event or obstructs a game in progress.~~
- (2) Advertisements for Sports Wagering may not be placed by a Sports Wagering Operator at a sports event with such intensity and frequency that they represent saturation of that medium or become excessive.

256.09: Endorsements

- (1) An advertisement for Sports Wagering shall not state or imply endorsement by minors, persons aged 18 to 20 (other than professional athletes), collegiate athletes, schools or colleges, or school or college athletic associations.
- (2) An individual who participates in Sports Wagering in the Commonwealth under an agreement with a Sports Wagering Operator for advertising, branding or promotional purposes may not be compensated in promotional credits for additional wagers.
- (3) Endorsements must comply with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255.

DRAFT**256.10: Records**

- (1) Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials intended to promote any Sports Wagering within the Commonwealth, including a log of when, how, and with whom, those materials have been published, aired, displayed, or disseminated, for six (6) years. A Sports Wagering Operator shall also grant the Commission access to all social media platforms utilized by the licensee—, provided that an Operator shall not be required to permit the Commission to control or directly alter such content on its platforms.
- (2) All advertising, marketing, branding, and other promotional materials related to Sports Wagering and the log described in subsection (1) shall be made available to the Commission or its agents upon request.

256.11: Enforcement

- (1) A Sports Wagering Operator shall discontinue or modify as expeditiously as possible the use of a particular advertisement, marketing, or branding material in the Commonwealth or directed to residents in this state upon receipt of written notice that the Commission has determined that the advertisement, marketing, or branding material in question does not conform to the requirements of 205 CMR 256.00 or the discontinuance or modification of which is necessary for the immediate preservation of the public peace, health safety, and welfare of the Commonwealth.
- (2) A failure to adhere to the rules of 205 CMR 256.00 may be grounds for disciplinary action under any enforcement method available to the Commission, including emergency enforcement orders to immediately cease and desist such advertising pursuant to 205 CMR 109.
- (3) —The Commission may, in addition to, or in lieu of, any other discipline, require an Operator that violates this section 205 ~~CMR~~ 256 to provide electronic copies of all advertising, marketing and promotional materials developed by or on behalf of the Operator to the Commission at least ten (10) business days prior to publication, distribution or airing to the public.

REGULATORY AUTHORITY

~~(4)~~(3) G.L. c. 23N, §4

Public Comments
205 CMR 256: Sports Wagering Advertising

Subsection	Comment	Commenter/Entity
All	<p>Generally, the proposed advertising rules apply to "branding" and not just advertising and promotional materials. Fanatics submits that these requirements, as applied to branding, create unnecessarily burdensome requirements for operators and their employees. For example, under these rules, as written, operators would have to include responsible gambling messages in simple logo placement branding. Further, inclusion of "branding" in the rules would impinge requirements on employees of operators who set up LinkedIn profiles, or, for example, share a press release about a sportsbook opening. Further, and as alluded to above, it is increasingly likely that new entrants to the sports betting market will be part of larger and diversified organizations whose success is premised on brand awareness - both in and out of the gaming space. The inclusion of "branding" within these rules thus could subject such companies to overly exhaustive and near impossible to follow gambling-advertising requirements. Such a result would also potentially confuse the public and limit companies' abilities to establish a diverse brand that only partially encompasses the gaming industry. As such, Fanatics respectfully requests that the Commission amend these rules to remove the inclusion of "branding."</p>	<p>Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>
All	<p>WynnBET looks forward to any clarity on whether there are any advertising requirements as it relates to e-mail, SMS or text message, or social media posts (e.g., Twitter, Instagram, Facebook, etc.).</p>	<p>Jennifer Roberts, General Counsel, VP WynnBet, WSI US, LLC, dba WynnBET</p>

All	With the saturation of the airwaves during sporting events, the advertising of sports gambling need severe restriction. I would simplify the regulation to state that no promotion offering credits, free play, etc., be allowed. Similar to medical advertising, at least a third of the duration of any advertisement should be devoted to the risks associated with gambling, the fact that most people lose money, and ways to access help for problem gamblers.	Ted Steger, Citizen
All	With the saturation of television advertising, children are exposed to countless numbers of sports gambling advertisements. During the Super Bowl and the Celtics game, My 6-year-old and 10-year-old were subjected to dozens of ads. I propose a limitation on television advertising until after 9:00 p.m. on weekdays, and after 10:00 p.m. on weekends. Thus, limiting the exposure of this advertising to power impressional youth, who are forbidden by law to participate in it.	Ted Steger, Citizen
256.01	Comment: This rule provides that sports wagering operators shall be responsible for the content and conduct of any and all advertising and marketing conducted on its behalf. Fanatics submits that, to the extent an advertisement is improperly placed on behalf of a sports wagering operators without its prior approval, the sports wagering operator should not be responsible for said marketing/advertisement. Said otherwise, an operator should not be subject to punishment in situations where it has taken reasonable steps to ensure that it maintains the right to review all advertisements made on its behalf prior to public dissemination, but where a third party fails to adequately provide such operator with an opportunity for prior approval of content.	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")

256.01(1)	<p>PENN recommends narrowing the scope of this regulation to content specifically "related to sports wagering." As currently written, this regulation is overly broad and imposes an unduly burden on Sports Wagering Operators to be responsible for any advertising, marketing, or branding content which may be "to its benefit." As many Sports Wagering Operators have affiliation with media brands, advertising, marketing, or branding for such partners may be interpreted as being to a Sports Wagering Operator's "benefit," even if such advertising, marketing, or branding is not related in any way to sports wagering.</p>	PENN
256.01(3)	<p><u>Proposed:</u> (3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.</p> <p>Comment: DraftKings respectfully requests that the Commission clarify its intentions in rule 205 CMR 256.01(3). DraftKings reads the below to only allow for flat fee arrangements with third parties to conduct advertising, marketing, or branding on behalf of operators. In other jurisdictions an arrangement based upon a cost per acquisition model is permitted. Clarification as to the Commission's intentions will allow DraftKings and other operators to appropriately plan for the upcoming Massachusetts launch.</p>	Draft Kings Inc.

256.01(3)	<p>Proposed: (3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of [patrons or] wagers placed, or the outcome of wagers.”</p> <p>Comment: Section 205 CMR 256.01(3) of the Proposed Advertising Regulation prohibits any advertising or marketing contracts where compensation is based on “the volume of patrons or wagers placed, or the outcome of wagers.” While we understand the concern about compensation based on the volume of wagering or the outcome of wagers, this language appears to prohibit a standard marketing practice used by operators throughout the United States.</p> <p>It is standard industry practice to pay marketing affiliates on a cost per acquisition (“CPA”) basis. This is in line with marketing practices in many other industries where compensation is provided for referrals. We strongly urge the Commission to clarify that compensation of marketing affiliates is authorized based on the number of patrons they assist the operator in acquiring, while still prohibiting compensation based on player activity (amount wagered, amount won or lost).</p>	<p>Cory Fox, FanDuel Inc. cory.fox@fanduel.com</p>
256.01(3)	<p>Proposed (delete): (3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.</p> <p>PENN recommends this regulation be removed as it is unprecedented in the sports wagering industry and prohibits standard marketing practices and agreements currently in place across multiple jurisdictions. PENN operates online sports wagering in 15 jurisdictions and retail sports wagering in 12 jurisdictions (excluding Plainridge Park Casino in MA), none of which impose a ban on establishing agreements with third party marketing entities based on the volume of patrons or wagers placed, or the outcome of wagers. It is standard industry practice to base compensation of a third-party marketing entity on the volume of new</p>	PENN

	<p>players it generates through its advertising for the Sports Wagering Operator as this is an objective metric to evaluate the partnership's success. However, the compensation terms of an agreement between a Sports Wagering Operator and a third-party marketing partner are immaterial to the messaging of marketing, advertising, and branding that will be present in the Commonwealth on a Sports Wagering Operator's behalf.</p> <p>Additionally, notwithstanding the removal of this regulation, the Massachusetts Gaming Commission will continue to maintain regulatory oversight of all advertising, marketing, and branding conducted by such third-party marketing partners as 205 CMR 256 are applicable to all such activity done on Sports Wagering Operators' behalf pursuant to rule 256.01(1).</p>	
256.01(3)	<p>A. The Regulation (205 CMR 256.01(3)) Effectively Prohibits Affiliate Marketers from Providing their Services to Massachusetts Consumers</p> <p>i. What/Who is a Marketing Affiliate and their Advertising Strategy</p> <p>Marketing Affiliates, commonly referred to as affiliates, are entities that promote or direct customer traffic to gaming operators. Affiliates usually provide and publish informational content to interested parties. Consumers looking for sports betting options turn to affiliate websites, such as Actionnetwork.com, Gambling.com, and Legalsportsreport.com, to assist them in finding the legal options available to them and evaluating deals or best odds being offered at any given time. Affiliate websites provide links and informative content such as expert reviews, comparisons of the products offered by gaming operators, available player incentives and other informational content such as gaming industry news and “how to” guidance. The affiliate sites typically also include information and resources on responsible gaming, including compulsive gambling self-tests. Successful affiliates act as gateways to the legal gaming operators with whom they choose to work, pulling individuals away from entering the illegal market.</p>	Jeff Ifrah, iDevelopment and Economic Association

	<p>As opposed to traditional “push” advertising, affiliates engage in “pull” marketing. Push advertising, such as TV ads, radio ads, social media ads, etc., is designed to entice consumers to a product. Otherwise stated, push advertisements push or encourage consumers to buy or engage with a certain business unprompted. It advertises to all, regardless of age demographics and product/service interest. Affiliates, however, do not generally engage in direct or push marketing. Conversely, pull advertising, a strategy used by nearly all affiliates, is designed to provide information to consumers who are proactively searching for sports betting information. A prime example in a different industry is a travel website such as Expedia or Travelocity. When a potential traveler visits these websites, they already intend to book a trip. They are using these websites to evaluate all of their options and learn about new offers or places they could stay. Like potential travelers visiting these websites, consumers that visit affiliate websites primarily do so through unpaid channels, including search engine optimization. Search engine optimization is the process of optimizing websites to make them more appealing to search engines so they rank favorably in search engines’ results pages for certain queries. It would be rare for a consumer to be shown advertisements from a marketing affiliate unless they were already interested in making a wager or learning more about legal sports wagering.</p> <p>In an affiliate/operator contractual relationship, affiliates receive performance-based marketing compensation, such as revenue share and cost per acquisition (“CPA”). Some form of performance-based marketing is permissible in all states where sports wagering is legal except Connecticut, which restricted CPA and revenue share, and Illinois, which restricts revenue share. Operators either compensate affiliates on a performance metric basis, such as CPA on deposit, CPA on first wager, or revenue, because they allow for the most efficient marketing spend. Without such predictability and ensured results from affiliates, operators would have little to no reason to outsource marketing efforts.</p> <p>ii. Benefits of Marketing Affiliates in a Legal Market</p> <p>Affiliates provide crucial aid in a legal and competitive market for two key reasons. First, one of, if not the ultimate, major challenge all legal wagering states face is aiding their licensees to capture market share from existing, entrenched offshore</p>	
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	<p>operators who have been active in states like Massachusetts for decades. Offshore illegal sportsbooks have been able and continue to advertise freely to customers in all 50 states. Even today, offshore sportsbooks continue to obtain a significant share of customers. Offshore sportsbooks and those that advertise on their behalf frequently appear in search results like “Massachusetts online sports betting”. A top priority and goal of affiliates is to reduce or fully eradicate offshore sportsbooks, ensuring that customers who wish to participate in a regulated and approved market do so only with Massachusetts licensed operators.</p> <p>Second, affiliates assist in facilitating and providing a competitive sports betting market. Restrictions on revenue share and CPA compensation limits competition by ensuring that only the biggest sportsbooks with the largest marketing budgets will be successful. For instance, some smaller operators are unable to work with affiliates in Illinois, which prohibits revenue share, because their marketing spend is too low to pay affiliates a CPA.</p> <p>Marketing affiliates are a neutral informational source for consumers to explore all licensed options in the market. Without affiliates present in a legal market, it is harder for consumers to be educated on brands that are less front facing or with smaller advertising budgets; thereby consolidating the power at the top and stifling the natural abilities for the market to be competitive. Such consolidation will hurt the Massachusetts’ legal sports betting economy over time as the majority of the market share remains concentrated to one or two operators, with the true victims being Massachusetts consumers who will be uninformed and left with fewer choices.</p> <p>iii. Current Impact of Regulations on Marketing Affiliates</p> <p>The current regulation prohibits revenue share and CPA compensation to affiliates, stating that “[n]o Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.” From the outset to those unfamiliar with affiliates and their benefits, such prohibition could seem reasonable, but it will have detrimental effects to the Massachusetts sports betting</p>	
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	<p>marketing. Consequently, the Regulation makes it infeasible for an affiliate to enter into agreements in Massachusetts.</p> <p>Additionally, by prohibiting revenue share and CPA, the likely result will be that those that have a true interest in being educated and placing a wager in the legal market will not be able to effectively do so as takes place in other regulated jurisdictions. Additionally, as explained above, offshore sportsbooks will be more likely to continue prospering, and the market is likely to become consolidated and anti-competitive.</p> <p>iv. Recommendations for Amending</p> <p>The vast majority of states that have legalized sports betting do not regulate the compensation structures available to affiliates. In fact, the majority of states have limited to no regulations at all in regards to marketing affiliates, with most not even requiring affiliates to register or obtain a license. It is our recommendation that the Commission strike regulation 205 CMR 256.01(3), and instead focus on ways it can effectively license and register such affiliates.</p> <p>As has been done in other legal wagering states, we suggest that if the Commission has concerns on certain compensations structures, then they effectively regulate and monitor those entities through elevated licensing requirements. For example, of the legalized states, Colorado, Michigan, New Jersey, and Pennsylvania have explicit elevated licensing requirements for affiliates receiving a revenue share compensation as opposed to the more traditional CPA compensation. Other states such as Kansas, Louisiana, and Maryland only require licenses or elevate the level of license if a vendor/affiliate's annual expected revenue from the state exceeds a certain dollar threshold. All other states with registration or licensing requirements demand the same level of registration/licensing from affiliates regardless of their compensation structure: Arizona, Indiana, Virginia, and West Virginia.</p> <p>Marketing affiliates are vital to a legal sports wagering market. Through appropriate licensing any and all of the Commissions third-party advertising concerns will be assuaged. Therefore, we recommend striking 256.01(3) and</p>	
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	instead provide a more structured licensing scheme for affiliates, perhaps being elevated, or differentiated depending on their payment structure.	
256.01(3)	<p>We thank the Commission for entertaining comments during this regulatory process, and for hosting a roundtable on Subsection 256.01(3) on February 27, 2023. We agree with comments shared by stakeholders during the discussion.</p> <p>We applaud the Commission for approving an interim waiver of the regulation to allow cost per acquisition (CPA) and revenue sharing models for affiliate relationships. It is our view that CPA and revenue sharing advertising is appropriate – not only with regard to affiliate arrangements for platforms like Google and other search engines, but also in other contexts. These affiliate models are commonplace in the industry, and work to funnel individuals with sports wagering intent to legally licensed regulated sports books. As presented in the roundtable, when Operators are able to focus advertising on adults through “pull” ads, Operators will tend to use this more efficient approach and rely less on “push advertising” that would reach a broad audience (including minors). We do not believe that CPA or revenue sharing advertising relationships pose a threat to consumers, and as the Commission continues to evaluate whether and how to regulate third party advertising models, we urge the Commission to avoid unneeded restrictions that may have unintended consequences.</p>	Dave Friedman, Red Sox obo Broadcasters coalition
256.01(3)	Importantly, we note that these issues would become even more problematic should the Commission back away from its current (and very sound) prohibition on commission-based payments to third-party marketing vendors. We understand certain vendors are asking for that prohibition to be lifted, which the Commission is considering on an interim basis. The fact is that certain third-party marketing vendors present themselves to the public as tip sheets, providing advice on prospective wagers. Where a vendor expressly or impliedly advises a particular wager, that vendor must not be compensated based on whether its audience then uses or accesses a sports wagering operator’s site or app to make the bet it has advised.	M. Patrick Moore Jr., AGO

256.01(3)	<p>Comment: (1) Regarding Section 256.01(3), this section appears to prohibit compensation arrangements for marketing affiliates and similar vendors on the basis of “volume of patrons or wagers placed, or the outcome of wagers.” WynnBET does not believe that the common form of compensation, cost per acquisition (CPA), which is driven by a flat fee for a single patron enrollment, would fall within this prohibition. To the extent that it is the intention of this proposed section, WynnBET would respectfully request reconsideration. Nearly all mobile sports betting jurisdictions permit CPA as a method of payment for marketing affiliates and similar companies. A majority also allow revenue sharing arrangements that are tied to player activity. While some require a higher level of licensing for such a compensation, a majority of mobile sports betting states have some allowance for it.</p>	Jennifer Roberts, General Counsel, VP Wynnbet, WSI US, LLC, dba WynnBET
256.01(3)	<p>I’m writing on behalf of Better Collective USA, Inc. (“BC US”, “we”, or “us”), a Delaware corporation and a wholly owned subsidiary of Better Collective A/S, a Denmark-based public company listed on Nasdaq Stockholm.</p> <p>The global and US leader in the affiliate marketing space, BC works exclusively with regulated sportsbooks. As a result, we take seriously our role within the ecosystem to educate and guide our users on all aspects of legal sports betting, including how to gamble responsibly. We believe that doing so creates a more sustainable industry for all involved, including states such as Massachusetts that have chosen to legalize sports betting.</p> <p>While we are pleased that Massachusetts has regulated online sports betting, we have concerns about the current proposed regulation limiting performance-based compensation like CPA and revenue share, which we fear will be harmful to the sports wagering market and is unnecessary for regulatory oversight of affiliates. As more fully detailed below, restrictions on performance-based affiliate compensation models create an anti-competitive environment due to the compensation restrictions with third parties. These restrictions make it unduly</p>	<p>Katherine McCord, Better Collective USA, Inc.</p> <p>Similar comment submitted by Jeff Ifrah, Ifrah PLLC, obo Better Collective USA, Inc., Catena Media plc, and GDC America, Inc. (“Affiliate Group”)</p>

	<p>difficult for regulated affiliates to compete with unregulated affiliates and Operators. As a result, we worry the Massachusetts regulated market will lose revenue to the offshore markets.</p> <p>First, due to the oversight of the Massachusetts Gaming Commission (“MGC”) through affiliate licensing requirements, restrictions on performance-based affiliate compensation models are unnecessary. Some form of performance-based marketing is permissible in all states except Connecticut, which restricts CPA and revenue share, and Illinois, which restricts revenue share. Neither Connecticut nor Illinois impose any vendor registration or affiliate licensing requirements. With the MGC’s direct enforcement power over affiliates, it is unnecessary to also restrict performance-based compensation.</p> <p>Limiting the affiliate commercial model away from traditional performance-based compensation methods like CPA and revenue share also hurts the growth of a newly regulated market like Massachusetts in the following ways:</p> <p>Channelization: Responsible affiliates like BC US exclusively promote licensed operators. Many consumers refer to specific affiliate-run websites, like BC US’s sportshandle.com, actionnetwork.com and vegasinsider.com, for betting information and education, such as which Operators are licensed. Discouraging affiliates from participating in the market by limiting affiliate compensation models allows offshore Operators to flourish. Diverting consumers from the regulated market decreases legitimacy and compliance, and reduces taxes to the state.</p> <p>Sustainable Marketing Spend: Operators typically prefer compensation models based on key performance metrics (such as CPA on deposit, CPA on first wager, or revenue share) because it allows for efficiency in their marketing spend. This predictability allows them to invest in other areas that will grow handle, gross gaming revenue and tax revenue as much as possible.</p>	
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	<p>Competitive Market: Restricting performance-based affiliate payment hinders competition within a state by ensuring that only the biggest sportsbooks with the largest marketing budgets will be successful. For instance, some smaller Operators are unable to work with affiliates in Illinois (which prohibits revenue share) because their marketing spend is too low to pay on CPA.</p> <p>Prohibiting both CPA and revenue share would only compound the problem smaller Operators face in Illinois. This consolidation will hurt the state economy over time, as less money will be invested by second- and third-tier operators, and it's bad for consumers who will be left with fewer choices.</p> <p>Mass Media: In assessing gambling advertising, it is important to differentiate between “pull” and “push” advertising. Push marketing, such as TV advertising, paid social media ads and others, is designed to entice consumers to a product. Conversely, most affiliate marketing can be categorized as pull marketing, designed to provide information to consumers who are proactively searching for sports betting information. Limiting performance-based compensation will result in Operators focusing their marketing budgets away from pull advertising and towards push advertising. Responsible gaming resources and educational content are scarce at best on push marketing, and shown to all age demographics.</p> <p>Education and Responsible Gaming: Affiliates provide betting information and insights, including introductions to various bet types and markets, and information and resources on responsible gaming, including compulsive gambling self-tests. BC US is committed to fostering wider initiatives in the affiliate marketing sector to promote social responsibility and create a safer gambling environment for consumers, including offering responsible gaming products that help consumers track their wins and losses across all Operators.</p> <p>Limiting compensation models paid by Operators will limit regulated affiliate activities in the state, reducing access to resources our consumers depend on to</p>	
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	<p>make informed betting decisions that are particularly essential in a newly regulated market.</p> <p>It is vital that consumers searching for gambling related products find the product offerings of responsible, regulated operators, rather than those of unlicensed operators. To achieve this, it is necessary to create a commercially viable market in which affiliate marketers can thrive.</p> <p>We would welcome the opportunity to discuss further and can be reached via email at kmccord@bettercollective.com and Legal.US@bettercollective.com, or by phone at 203-536-2138.</p>	
256.01(3)	<p>On behalf of Better Collective USA, Inc. (“we”, “us” or “BC”), we respectfully submit the below comments on the Massachusetts Gaming Commission’s (“Commission”) proposed Sports Wagering Advertising regulations 205 CMR 256.</p> <p>As a leading marketing affiliate, BC takes seriously our role within the sports wagering ecosystem to responsibly educate and guide users. While we understand and are aligned with the Commission’s concerns on advertising with respect to responsible gaming, we believe that 205 CMR 256 as currently drafted will have a significant dampening effect on the new Massachusetts market without any measurable increase in consumer protections. Accordingly, we provide the following comments:</p> <p>We respectfully urge the Commission to delete 205 CMR 256.01(3) in its entirety to allow for performance-based marketing compensation models such as revenue share and cost per acquisition (“CPA”). Prohibiting industry-recognized commercial models like CPA and revenue share in a newly regulated Massachusetts will limit both marketing affiliate activity and competition between sports wagering operators, negatively impacting tax revenue to the state and hurting consumers.</p>	Katherine McCord, Better Collective USA, Inc.

	<p>Some form of performance-based marketing is permissible in all states where sports wagering is legal except Connecticut, which restricts CPA and revenue share, and Illinois, which restricts revenue share. Neither Connecticut nor Illinois impose any vendor registration or affiliate licensing requirements. With the Commission’s direct enforcement power over marketing affiliates through the vendor registration process, it is unnecessary to also restrict performance-based compensation.</p> <p>Additionally, we note feedback from Todd Grossman conveyed by email on February 16 that operators may enter into revenue share or CPA agreements where compensation is based on the number of visits to the operator’s website, i.e., a cost-per-click model (“CPC”). Operators typically prefer to compensate marketing affiliates based on key performance metrics (such as CPA on deposit, CPA on first wager, or revenue share) because it allows for efficiency in their marketing spend. This predictability allows them to invest in other areas that will grow handle, gross gaming revenue and tax revenue as much as possible.</p> <p>Responsible marketing affiliates like BC exclusively promotes licensed operators. Many consumers refer to specific affiliate-run websites, like BC’s sportshandle.com, actionnetwork.com and vegasinsider.com, for betting information and education, such as which operators are licensed. Discouraging affiliates from participating in the market by limiting affiliate compensation models allows offshore operators to flourish. Diverting consumers from the regulated market decreases legitimacy and compliance, and reduces taxes to the state.</p> <p>Restricting revenue share and CPA also limits competition by ensuring that only the biggest sportsbooks with the largest marketing budgets will be successful. For instance, some smaller operators are unable to work with affiliates in Illinois (which prohibits revenue share) because their marketing spend is too low to pay on CPA. Prohibiting both CPA and revenue share would only compound the problem smaller operators face in Illinois. This consolidation will hurt the state economy</p>	
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	<p>over time as the majority of the market share is concentrated to one or two operators, and it's bad for consumers who will be left with fewer choices.</p> <p>In assessing gambling advertising, it is important to differentiate between “pull” and “push” advertising. Push marketing, such as TV advertising, paid social media ads and others, is designed to entice consumers to a product. Conversely, most affiliate marketing can be categorized as pull marketing, designed to provide information to consumers who are proactively searching for sports betting information. By prohibiting CPA and revenue share in favor of CPC, operators will instead focus their marketing budgets away from pull advertising (such as agreements with marketing affiliates) and towards push advertising. Push advertising is shown across all age demographics, and doesn't include the same responsible gaming resources and educational content that marketing affiliates provide.</p> <p>Marketing affiliates provide betting information and insights, including introductions to various bet types and markets, and information and resources on responsible gaming, including compulsive gambling self-tests. BC is committed to fostering wider initiatives in the affiliate marketing sector to promote social responsibility and create a safer gambling environment for consumers, including offering responsible gaming products that help consumers track their wins and losses across all operators.</p> <p>It is vital that consumers searching for gambling related products find the product offerings of responsible, regulated operators, rather than those of unlicensed operators. To achieve this, it is necessary to create a commercially viable market in which affiliate marketers can thrive. As such, we respectfully request that 205 CMR 256.01(3) be removed in its entirety.</p>	
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256.02	Caesars supports this regulation but recommend this not apply to national advertising buys. While we are licensed to operate in the Commonwealth, it would be onerous on the staff, and potentially illegal, to regulate out-of-state media organizations.	Curis Lane Jr., Caesars Sportsbook
256.02(2)	DraftKings respectfully requests that the Commission clarify the requirements of this section. For example, if an offer in a national advertisement is not available in Massachusetts and not intended for use in Massachusetts, would a “Void in MA” disclaimer be sufficient? In such a case, where an offer is not available in Massachusetts and the advertisement includes a disclaimer as such, would the provisions about including specific responsible gaming information about resources in Massachusetts still apply?	Draft Kings Inc.
256.02(2)	<p>Subsection 256.02(2) requires an affirmative statement that wagering is not available in Massachusetts if the Operator is not licensed in Massachusetts. We would like to request clarification on whether and when such a disclosure is required and in particular would propose a modification for advertisements in broadcasts. Any additional disclosures like this, proposed by the Commission, add to an already cumbersome disclosure paragraph that is difficult for viewers to sort through. Additionally, a significant portion of ads in sports broadcasts are national or regional ads for which it may be technically and practically infeasible to substitute state-specific ads or copy. This proposal would raise significant legal questions in this context. We would recommend that the Commission allow industry standard verbiage for these ads (e.g., “Void where prohibited.”).</p> <p>Our coalition also requests clarification on the Commission’s definition of “third party.” We understand third parties to refer to creative producers like advertising</p>	Dave Friedman, Red Sox obo Broadcasters coalition

	agencies and marketing firms, and media buyers, but not to include broadcasters who simply air the content produced by other third parties.	
256.02(2)	<p>Proposing: Add “knowingly” to state: “Sports Wagering Operators and their agents, employees, or any third-party conducting advertising or marketing on their behalf shall not knowingly advertise forms of illegal gambling in the Commonwealth.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM</p> <p>jess.panora@betmgm.com</p>
256.04 256.04(2) and (3)	<p>While BC supports the Commission’s goals of prohibiting deceptive advertising and clearly disclosing responsible gaming messaging, we believe the requirements of 205 CMR 256.04 and 205 CMR 256.06 are too broad to realistically allow for compliance.</p> <p>Requirements such as those in 205 CMR 256.04(2) and (3) regarding the conspicuous disclosure of terms and conditions on the advertisements themselves would effectively render digital advertisements and promotions impossible. We therefore respectfully request that the Commission allow for such disclosures to be accessible within one click, as permitted by Ohio Administrative Code 3775-16-00(A)(1).</p>	Katherine McCord, Better Collective USA, Inc.
256.04(1)	<p>Proposing: Add “knowingly” to state: “No Sports Wagering Operator shall knowingly allow, conduct, or participate in any unfair or deceptive advertising, marketing, or branding for Sports Wagering. Advertising, marketing, or branding that is unfair or deceptive includes, but is not limited to, advertising, marketing, or branding that would reasonably be expected to confuse and mislead patrons in order to induce them to engage in Sports Wagering.”</p>	<p>Jess Panora, BetMGM</p> <p>jess.panora@betmgm.com</p>

	BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	
256.04(1)	To avoid any future, incorrect argument otherwise from regulated entities, the Commission should expressly state that its regulations, and particularly those related to advertising and marketing, are in addition to, and are not intended to displace, the Commonwealth's preexisting and extensive consumer protection laws. Those laws include without limitation the Massachusetts Consumer Protection Act, G.L. c. 93A, and regulations established by our Office under that Act.	M. Patrick Moore Jr., AGO
256.04(1)	<p>Delete: "Advertising, marketing, or branding that is unfair or deceptive includes, but is not limited to, advertising, marketing, or branding that would reasonably be expected to confuse and mislead patrons in order to induce them to engage in Sports Wagering."</p> <p>Comment: Caesars supports the Commonwealth's goal of prohibiting deceptive advertising practices, but as written it is too broad to provide meaningful direction to the operators and may be impossible to comply with.</p>	Curis Lane Jr., Caesars Sportsbook
256.04(1)	Our coalition appreciates the Commission's work to prevent unfair or deceptive advertising. On this Subsection, we request clarification to confirm that the Commission intends this provision to apply to Operators and those responsible for producing the advertising at issue, not third parties that disseminate the ads, including broadcasters.	Dave Friedman, Red Sox obo Broadcasters coalition
256.04(2)	Proposing: Add "knowingly" to state: "No Sports Wagering Operator shall knowingly obscure or fail to disclose any material fact in its advertising, marketing, or branding for sports wagering or use any type, size, location lighting, illustration, graphic, depiction or color resulting in the obscuring of or failure to disclose any material fact in any advertising, marketing, or branding."	<p>Jess Panora, BetMGM</p> <p>jess.panora@betmgm.com</p>

	BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	
256.04(3)	Comment: Caesars believes it would be impracticable to include all terms and conditions in an advertisement. For example, an NFL game earlier this season was canceled in the first quarter because a player collapsed from cardiac arrest. This was an unprecedented result for a NFL game. Operators in legal jurisdictions were bound by their internal controls and terms and conditions. Listing every possible condition would not be possible.	Curis Lane Jr., Caesars Sportsbook
256.04(3)	Proposing: Change “and the nature of any promotions or and information to assist patrons in understanding the odds of winning” to “and the nature of any promotions or any information to assist patrons in understanding the odds of winning” BetMGM Comment: This appears to be a typo.	Jess Panora, BetMGM jess.panora@betmgm.com
256.04(3)	Comment: Regarding Section 256.04(3), all Sports Wagering advertisements must clearly convey the conditions under which Sports Wagering is being offered, including information about the cost to participate and the nature of any promotions or and information to assist patrons in understanding the odds of winning. As this requirement would necessitate a significant number of disclosures, WynnBET respectfully requests additional information as to what disclosures would be required. WynnBET does have such information available within its app and on its website.	Jennifer Roberts, General Counsel, VP WynnBet, WSI US, LLC, dba WynnBET
256.04(4)	205 CMR 256.04(4) regarding limitations on "specific wager[s] of any specific type, kind, subject or amount" is so vague and broad as to potentially prohibit	Katherine McCord, Better Collective USA, Inc.

	content we create that is intended to educate users and allow for more informed betting decisions.	
256.04(4)	<p><i>Proposed (4):</i> No employee or vendor of any Sports Wagering Operator (<u>or employees of its vendors</u>) shall advise or encourage individual patrons on a <u>one-on-one</u> basis to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities, <u>which may require a patron to place a specific wager type, kind, subject, or amount in order for patron to receive a promotional benefit.</u></p> <p>Comment: Caesars believes the proposed change above would clarify that standard industry promotions advertised publicly or to certain market segments that require a participating customer to place a specific wager type, kind, subject or amount in order to receive a particular promotional benefit would not be prohibited.</p>	Curis Lane Jr., Caesars Sportsbook
256.04(4)	<p>Proposed: (4) No employee or vendor of any Sports Wagering Operator shall advise or encourage individual patrons to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities, including wager types offered by operators and sports wagering industry media coverage.</p> <p>Comment: DraftKings respectfully requests that the Commission clarify and amend this section. From time to time, employees of operators and personalities affiliated with operators can be active on social media, posting their active wagers, thoughts on bets, and so on. Would any of the following examples be a violation of this rule?</p> <ul style="list-style-type: none"> • An operator executive attends a Celtics game, and before the game tweets “We put the line at Celtics -4 tonight, but the way they’ve been playing it should be Celtics -75.” 	Draft Kings Inc.

	<ul style="list-style-type: none"> • A low-level employee replies to a tweet about the Super Bowl with, “the Patriots are a lock to win the 2024 Super Bowl. Count on it.” • A vendor employee posts a screenshot of their active wagers before games begin and says “I’m feeling really good about these!” <p>As written, this section could be read to prohibit pre-made same-game parlay bets offered by an operator, as that could be encouragement to place a specific wager, which DraftKings does not believe is the intention of the proposed rule.</p> <p>Further, by way of example, DraftKings owns VSiN (Vegas Sports Information Network, Inc.), which is a multi-platform broadcast and content company that delivers sports wagering news, analysis, and data. VSiN produces up to 18+ hours of live sports wagering content each day. It operates a 24/7 stream of content, and is accessible through multiple video and audio channels, including on NESN and other platforms in Massachusetts. VSiN maintains editorial independence, but its on-air talent are all DraftKings employees who discuss, advise, and encourage bets on specific markets. DraftKings respectfully submits that the proposed rule should not prohibit the manner in which VSiN operates.</p>	
256.04(4)	<p>Comment: Section 205 CMR 256.04(4) of the Proposed Advertising Regulation prohibits employees and vendors of the sports wagering operator from advising or encouraging individual patrons to place a specific wager. While this section has an exemption for general advertising and promotional activities, we would suggest further clarification from the Commission as to the scope of this prohibition. For example, we would understand a proposed limitation on members of our VIP team specifically suggesting a wager to a customer. However, we would not expect, and it would not be a standard requirement, to prohibit our application from suggesting an event or wager a patron may be interested in based on previous activity on the site.</p>	<p>Cory Fox, FanDuel Inc. cory.fox@fanduel.com</p>

256.04(2)-(4)	<p>Section 256.04(2) and (3) require conspicuous disclosure of all terms and conditions on advertisements including disclosing “any material fact in its advertising” and “information about the cost to participate and the nature of any promotions or information to assist patrons in understanding the odds of winning.” Such a requirement would effectively render all digital advertisements and promotions impossible. Displaying such information within an advertisement would render it useless, the content would be nothing but terms and conditions, and not provide any effective marketing of the product or service. It is commonly understood that the most effective means to provide a message or marketing is within easily understood and digestible words or phrases, not long-winded displays of terms and conditions which are commonly ignored. The Commission’s intentions can be better captured by requiring such disclosures similar to those in Ohio. The Ohio Administrative Code 3775-16-08(A)(1) allows such disclosures to be displayed in a one-click link on the advertisement.</p> <p>Further, section 256.04(4)’s prohibition against vendors advising “patrons to place a specific wager of any specific type, kind, subject, or amount” is ripe for unintended negative consequences. The sports wagering market is new to consumers in Massachusetts. It is more than likely that many consumers will be unfamiliar with odds or types of bets and where such wagers may be legally placed. These individuals must have resources to inform them of the specific types and kinds of bets that are not only accessible but also permitted in Massachusetts. Many marketing affiliates publish and provide this sort of content, and it has shown to be beneficial in aiding consumers to place well and more informed wagers. We request that the Commission reconsider the wording in this section to ensure that Massachusetts sports wagering consumers remain able to seek advisements through informational resources.</p>	Jeff Ifrah, iDevelopment and Economic Association
256.04(5)(a)	Regarding Section 256.04(5)(a), “all advertisements or inducements where the complimentary item or promotion” is must fully disclose all the terms, conditions, or limitations of the offer. Such terms and conditions are detailed and lengthy and disclosure would render advertising and promotions impossible. WynnBET	Jennifer Roberts, General Counsel, VP Wynnbet, WSI US, LLC, dba WynnBET

	includes at minimum that terms apply and will often include a link for direct access to the terms.	
256.04(5)(c)	<p>Section 205 CMR 256.04(5)(c) of the Proposed Advertising Regulation requires that when a customer is required to wager a certain amount to receive a complimentary item or promotional credit, any advertisement of such promotion must display the required wager amount in the same size and style of font as the complimentary item or promotional credit. While we understand the underlying concern to prevent operators from “hiding” the required wager, it is not standard practice to require the exact same size and style of font for both the required wager and the complimentary item. We suggest that this section be clarified to require the advertisement to “clearly and conspicuously” disclose any required wager. To address this concern, we suggest the following edits:</p> <p>Section 205 CMR 256.04(c):</p> <p>“(c) If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron’s own funds shall be clearly and conspicuously disclosed [in the same size and style of font as the amount of the complimentary item or promotional credit], and the complimentary item or promotional credit shall not be described as free.”</p>	<p>Cory Fox, FanDuel Inc.</p> <p>cory.fox@fanduel.com</p>

256.04(5)(b)	<p>Proposed: Delete (b) If being added to a Sports Wagering Account, through the use of a pop-up message either while the complimentary item or promotional credit is being added or when the patron next logs in to the Account, whichever is earlier; and</p> <p>(e) (b) If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron's own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free.</p> <p>Comment: DraftKings respectfully requests that the Commission strike this section of the proposed rules, as terms of promotion are readily available on the website and in the app whenever a customer views or selects a promotion. The availability of terms moots the need for an additional popup.</p>	Draft Kings Inc.
256.04(5)(b)	<p>Proposed: (delete) [(b) If being added to a Sports Wagering Account, through the use of a pop-up message either while the complimentary item or promotional credit is being added or when the patron next logs in to the Account, whichever is earlier;] and</p> <p>(c) If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron's own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free."</p> <p>Comment: Section 205 CMR 256.04(5)(b) of the Proposed Advertising Regulation requires operators to disclose to a patron all terms, conditions, or limitations of a promotional offer "through the use of a pop-up message either while the complimentary item or promotional credit is being added or</p>	Cory Fox, FanDuel In. cory.fox@fanduel.com

	<p>when the patron next logs in to the Account, whichever is earlier.” While operators certainly make the terms and conditions of promotional offers available to patrons, it is not a standard requirement in other jurisdictions for operators to build specific pop-up messaging into their application to serve this purpose. As such, we suggest removal of this requirement.</p>	
256.04(5)(b)-(c)	<p>Comment: Subsection (5)(b) provides that sports wagering operators who offer complimentary items or promotional credits that are subject to terms, conditions or limitations must fully disclose the terms, conditions or limitations through the use of a pop-up message. While Fanatics appreciates the importance of disclosing any specific terms, conditions or limitations, Fanatics submits that this requirement is overly limiting. Fanatics recommends that the Commission amend this rule to give operators the option of making the terms of an offer available through webpage disclosures (which could be one-click away), as opposed to requiring them to display terms through a pop up. Fanatics submits that this approach is consistent with Federal Trade Commission guidance as well as the goal of ensuring that the terms of an offer are fully disclosed to patrons in a manner that is most user friendly and easy to comprehend.</p> <p>Subsection 5(c) also applies to sports wagering operators who offer complimentary items or promotional credits that are subject to terms, conditions or limitations. This subsection provides that if the offer requires the patron to wager a specific dollar amount, operators must disclose the amount in the same size and style of font as the amount of the complimentary item or promotional credit. Fanatics submits that the Commission should amend this rule to require that sports wagering</p>	<p>Adam Berger, Duane Morris LLP o/b/o</p> <p>FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>

	operators must disclose "clearly and conspicuously" the amount a patron must wager, as opposed to the "same font" requirement. The requirement, as written, limits operators' ability to exercise discretion in establishing marketing campaigns and to determine what is most appropriate for a particular advertisement.	
256.04(6)	<p>Proposing to add “knowingly” after “shall not”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, Bet MGM</p> <p>jess.panora@betmgm.com</p>
256.05(1)	<p>Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed at individuals under twenty-one years of age.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM</p> <p>jess.panora@betmgm.com</p>
256.05(2)	<p>Proposing to add “knowingly” to state: “Advertising, marketing, branding, and other promotional materials knowingly published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall not knowingly contain images, symbols, celebrity or entertainer endorsements, or language designed to appeal primarily to individuals younger than twenty-one years of age.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM</p> <p>jess.panora@betmgm.com</p>

256.05(3)	<p>Proposing to add “knowingly” to state: “Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall not be knowingly published, aired, displayed, disseminated, or distributed;”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM jess.panora@betmgm.com</p>
256.05(3)	<p>Caesars believes further clarification if this is a ban on celebrity and entertainment endorsements, or those designed to appeal to minors. Caesars supports the former interpretation. Celebrities that appeal to adults can be a key part of a marketing strategy to attract customers who currently bet illegally and to grow the market through new customers who will generate increased tax revenues for the Commonwealth.</p>	<p>Curis Lane Jr., Caesars Sportsbook</p>
256.05(4)	<p>Proposing to add “knowingly” to state: “Sports Wagering advertisements, including logos, trademarks, or brands, shall not knowingly be used, or licensed for use, on products, clothing, toys, games, or game equipment designed or intended for persons under twenty-one years of age.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM jess.panora@betmgm.com</p>
256.05(2)-(7)	<p>Comment: Subsections (2)-(7) of this rule, generally, prohibit sports wagering operators from advertising and marketing to persons under twenty-one years of age and limit the dissemination of marketing information at certain venues, including schools and college campuses. As written, the prohibitions are broad and when read literally are not necessarily limited to sports wagering, or gaming-related advertisements. While Fanatics understands the presumed purpose and shares the goal of preventing the promotion of sports wagering to youth, the provisions as written are overly limiting. Particularly, Fanatics recommends that the Commission amend these subsections to remove any potential ambiguity and make clear that the</p>	<p>Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>

	rules relate solely to an operator's gaming-related business. Such a clarification would be timely and consistent with the scope and presumed objectives of the sports wagering statute given that as the gaming industry expands and new multi-dimensional and innovative companies enter the market, it is likely that such companies will seek to advertise and market their gaming business while also growing their non-gaming assets.	
256.05(4)(a)	Section 256.05(a) prohibits advertisements and promotions published or disseminated “in media outlets, including social media platforms, that are used primarily by individuals under twenty-one years of age.” This requirement is vague. We request that the Commission provide clearer guidance on the specific media outlets such content cannot be disseminated. It is well known that individuals under the age of 21 are active on many social media platforms, but it is nearly impossible for an advertiser to determine at any one time if such platform is “primarily” used by those underage. The Commission’s concern is valid, however, we advise that they provide operators and third-party advertisers more specific guidance media outlets and social media platforms that are strictly prohibited, and regularly update that guidance. Importantly, we note that social media, like affiliate marketing, is an effective way to advertise the legal and regulated market, thereby drawing individuals away from the illegal market and making regulators operators known to consumers.	Jeff Ifrah, iDevelopment and Economic Association
256.05(4)(a)	<p>The AGO appreciates the Commission’s efforts to protect underage youth from harmful exposure to sports wagering, which is a goal that we share. With that goal in mind, the Commission’s draft and emergency regulations should be strengthened.</p> <p>The Commission’s advertising regulations limit the placement of paid marketing and promotion in areas likely to be viewed by young people, including, for example, mass media with a young audience and outlets serving colleges and universities. These regulations should be amended to more directly address social media (e.g., Instagram and TikTok) and connected television platforms (e.g., YouTube TV and Hulu). Many such platforms allow individuals under a certain age (actual or predicted) to be excluded from an advertiser’s audience. Where</p>	M. Patrick Moore Jr., AGO

	<p>technically feasible, operators and their vendors should be mandated to exclude any age category that includes those under the age of 21. We understand from our diligence that certain operators would welcome this mandate. Where an operator can demonstrate that this type of exclusion is not feasible or available, however, operators should still not be permitted to promote or market on platforms where 25% or more of the audience is under 21, consistent with the standard for other marketing settings under the current draft regulations. This is particularly important given that operators are presently advertising through paid social media influencers who have potentially substantial underage audiences.</p> <p>Moreover, we urge the Commission to strengthen age verification protocols by amending 205 CMR 248.04 to clearly state the minimum standard of reliability and accuracy for age verification that operators must implement. The standard should be consistent with the highest level of accuracy and reliability in the digital age verification industry and incorporate protections against the unauthorized use of sports betting accounts by underage users (e.g., underage use of an account of an older sibling or friend).</p>	
256.05(4)(d) (now (e))	<p>Proposed: No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall be published, aired, displayed disseminated, or distributed:</p> <p>(d) on any college or university campus, <u>except for generally available advertising, including television, radio, and digital advertising;</u></p> <p>Comment: PENN recommends amending this rule to permit the presence of generally available television, radio, and digital advertising on college or university campuses in Massachusetts. Prohibiting advertisements from Massachusetts college or university campuses, generally, is overly restrictive as campus borders are often ambiguous and expand beyond areas predominantly utilized by college students and student-athletes. Additionally, the rule as currently written would result in a significant operational burden for Sports Wagering Operators to ensure</p>	PENN

	generally available advertisements on mediums such as television, radio, and social media are not able to be consumed on college or university campuses.	
256.05(4)(e)	Moreover, as to subsection (4)(e), Fanatics submits that the use of the phrase "presumed to be under 21" is ambiguous. Fanatics submits that the presumed intention of subparagraph (e) is captured in subparagraph (b), which prohibits advertising at events aimed at minors or where 25% or more of the audience is "reasonably expected" to be under twenty-one years of age. As such, Fanatics recommends that the Commission delete this language and instead rely upon the clear mandate set forth in subsection (b).	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")
256.05(5)	Proposing to add “knowingly” to state: “Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall not knowingly depict an individual who is, or appears to be, under twenty-one years of age, except live footage or images of professional athletes during sporting events on which sports wagering is permitted. Any individual under the age of twenty-one may not be knowingly depicted in any way that may be construed as the underage individual participating in or endorsing sports gaming.” BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM jess.panora@betmgm.com
256.05(6)	Proposing to add “knowingly” to state: “Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall not knowingly depict students, schools or colleges, or school or college settings.” BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM jess.panora@betmgm.com

256.05(7)	<p>Proposing to add “knowingly” to state: “Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall knowingly state that patrons must be twenty-one years of age or older to participate.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM</p> <p>jess.panora@betmgm.com</p>
256.06	<p>This rule, among other things, requires that marketing and advertising include a link to and phone number for the Massachusetts Problem Gambling Helpline, as well as state-specific problem gambling messages, regardless of whether the marketing and advertising is targeted to Massachusetts.</p> <p>Consistent with the approach accepted in numerous jurisdictions, Fanatics recommends that the Commission give operators the ability to use the "1-800 GAMBLER" number and message for national or regional advertisements. Fanatics submits that the requirement to list state-specific responsible gaming messages in national advertisements does not further operators' and regulators' shared goal of providing customers straightforward guidance on how to seek assistance with problem gaming. More particularly, Fanatics submits that permitting operators to utilize one helpline for national or regional advertisements will promote greater awareness, consistency in messaging and understanding by patrons of the resources available to persons in need of valuable problem gambling resources. To the contrary, a state-by-state approach on the issue risks creating confusion amongst patrons and makes responsible gaming disclosures on multi-state advertisements harder to read and quickly comprehend.</p> <p>Consistent with the above recommendations, Fanatics submits that the Commission should limit the express requirements in subsection (4)(d) (related to video and television responsible gaming messaging) and subsection (4)(e) (related to websites and social media responsible gaming messaging) to advertising specifically targeting the Massachusetts market or the promotion of Massachusetts-specific</p>	<p>Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>

	<p>offerings - as opposed to national or regional advertisements. Further to this point, Fanatics again submits that operators should be permitted to utilize national problem gambling messaging (i.e., 1-800 GAMBLER" number and message for national advertisements) when conducting multi-state marketing efforts on its websites and social media assets in order to permit easy viewing and comprehension of responsible gaming messaging, and in turn give patrons straightforward guidance on seeking assistance.</p> <p>Finally, as to subsection (e)(1), Fanatics recommends that the Commission replace the word "webpage" with "website." Fanatics understands the importance for operators to clearly and prominently display responsible gaming messaging. Fanatics believes that this amendment gives more flexibility to determine the appropriate placement of the messaging on the overall websites to meet that requirement. This will allow operators to effectively provide the requisite messaging to patrons in a location on the website that is easily accessible and in a manner that is most user friendly. In this regard, Fanatics suggests that the Federal Trade Commission's ("FTC") ".com Disclosures: How to Make Effective Disclosures in Digital Advertising" may provide additional guidance on the issue. The FTC's guidance provides that the use of hyperlinks to provide relevant disclosures (or by extension other means to provide disclosures in a manner that is one-click away) are particularly useful if a disclosure in question is lengthy or needs to be repeated. Fanatics submits that it should be permitted to use a similar approach for including responsible gaming messaging on advertisements on social media platforms as well.</p>	
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256.06	<p>iDEA is highly invested in providing consumers with meaningful and easily accessible resources in connection with responsible gaming. Section 256.06's requirement for Massachusetts specific messaging, along with the messaging length and font size requirements for responsible gaming messages, are not practical. A state specific messaging approach will be very difficult for multi-jurisdictional operators and advertisers and is ripe for unintended errors. Such operators and advertisers provide advertisements and promotional content nationally and/or throughout the legal wagering jurisdictions, and many forms of advertising that cross national or regional borders is not well suited for jurisdiction specific responsible gaming messaging.</p> <p>As stated above, when an ad contains too many disclaimers, they are more likely to be ignored or drowned out by the other messaging. Instead, iDEA suggests that the Commission follow in the footsteps of other states and allow advertisements to display the national hotline, 1-800-GAMBLER, at a minimum for advertisements that are intended to be deployed on a multi-jurisdictional basis. The national hotline is very effective in providing access to problem gaming resources. By using the national hotlines, it is less likely the important messaging will be lost, and the messaging will be more effective to those that require such assistance and guidance.</p> <p>Additionally, it is important to note that the provisions of Chapter 23N, Section(4)(d)(3) only require display of the "problem gambling hotline overseen by the department of health" to patrons "upon each entry into the application or platform." There is no requirement in statute to utilize the Massachusetts specific messaging in advertisements</p>	Jeff Ifrah, iDevelopment and Economic Association
256.06	<p>With respect to 205 CMR 256.06, while BC is strongly supportive of the display of responsible gaming messaging for all marketing materials, the length of the messaging and the font size requirements are practically very challenging. Furthermore, the requirement to use Massachusetts-specific language is impossible</p>	Katherine McCord, Better Collective USA, Inc.

	to implement across certain advertising mediums including direct marketing (such as emails) and social media posts.	
256.06(1)	<p>Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed exclusively or primarily at groups of people that are at moderate or high risk of gambling addiction. A Sports Wagering</p> <p>Operator shall not intentionally use characteristics of at-risk or problem bettors to target potentially at-risk or problem bettors with advertisements.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM</p> <p>jess.panora@betmgm.com</p>
256.06(1)	Subsection 256.06(1) prohibits certain advertising aimed at “moderate or high risk” individuals. We agree with the public comment provided by PENN that the current language is vague and seek further clarification on how “moderate” and “high risk” are defined.	Dave Friedman, Red Sox obo Broadcasters coalition
256.06(1) (<i>note</i> , moved down from 256.01 because I think this comment was misplaced)	Caesars supports operators taking full responsibility for the actions of their third-party marketing affiliates and efforts to protect the consumers, but this regulation does not provide further protections for the public and instead mandates contractual relationship terms between private parties. Many of the other provisions in the marketing regulations provide ample, and often best-in class, consumer protections. Further, the vagueness of the terms “moderate” and “high risk” renders this regulation inherently problematic. For example, if it were determined that males are at higher risk of gambling disorder than females, would an advertisement depicting just males be prohibited?	Curis Lane Jr., Caesars Sportsbook

	<p>If persons of color are at a higher risk of gambling disorder than persons not of color, would an advertisement depicting primarily group of people of color be prohibited?</p> <p>Caesars recommends deleting this regulation.</p>	
256.06(1)	<p>In addition, unfair and deceptive trade practices, like targeted marketing to at-risk populations, do not require proof of specific intent. It is enough that the business knew or should have known that its conduct reasonably could be perceived as unfair or deceptive. To this end, the word “intentionally” should be removed from 204 CMR 256.06(1); the phrase “in order to induce them to engage in Sports Wagering” should be removed from 205 CMR 256.04(1); and 205 CMR 256.09 should be expanded to specifically require compliance with Federal Trade Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255, or any later iteration.</p>	M. Patrick Moore Jr., AGO
256.06(2)	<p>Proposed: (2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator <u>targeted at Massachusetts residents</u> shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”). <u>Such materials not specifically targeted at Massachusetts residents that may be seen in Massachusetts shall include either: The Massachusetts Problem Gambling Helpline; the National Council on Problem Gambling’s twenty-four-hour confidential helpline; or another helpline approved by the Commission that is free of charge to the caller.</u></p> <p>Comment: DraftKings respectfully requests that the inclusion of the National Council on Problem Gambling’s 1-800-GAMBLER helpline be allowed as a substitution for the Massachusetts Problem Gaming Helpline in national advertisements. This inclusion is supported by the American Gaming Association,</p>	Draft Kings Inc.

	<p>has been approved for advertisements in other U.S. regulated sports wagering jurisdictions, including Ohio, and allows for consistency in advertising and clearer resources for players.</p> <p>The American Gaming Association (AGA) previously released a policy note to improve access and service for problem gambling that focused on how state-specific regulations have led to confusion and inconsistency in how operators must display problem gambling helpline disclaimers. Specifically, the AGA identified advertisements that listed each state specific problem gambling helpline number on national advertisements created diminished awareness, customer confusion, and outdated offerings. The policy note states, “The American Gaming Association and its members support utilizing national problem gambling helplines in national advertising campaigns to help consumers in need access support and resources quickly and efficiently.” As more jurisdictions request jurisdiction-specific information in national advertisements, the responsible gaming information included in those advertisements become lengthier, and thus more difficult for players to parse. This may result in a player being less likely to be able to identify the correct resource to contact, thus impeding access to that resource. DraftKings supports the AGA’s position, and our proposed language is adopted from Ohio’s regulations and provides the Commission discretion to approve additional gambling hotline numbers, and messages, for national advertising to provide clarity and streamlined messaging to players.</p>	
256.06(2)	<p><u>Proposed:</u> (2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health, <u>or a national toll-free problem gambling assistance hotline approved by the commission,</u> and such other information</p>	<p>Cory Fox, FanDuel Inc.</p> <p>cory.fox@fanduel.com</p>

	<p>regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”).</p> <p><u>Alternative Language:</u> (2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator solely within the commonwealth, shall include a link to and phone number for the Massachusetts</p> <p>Problem Gambling Helpline using language provided by the Department of Public Health and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”). All other advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator within the commonwealth, shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the</p> <p>Department of Public Health, or a national toll-free problem gambling assistance hotline approved by the commission, and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”))”</p> <p>Comment: Additionally, we would also urge the Commission to work with operators and the Department of Public Health on the appropriate language used in the “Responsible Gaming Message” to ensure that the length and message are both effective and appropriate in light of these considerations and the specific requirements around “Responsible Gaming Messaging” font size discussed in further detail in Issue 3 [205 CMR 256.06(4)] below.</p> <p>Comment: Section 205 CMR 256.06(2) of the Proposed Advertising Regulation requires that operators must include a responsible gaming message on all</p>	
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	<p>advertising, and that such responsible gaming message must include the contact information of the Massachusetts Problem Gambling Helpline¹.</p> <p>While we wholeheartedly agree with including a responsible gaming message along with contact information for a resource where individuals can seek assistance with problem gambling issues, the requirement to only use a jurisdictionally specific number on all advertisements poses significant issues for multi-state operators, especially those who are, or will be, advertising nationally and/or throughout New England and the northeast specifically.</p> <p>While copy for billboards and other out-of-home advertisements can be designed in a jurisdictionally specific format, other forms of advertising on a national or regional level crosses borders (radio, tv, social media, podcasts, etc.) and is not best suited to require jurisdictionally specific responsible gambling messages and use of state hotlines. What happens in these forms of advertising is that numerous state disclaimers are added which leads to each individual state responsible gaming message being ignored as it is drowned out by the others. For example, it takes almost 40 seconds for a host to read through a standard listing of responsible gambling messages for an advertisement during a podcast.</p> <p>We wish to work with the Commission on a solution that ensures listeners and viewers receive pertinent information on how to access problem gambling assistance in a way that reduces the likelihood of audiences “tuning out” while a long listing of jurisdictionally specific messages are presented to them. There are national hotlines, like 1-800-GAMBLER, which have been authorized by other jurisdictions and provide access to problem gambling resources. We suggest that the Commission consider allowing operators to utilize this resource, at a minimum for advertisements that will be transmitted across multiple jurisdictions.</p>	
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256.06(2)	<p>Proposed: 2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline, or a national problem gambling helpline, using language provided by the Department of Public Health and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”).</p> <p>Comment: National leaders in responsible and problem gaming have requested the industry use the national 1-800 number where possible to create consistency and to allow the experts there to direct customers to the best local resources. This has become an industry best practice.</p>	<p>Curis Lane Jr., Caesars Sportsbook</p>
256.06(2)	<p>Subsection 256.06(2) requires advertising on behalf of any Sports Wagering Operator to include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health. The coalition agrees with various Operators’ requests that the inclusion of the National Council on Problem Gambling’s 1-800-GAMBLER helpline be allowed as a substitute for the Massachusetts Problem Gambling Helpline in national advertisements.</p>	<p>Dave Friedman, Red Sox obo Broadcasters coalition</p>

256.06(2)	<p>Proposed: Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health.</p> <p>PENN recommends removing "branding" from this regulation to align with industry standards in regards to sponsorship and brand signage. As sponsorship and brand signage solely contains a Sports Wagering Operator's logo, there is no call-to-action for patrons to engage in sports wagering. PENN is not aware of any other jurisdiction which requires a responsible gaming disclaimer be present on sponsorship and brand signage. Requiring a responsible gaming disclaimer any time a Sports Wagering Operator's logo appears without a marketing or advertising message to engage in sports wagering is overly burdensome, as it materially alters a Sports Wagering Operator's intellectual property and its ability to use it in non-advertisement materials.</p> <p>By way of example, as currently written, this regulation would require a T-shirt (or other merchandise) containing a Sports Wagering Operator's logo with no call-to-action to engage in sports wagering to include a responsible gaming disclaimer. Such merchandise is not an advertisement for sports wagering and thus should not be mandated to alter the display of the Sports Wagering Operator's intellectual property.</p>	PENN
256.06(4)	<p>Comment: WynnBET strongly supports the display of responsible gaming messaging for marketing materials. However, the length of the responsible gaming messaging and font size requirements would significantly impact our ability to utilize billboards, radio, and television media. WynnBET respectfully asks for reconsideration of these requirements. In addition, WynnBET does not have any way to control or prevent a VSE from observing an "unsolicited pop-up</p>	Jennifer Roberts, General Counsel, VP Wynnbet, WSI US, LLC, dba WynnBET

	advertisement” that is available to the general public through broad distribution channels.	
256.06 (4)	<p><u>Proposed:</u> Strike 205 CMR 256.06(4) in its entirety.</p> <p>Alternative Language: “(4) Information regarding the Problem Gaming Helpline and any other required responsible gaming information (“Responsible Gaming Messaging”) must also meet the following requirements:</p> <p>(a) For signs, direct mail marketing materials, posters and other print advertisements, the height of the font used to advertise Responsible Gaming Messaging must be the greater of:</p> <ul style="list-style-type: none"> i. The same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; or ii. 2% of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement. <p>(b) For billboards, the height of the font used for Responsible Gaming Messaging must be at least 5% of the height or width, whichever is greater, of the face of the billboard.</p> <p>(c) For digital billboards, Responsible Gaming Messaging must be visible for the entire time the rest of the advertisement is displayed.</p> <p>(d) For video and television, Responsible Gaming Messaging must be visible for either:</p> <ul style="list-style-type: none"> i. The entire time the video or television advertisement is displayed, in which case the height of the font used for Responsible Gaming Messaging must be at least 2% of the height or width, whichever is greater, of the image that will be displayed. 	<p>Cory Fox, FanDuel Inc.</p> <p>cory.fox@fanduel.com</p>

	<p>ii. From the first time Sports Wagering Equipment, a Sports Wagering Facility, a Sports Wagering Area or Sports Wagering is displayed or verbally referenced, and on a dedicated screen shot visible for at least the last three (3) seconds of the video or television advertisement. If the Operator elects to utilize this option, the height of the font used for Responsible Gaming Messaging:</p> <p>1. During the advertisement must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.</p> <p>2. On the dedicated screen shot must be at least 8% of the height or width, whichever is greater, of the image that will be displayed.</p> <p>(e) For web sites, including social media sites:</p> <p>i. Responsible Gaming Messaging must be posted in a conspicuous location on each webpage or profile page and on a gaming related advertisement posted on the webpage or profile page.</p> <p>ii. The height of the font used for Responsible Gaming Messaging must be at least the same size as the majority of the text used in the webpage or profile page.</p> <p>iii. For advertisements posted on the webpage or profile page, the height of the font used for Responsible Gaming Messaging must comply with subparagraph (ii) of this paragraph {the height required for signs, direct mail marketing materials, posters and other print advertisements}.</p>	
256.06(4)(b)	<p>Proposed: For billboards, the height of the font used for Responsible Gaming Messaging must be at least 5-2% of the height or width, whichever is greater, of the face of the billboard.</p> <p>Comment: PENN recommends reducing the sizing requirement to 2% to align with the sizing requirements for other print advertisements listed in 256.06(4)(d)(i). As</p>	PENN

	<p>the sizing requirement in 256.06(4)(d)(i) is a percentage of, and thus relative to, the height or width of print material, the responsible gaming disclaimer will proportionally increase with the print material. Accordingly, there is no reason for the percentage to increase as the size of the print material increases. In practice, 5% of the height or width (whichever is greater) of a billboard is extremely large and will dominate the copy of a billboard, especially when considering the length of the prescribed responsible gaming disclaimer in Massachusetts. This responsible gaming disclaimer sizing requirement for billboards is only present in Pennsylvania, where the responsible gaming disclaimer is materially shorter than that prescribed in Massachusetts.</p>	
256.06(4)(e)(i)	<p>Comment: DraftKings respectfully requests that the Commission clarify that, while operators should include responsible gaming messages on social media sites, they are not required to use responsible gaming messaging specific to Massachusetts.</p> <p>No other jurisdiction requires a jurisdiction-specific responsible gaming messaging to be utilized on third party websites, including in profiles. Additionally, character limitations in profiles on third party websites, including social media pages, make it impossible for operators to include responsible gaming messages for specific jurisdictions</p>	Draft Kings Inc.
256.06(4)(e)(i)	Requesting to change “webpage” to “website”	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")
256.07(1)	<p>Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly allow, conduct, or participate in any advertising, marketing, or branding for sports wagering that is aimed at persons who have enrolled in a Self-Exclusion Program pursuant to 205 CMR 233.”</p>	Jess Panora, BetMGM

	BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	
256.07(2)	<p>Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly direct text messages or unsolicited pop-up advertisements on the internet to an individual in the Self-Exclusion Program or shall knowingly allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p> <p>Question: Looking for more clarity on what they deem “unsolicited pop-up advertisements” and the process around this. If these are general advertisements on the internet it would be extremely hard/almost impossible to control these being seen by self-excluded person.</p>	Jess Panora, BetMGM
256.07(2)	<p>Proposed: (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for sports wagering that is aimed at persons who have enrolled in a Self-Exclusion Program pursuant to 205 CMR 233.</p> <p>(2) No Sports Wagering Operator shall direct text messages or unsolicited pop-up advertisements on the internet to an individual in the Self-Exclusion Program or shall allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions.</p> <p>Comment: DraftKings respectfully requests that the Commission remove the reference to “unsolicited pop-up advertisements.” Operators understand their responsibility to not direct advertisements to individuals on a self-exclusion list, however, it is not clear what is meant by “unsolicited pop-up advertisements,” nor</p>	Draft Kings Inc.

	<p>what it would mean to “direct” such an advertisement to a person in the Self-Exclusion program.</p> <p>While operators work with their advertising partners to ensure that individuals on the self-exclusion list are not directly marketed to, operators have limited to no ability to control who sees a general advertisement online, and thus cannot prevent individuals who have self-excluded from seeing them.</p> <p>Additionally, the provisions of this section are already covered by the prohibitions in 205 CMR 256.07(1). Eliminating the vagueness presenting in 205 CMR 256.07(2) will not have any negative effect on consumer protections in Massachusetts.</p>	
256.07(2)	<p>Subsection (2) prohibits sports wagering operators from directing text messages or "unsolicited pop-up advertisements on the internet" to individuals in the self-exclusion program. Fanatics recommends that the Commission amend this rule to replace "unsolicited pop-up advertisements," with "directed marketing to Massachusetts residents." Digital companies, whether gaming businesses or otherwise, in almost all cases do not have the ability to determine the identity of the person receiving a non-targeted marketing pop-up, and by extension whether the recipient of such a pop-up is a self-excluded person. By focusing this requirement toward directed marketing activities, operators would still be prohibited from directly advertising to persons known to be self-excluded, which is consistent with requirements in other sports wagering jurisdictions.</p>	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")
256.07(2)	<p>Proposed: “(2) No Sports Wagering Operator shall direct text messages [or unsolicited pop-up advertisements on the internet] to an individual in the Self-Exclusion Program or shall allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions. <u>A Sports Wagering Operator shall not be found to have violated this</u></p>	Cory Fox, FanDuel Inc. cory.fox@fanduel.com

	<u>provision if the individual did not provide the phone number at which the text message was received when entering the Self-Exclusion Program.”</u>	
256.07(2)	We additionally note with respect to 205 CMR 256.07(2) that preventing unsolicited pop-up advertisements from being shown to self-excluded persons is not technologically possible.	Katherine McCord, Better Collective USA, Inc.
256.07(2)	Subsection 256.07(2) prohibits direct text messages or unsolicited pop-up advertisements to an individual in the Self-Exclusion Program from any Operator, affiliated entity, or third party. We support the goal of preventing sports wagering advertising from reaching individuals in the Program. We share the concerns raised by Operators in their public comments, however, regarding the technical feasibility of implementing this provision (e.g., similar name issues, privacy restrictions) and seek clarification on how the Commission believes such a system could be implemented. At the very least, a standard based on knowledge or intent should be added.	Dave Friedman, Red Sox obo Broadcasters coalition
256.08 (1)	<p>Proposed: No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that obscures the game play area of at a live sporting event or obstructs the viewer experience at a sports event game in progress.</p> <p>Comment: PENN recommends amending this rule as the current requirement is not supported by M.G.L. c. 23N, Section 4(c)(C). Pursuant to the language of Section 4(c)(C), the Commission is to promulgate rules to prohibit "any form of advertising, marketing or branding that the commission deems unacceptable or disruptive to the viewer experience at a sports event" (emphasis added); however, the current language of 256.08(1) can reasonably be interpreted as imposing requirements on the broadcast or other display of a live sports event. As there is only statutory support for the Commission to determine what is unacceptable or disruptive to the viewer experience at a live sports event, PENN recommends</p>	PENN

	amending this rule so that it is narrowly tailored and aligns with the intent of M.G.L. c. 23N, Section 4(c)(C).	
256.08(1)	Subsection 256.08(1) relates to “obscur[ing]” game play area or “obstruct[ion]” of a game in progress. The Commission’s legal counsel acknowledged that “[w]hile this section fulfills the Commission’s statutory mandate, [it] may be on constitutionally shaky ground.” And we appreciate that several Commissioners expressed concerns about the section’s lack of clarity during the open meeting on January 12. We trust that the Commission will be reasonable in its interpretation of this section and will not call into question widely used advertising displays such as physical or virtual signage on venue walls, dasher boards, on-screen scrolls, etc., and we ask only that the Commission engage with relevant stakeholders before taking any relevant interpretive or enforcement action.	Dave Friedman, Red Sox obo Broadcasters coalition
256.08 (1)	Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that obscures the game play area of a sporting event or obstructs a game in progress.” BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM
256.08(2)	Proposing to add “knowingly” to state: “Advertisements for Sports Wagering may not knowingly be placed at a sports event with such intensity and frequency that they represent saturation of that medium or become excessive.” BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM

256.08(2)	<p>Comment: Section 205 CMR 256.08(2) of the Proposed Advertising Regulation prohibits advertising being placed at a sports event “with such intensity and frequency that they represent saturation of that medium or become excessive.” While we understand the underlying concern of the Commission, we find it important to point out that this will be a competitive market for operators, who will be advertising significantly to draw customers from the illegal market to the regulated market. While a single operator may place advertisements in relation to a sporting event that is nowhere near “saturation”, they are unable to control what other operators will do. It is not possible for sports wagering operators to control what may feel to some as “saturation” of sports wagering advertisements, when those advertisements are coming from many different companies. We urge the Commission to provide further clarification on what they consider “saturation.”</p>	<p>Cory Fox, FanDuel Inc. cory.fox@fanduel.com</p>
256.09	<p>To avoid any future, incorrect argument otherwise from regulated entities, the Commission should expressly state that its regulations, and particularly those related to advertising and marketing, are in addition to, and are not intended to displace, the Commonwealth’s preexisting and extensive consumer protection laws. Those laws include without limitation the Massachusetts Consumer Protection Act, G.L. c. 93A, and regulations established by our Office under that Act. The Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), and the regulations and guidance interpreting that statute also apply. The Commission should ensure that its regulations are consistent with these and other existing laws and regulations.</p>	<p>M. Patrick Moore Jr., AGO</p>

256.10(1)	<p>Proposed: (1) Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials intended to promote any Sports Wagering within the Commonwealth, including a log of when, how, and with whom, those materials have been published, aired, displayed, or disseminated, for six (6) years. A Sports Wagering Operator shall also grant the Commission access to <u>such log of all social media posts</u> utilized by the licensee <u>for advertising, marketing, and branding purposes</u>.</p> <p>Comment: DraftKings respectfully requests that the Commission amend this section to clarify Commission access to social media platforms. The term “utilized by the licensee” is broad and undefined. This could include customer experience accounts, which deal with individual customers and can include private information in direct messages. “Utilized by the licensee” could also be construed to include any personal social media accounts of company executives, who may promote the company on their personal channels. DraftKings requests an amendment to limit this to the promotional log detailing posts expressly used for advertising, marketing, and branding purposes.</p> <p>Additionally, DraftKings requests an amendment to clarify that “access” means specifically to view a log of what the accounts have publicly posted. As written, it is not clear if the Commission requests the ability to view all posts by accounts utilized by the licensee for marketing purposes, or if the Commission requests login credentials for each licensee for all social media accounts used for marketing purposes. If the latter, DraftKings would request establishment of a detailed process for access that would include but not be limited to detailed information as to reasons for access, the level of access required, the process by which the Commission would gain access, and procedures for the operator to be able to safeguard information.</p>	Draft Kings Inc.
256.10(1)	Proposed: (1) Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials intended to promote any	PENN

	<p>Sports Wagering within the Commonwealth, including a log of when, how, and with whom, those materials have been published, aired, displayed, or disseminated, for six (6) years. A Sports Wagering Operator shall also grant the Commission access to all social media platforms utilized by the licensee.</p> <p>Comment: PENN recommends removing the requirement to maintain such a detailed log of marketing activity in the Commonwealth as it is overly burdensome and does not align with industry standards. PENN operates online sports wagering in 15 jurisdictions, and Illinois is the only jurisdiction that requires such a cumbersome log for advertisements. As currently written, the required fields for the log imposed in this regulation do not impact whether such advertising, marketing, or branding is compliant with the regulations and tracking all such information is operationally burdensome.</p>	
256.10(1) -(2)	<p>Subsection 256.10(1), as written, requests Commission access to all social media platforms “utilized by” Operators. We would appreciate clarification on what social media platforms the Commission expects to access, how such access is granted, and if this access differs from the Commission viewing a public social media page. On Subsection 256.10(2), we request clarification as to what entity is responsible for providing the Commission any advertising materials or logs and believe the obligation should reside with the Operator.</p>	Dave Friedman, Red Sox obo Broadcasters coalition
256.10(1) -(2)	<p>Comment: Subsection (1) requires operators to maintain all promotional materials for six years. Fanatics submits that this rule is unnecessarily burdensome for operators and not in accordance with market standards. As such, Fanatics respectfully recommends that the Commission adopt a two-year retention standard,</p>	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")

	<p>which is in line with the rules in other jurisdictions that have recently adopted robust advertising regulations, such as Ohio.</p> <p>Subsection (2) requires operators to make advertising and marketing materials available to the Commission or its agents upon request. Fanatics recommends that the Commission amend this subsection to clarify that operators are only required to give "read only" access to social media accounts and not control of such accounts. Such access controls would not undermine the purpose of the rule.</p>	
256.11(3)	<p>Proposed: (3) The Commission may, in addition to, or in lieu of, any other discipline, require an Operator that violates this section 205 <u>CMR</u> 256 to provide electronic copies of all advertising, marketing and promotional materials developed by or on behalf of the Operator to the Commission at least ten (10) business days prior to publication, distribution or airing to the public.</p> <p>To date, operators have been directed by Commission staff to submit all promotional materials ten days prior to publication. The Commission has not issued any regulation that operators must submit all promotional materials ten days prior to publication outside of this section, which only provides the Commission an option to enact such a requirement as part of an enforcement action.</p> <p>DraftKings respectfully requests that the Commission only apply the ten-day requirement in line with this section - to operators who are the subject of enforcement actions, and where the Commission specifically determines that such pre-approval is warranted.</p> <p>Providing all materials ten days in advance of publication would be exceptionally burdensome and would prevent operators from marketing certain events. For example, the NBA Finals may go</p>	Draft Kings Inc.

	<p>to a game seven, which could not be known to operators 10 days in advance. Operators would be unable to advertise or offer such promotions.</p> <p>Additionally, there is no need for preapproval for all operators for oversight purposes, as operators are already required by 205 CMR 256.10(1) to retain all advertising, marketing, and promotional materials. The Commission already has access to those materials to ensure that operators follow these regulations, and the Commission has remedies in cases where an operator does not follow the regulations.</p> <p>Finally, there is one typographical error in the draft rule, corrected below.</p>	
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From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:47:21 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Emaild.prestwood@draftkings.com**Regulation**

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.11(3)

Comments

There is one typographical error in the draft rule, where “205 CR 256” should read “205 CMR 256”.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:46:27 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Email

d.prestwood@draftkings.com

Regulation

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.07(2)

Comments

DraftKings respectfully requests that the Commission remove the reference to “unsolicited pop-up advertisements.” Operators understand their responsibility to not direct advertisements to individuals on a self-exclusion list, however, it is not clear what is meant by “unsolicited pop-up advertisements,” nor what it would mean to “direct” such an advertisement to a person in the Self-Exclusion program.

While operators work with their advertising partners to ensure that individuals on the self-exclusion list are not directly marketed to, operators have limited to no ability to control who sees a general advertisement online, and thus cannot prevent individuals who have self-excluded from seeing them.

Additionally, the provisions of this section are already covered by the prohibitions in 205 CMR 256.07(1). Eliminating the vagueness presenting in 205 CMR 256.07(2) will not have any negative effect on consumer protections in Massachusetts.

Proposed Final Rule Language (replacing "unsolicited pop-up advertisements" with "advertising"):

(1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for sports wagering that is aimed at persons who have enrolled in a Self-Exclusion Program pursuant to 205 CMR 233.

(2) No Sports Wagering Operator shall direct text messages or advertising on the internet to an individual in the Self-Exclusion Program or shall allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:43:53 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Email

d.prestwood@draftkings.com

Regulation

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.06(4)(e)(i)

Comments

DraftKings respectfully requests that the Commission clarify that, while operators should include responsible gaming messages on advertising on social media sites, they are not required to use responsible gaming messaging specific to Massachusetts on profile pages.

No other jurisdiction requires a jurisdiction-specific responsible gaming messaging to be utilized on third party websites, including profiles. Additionally, character limitations in profiles on third party websites, including social media pages, make it impossible for operators to include responsible gaming messages for specific jurisdictions.

Proposed Final Rule Language:

i. Responsible Gaming Messaging must be posted on each gaming related advertisement posted on the webpage.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:41:58 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Email

d.prestwood@draftkings.com

Regulation

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.06(2)

Comments

DraftKings respectfully requests that the inclusion of the National Council on Problem Gambling's 1-800-GAMBLER helpline be allowed as a substitution for the Massachusetts Problem Gaming Helpline in national advertisements. This inclusion is supported by the American Gaming Association, has been approved for advertisements in other U.S. regulated sports wagering jurisdictions, including Ohio, and allows for consistency in advertising and clearer resources for players.

The American Gaming Association (AGA) previously released a policy note to improve access and service for problem gambling that focused on how state-specific regulations have led to confusion and inconsistency in how operators must display problem gambling helpline disclaimers. Specifically, the AGA identified advertisements that listed each state specific problem gambling helpline number on national advertisements created diminished awareness, customer confusion, and outdated offerings. The policy note states, "The American Gaming Association and its members support utilizing national problem gambling helplines in national advertising campaigns to help consumers in need access support and resources quickly and efficiently." As more jurisdictions request jurisdiction-specific information in national advertisements, the responsible gaming information included in those advertisements become lengthier, and thus more difficult for players to parse. This may result in a player being less likely to be able to identify the correct resource to contact, thus impeding access to that resource.

DraftKings supports the AGA's position. The proposed language is adopted from Ohio's regulations, and provides the Commission discretion to approve additional gambling hotline numbers, and messages, for national advertising to provide clarity and streamlined messaging to players.

Proposed Final Rule Language:

(2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator targeted at Massachusetts residents shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health and such other information regarding responsible gaming as required by the Commission ("Responsible Gaming Messaging"). Such materials

not specifically targeted at Massachusetts residents that may be seen in Massachusetts shall include either: The Massachusetts Problem Gambling Helpline; the National Council on Problem Gambling's twenty-four hour confidential helpline; or another helpline approved by the Commission that is free of charge to the caller.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:39:08 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Emaild.prestwood@draftkings.com**Regulation**

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.04(5)(b)

Comments

DraftKings respectfully requests that the Commission strike this section of the proposed rules, as terms of promotion are readily available on the website and in the app whenever a customer views or selects a promotion. The availability of terms moots the need for an additional popup.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:38:04 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Email

d.prestwood@draftkings.com

Regulation

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.04(4)

Comments

DraftKings respectfully requests that the Commission clarify and amend this section to ensure that it does not capture routine statements about sports wagering, or sports wagering analysis by media.

From time to time, employees of operators and personalities affiliated with operators are active on social media, posting their active wagers, thoughts on bets, and so on. DraftKings would argue that none of the following examples should be captured by the proposed rule:

- An operator executive attends a Celtics game, and before the game tweets “We put the line at Celtics -4 tonight, but the way they’ve been playing it should be Celtics -75.”
- A low-level employee replies to a tweet about the Super Bowl with, “the Patriots are a lock to win the 2024 Super Bowl. Count on it.”
- A vendor employee posts a screenshot of their active wagers before games begin, and says “I’m feeling really good about these!”

As written, this section could be read to prohibit pre-made same-game parlay bets offered by an operator, as that could be encouragement to place a specific wager, which DraftKings does not believe is the intention of the proposed rule.

Further, by way of example, DraftKings owns VSIN (Vegas Sports Information Network, Inc.), which is a multi-platform broadcast and content company that delivers sports wagering news, analysis, and data. VSIN produces up to 18+ hours of live sports wagering content each day. It operates a 24/7 stream of content, and is accessible through multiple video and audio channels, including on NESN and other platforms in Massachusetts. VSIN maintains editorial independence, but its on-air talent are all DraftKings employees who discuss, advise, and encourage bets on specific markets. DraftKings respectfully submits that the proposed rule should not prohibit the manner in which VSIN operates.

Proposed Final Rule Language (adding a clarifying clause in the final sentence):

(4) No employee or vendor of any Sports Wagering Operator shall advise or encourage individual patrons to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit

general advertising or promotional activities, including wager types offered by operators and sports wagering industry media coverage.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 4:56:32 PM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Email

d.prestwood@draftkings.com

Regulation

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.05(1), 256.06(2)

Comments

DraftKings respectfully requests that the Commission clarify the intended scope of "branding" in these sections.

No jurisdiction requires all branding to include an age limitation and responsible gaming message for patrons, instead only applying provisions to advertisements and other calls to action. An advertisement encouraging individuals to visit an operator's website, download an app, or deposit funds should require age limitation information and a responsible gaming message, but a company or product logo in the absence of a call to action should not. DraftKings respectfully requests that Massachusetts adopt this line of reasoning.

Without such a clarification, the plain language of the rule would require any branding to include age limitation information and a responsible gaming message. That could include employee business cards, company letterhead, t-shirts given to employees, and building signage. Additionally, this language does not limit its application to Massachusetts, which is especially problematic in jurisdictions where the legal wagering age is not 21, and the particular responsible gaming message would not be applicable. No other jurisdiction requires anything of this kind.

Finally, Massachusetts casinos are not required to include an age limitation and responsible gaming message on all branding. Adult beverage companies are not required to include an age limitation or responsible consumption message on all branding. Sports wagering operators should not be held to a separate standard.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 8:33:39 PM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

BETMGM LLC

Name

Jess Panora

Email

jess.panora@betmgm.com

Regulation

205 CMR 256: Sports Wagering Advertising

Subsection

256.01: Third Parties

Comments

BetMGM Response to MA Rev Share:

Affiliate Marketing, where 3rd-party partners market our product using specified tracking links, is essential to the health of BetMGM's business and the entire industry. Without the ability to tactfully pay our partners for their acquisition efforts, we will be forced to dial back or completely cease the affiliate channel in the state. This could potentially:

a. Allow Illegal Operators to Flourish

Models that do not allow performance-based metrics such as CPA or rev share will cause operators to not partner with as many third-party affiliates because the marketing spend is not as efficient or effective.

b. Discouraging affiliates from participating in the market by limiting compensation models allows offshore operators to flourish. Diverting consumers from the regulated market decreases legitimacy and compliance and reduces tax revenue for the state.

c. Adds to patron confusion as to who is regulated and who is not – 3rd party affiliate marketing legitimizes the market.

d. Allowing performance-based metrics and rev share models allows for the largest number of third-party marketing affiliates across the largest number of sportsbooks. This increases consumer choice;

2. Education: Player Education and Responsible Gaming

a. Without this crucial channel, acquisition across the industry will undoubtedly drop as many people rely exclusively on third party websites, blogs, influencers, and newsletters for impartial and trustworthy information about sports wagering.

b. Operators rely heavily on these partners for promotion of offers and player education. Many sites provide tools and guides to educate players on offers, bet types, and responsible gaming tactics that act to inform users before they make the choice to become an active player.

c. Affiliates are also essential in disseminating updated regulations, disclaimers, products and offers, which in turn keeps the industry current and promotes responsible gaming.

3. Massachusetts State Play Dropoff

a. With sports betting now accessible in surrounding states, players who are not incentivized by third-party sites to bet in MA, will filter to NJ, PA, NY etc. to complete wagers, in turn diverting funds from the MA gov.

4. Reduced Opportunity for Local / Smaller / Diverse 3rd Party Affiliates

- a. Models allowing performance-based metrics increase the ability for operators to contract with smaller, local, and diverse third-party marketing affiliates, allowing additional opportunity for Massachusetts-based companies to participate in the sports wagering industry and MA market.
- b. Without performance-based metrics such as rev. share, operators are likely to consider a reduction in marketing spend and allocate their marketing budgets toward paid advertising channels such as mainstream television, that receive more viewership. This will increase the visibility of sportsbook advertisements in mainstream media for the larger operators. This will reduce visibility of the smaller operators who are not competing for mainstream television spend.



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed adoption of **205 CMR 256.00: Sports Wagering Advertising**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 256.00.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23N, §4.

205 CMR 256.00 will pertain to the promotional communications and advertisements produced by Sports Wagering Operators licensed by the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses.

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

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

As a general matter, the Commission does not anticipate that small businesses will be negatively impacted by this regulation. As a result, less stringent compliance or reporting requirements for small businesses have not been established.

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

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

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

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

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

The proposed regulation prescribes performance-based standards.



Massachusetts Gaming Commission

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

The promulgation of this regulation is not likely to deter nor encourage the formation of new businesses in the Commonwealth.

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

The Commission does not anticipate that small businesses will be impacted by this regulation, however alternative regulatory methods have been heavily discussed by the Commission, and relevant stakeholders. The provisions of the final regulations are intended to produce a minimal adverse impact or hardship on small businesses and Operators.

Massachusetts Gaming Commission
By:

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

Dated: March 23, 2023



Massachusetts Gaming Commission



Division of Racing

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

FROM: Alexandra Lightbown, Director of Racing

CC: Karen Wells, Executive Director
Todd Grossman, General Counsel

DATE: March 23, 2023

RE: Plainridge Operating Personnel and Racing Officials

Dear Commissioners:

Plainridge Park Casino Director of Racing Steve O'Toole has submitted a request for approval of their Operating Personnel and Racing Officials dated March 14, 2023. These are the same personnel and officials that were approved by the Commission in 2022. They are in the process of applying for their 2023 licenses. The State police will conduct their background checks.

Recommendation: That the Commission approve the request of Plainridge Park Casino to approve their March 14, 2023 list of Operating Personnel and Racing Officials, pending satisfactory completion of licensure by the Massachusetts Gaming Commission Division of Racing and satisfactory completion of their background checks by the Massachusetts State Police.



Massachusetts Gaming Commission



PLAINRIDGE PARK
CASINO

March 14, 2023

Alexandra Lightbown
Director of Racing
Massachusetts Gaming Commission
101 Federal St.
Boston, MA 02110

Dear Director Lightbown,

Plainridge Park Casino respectfully requests approval of the following operating personnel and racing officials for the 2023 racing season;

OPERATING PERSONNEL

Steve O'Toole	Director of Racing
Lenny Calderone	Racing Services Manager
Andrew Tavares	Mutuel Manager
William Sullivan	Assistant Racing Services Manager
Joseph Pastela	Assistant Racing Services Manager

RACING OFFICIALS

Charles Eaton III	Presiding Judge
Paul Verrette	Racing Secretary
James Tomaso	Clerk of Course
Gregory Brewster	Paddock Judge
Richard Flanders	Starter / Patrol Judge
Lenny Calderone	Announcer
Dr. Jeremy Murdock	Racing Veterinarian
Chrissy Nadeau	Identifier
Joseph Pastela	Photo Finish / Timing
Steve O'Toole	Back up Presiding Judge & Starter / Patrol Judge
Andrew Tavares	Back up Photo Finish / Timing
William Sullivan	Back up Photo Finish / Timing
Brenda Fafard	Back up Photo Finish / Timing

Sincerely,

Steve O'Toole
Director of Racing
Plainridge Park Casino
Plainville Gaming and Redevelopment, LLC



Division of Racing

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

FROM: Alexandra Lightbown, Director of Racing

CC: Karen Wells, Executive Director
Todd Grossman, General Counsel

DATE: March 23, 2023

RE: Plainridge Waiver Request of 205 CMR 3:12 (7)

Dear Commissioners:

Plainridge Park Casino Director of Racing Steve O'Toole has submitted a request for approval of a waiver of 205 CMR 3:12 (7) for the 2023 racing season at Plainridge Park Casino.

205 CMR 3:12 (7) reads: "The Judges shall require all horses not showing a satisfactory racing line during the previous 30 days to go a qualifying mile in a race before the Judges. The Association may request a waiver of this requirement".

The requested waiver would change the requirement from 30 days to 45 days. Plainridge has requested this same waiver each year starting in 2018 and the Commission approved it each time. There have been no issues with this waiver.

Recommendation: That the Commission approve the request of Plainridge Park Casino of a waiver for the 2023 racing season with respect to 205 CMR 3:12 (7) which would require all horses not showing a satisfactory racing line during the previous 45 days to go a qualifying mile in a race before the Judges.



Massachusetts Gaming Commission



PLAINRIDGE PARK
CASINO

March 14, 2023

Alexandra Lightbown
Director of Racing
Massachusetts Gaming Commission
101 Federal St.
Boston, MA 02110

Dear Director Lightbown,

Plainridge Park Casino respectfully requests approval of a waiver for the 2023 racing season with respect to 205 CMR 3:12 (7) which would require all horses not showing a satisfactory racing line during the previous 45 days to go a qualifying mile in a race before the Judges.

205 CMR 3:12 (7) reads as follows;

(7) The Judges shall require all horses not showing a satisfactory racing line during the previous 30 days to go a qualifying mile in a race before the Judges. The Association may request a waiver of this requirement.

Sincerely,

Steve O'Toole
Director of Racing
Plainridge Park Casino
Plainville Gaming and Redevelopment, LLC



Division of Racing

MEMORANDUM

TO:	Massachusetts Gaming Commission
FROM:	Chad Bourque, Financial Analyst
SUBJECT:	Requests for Reimbursement Harness Horse Promotional Trust Fund
DATE:	March 16, 2023

In accordance with General Laws of Massachusetts, Chapter 128A, Section 5g.

The trustees may expend without appropriation all or any part of the promotional trust funds to the appropriate track licensee in proportion to the amount deposited in each fund for use in promotional marketing. The following promotional fund request has been reviewed.

HHPTF Requests for Reimbursement: 2022-02 and 2022-03

- | | |
|--|-------------|
| • #01: Pennultimate Handicapping Contest | \$25,000.00 |
| • #00: Survivor Handicapping Contest | \$2,500.00 |

Total Request for Reimbursement:	\$27,500.00
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All financial statements required under section 6 shall be accompanied by a statement signed under the pains and penalties of perjury by the chief financial officer of the licensee setting forth the promotions completed with funds obtained under this section.

The requests for consideration were approved by the Commission on 10/13/2022. After review and confirmation of the requests for reimbursement, with your authorization, we will make payment to the track.

Encl. plainridge_rfr_hhptf_2022_02_and_2022_03

Cdb



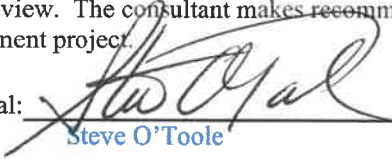
Massachusetts Gaming Commission



**Massachusetts Gaming Commission
Harness Horse Capital Improvement Trust Fund
Harness Horse Promotional Trust Fund**

1. Date: 3/14/2023
2. Association: Plainville Gaming & Redevelopment, LLC d/b/a/ Plainridge Park Casino
3. Project #: Plainridge HHPTF 2022-2
4. Project Description: PENNULTIMATE Handicapping Contest
5. Type of Request: RFR - HHPTF
 - Request for Consideration / RFC
 - Request for Reimbursement / RFR
 - Harness Horse Capital Improvement Fund / HHCIF
 - Harness Horse Promotional Trust Fund / HHPTF
6. Total Project Amount: \$25,000
 - Estimate / RFC - \$25,000
 - Actual / RFR -
7. RFC – Provide a detailed description of the promotional or capital improvement project including the project objectives, how it will enhance the operations of the association and / or improve attendance and handles at your racetrack:

RFR – Requests for reimbursement must contain a listing of all project expenditures by date, paid to and check number. A copy of the invoice and cancelled check must support each expenditure: In an effort to engage the racing patrons at Plainridge, a series of Handicapping Contests were held. Four (4) consecutive weekly handicapping contests on Saturdays, November 5, 12 & 19 for \$5,000, and Black Friday, November 25, 2022 for \$10,000. For a total of \$25,000.

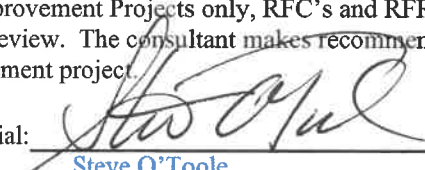
8. For Capital Improvement Projects only, RFC's and RFR's must be submitted to the Commission's architect engineer consultant for review. The consultant makes recommendations to the Trustees relative to the cost and nature of the capital improvement project.
9. By Track Official:  Title: Director of Racing Date: 3/14/2023
Steve O'Toole
10. Trustee Approval and Date:



**Massachusetts Gaming Commission
Harness Horse Capital Improvement Trust Fund
Harness Horse Promotional Trust Fund**

1. Date: 3/14/2023
2. Association: Plainville Gaming & Redevelopment, LLC d/b/a/ Plainridge Park Casino
3. Project #: Plainridge HHPTF 2022-3
4. Project Description: SURVIVOR Handicapping Contest
5. Type of Request: RFR - HHPTF
 - Request for Consideration / RFC
 - Request for Reimbursement / RFR
 - Harness Horse Capitol Improvement Fund / HHCIF
 - Harness Horse Promotional Trust Fund / HHPTF
6. Total Project Amount: \$2,500
 - Estimate / RFC - \$2,500
 - Actual / RFR -
7. RFC – Provide a detailed description of the promotional or capital improvement project including the project objectives, how it will enhance the operations of the association and / or improve attendance and handles at your racetrack:

RFR – Requests for reimbursement must contain a listing of all project expenditures by date, paid to and check number. A copy of the invoice and cancelled check must support each expenditure: In conjunction with the Standardbred Owners of Massachusetts, Inc., and in an effort to engage the racing patrons and bring awareness to the Massachusetts Breeders Program at Plainridge, a \$5,000 Survivor Handicapping Contest was held on Stakes Finals day, Monday, October 24, 2022. SOM, Inc. co-sponsored the contest with a \$2,500 contribution to the prize money. The contest featured live racing at Plainridge by using the entire program for the day.

8. For Capital Improvement Projects only, RFC's and RFR's must be submitted to the Commission's architect engineer consultant for review. The consultant makes recommendations to the Trustees relative to the cost and nature of the capital improvement project.
9. By Track Official:  Title: Director of Racing Date: 3/14/2023
Steve O'Toole
10. Trustee Approval and Date:



Division of Racing

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

FROM: Alexandra Lightbown, Director of Racing

CC: Karen Wells, Executive Director
Todd Grossman, General Counsel

DATE: March 23, 2023

RE: Suffolk Downs Request for Approval of DK Horse, LLC as an Advance Deposit Wagering (Account Wagering) Vendor

Dear Commissioners:

Suffolk Downs' Chief Operating Officer Michael Buckley has submitted a request for approval of DK Horse, LLC ("DK Horse") as one of their Advance Deposit Wagering (ADW) providers.

DK Horse, a subsidiary of Draft Kings, has a marketing affiliation with Churchill Downs Technology Initiatives Company (CDTIC). CDTIC operates the Twin Spires ADW platform that has been authorized in Massachusetts for years as an Advance Deposit Wagering provider. A document has been provided regarding the association between the two and the services provided by CDTIC. DK Horse has been approved in Oregon, Virginia, Minnesota and Montana. Past practice has been to reciprocate when Account Wagering providers are already operating in other jurisdictions. We do not have any information that there have been issues with account wagering by this provider. Please note that the below recommended approval is for Account Wagering purposes only, and has no bearing on any potential license application for other activity.

Recommendation: That the Commission approves the Suffolk Downs request for approval of DK Horse, LLC as one of their Advance Deposit Wagering vendors, for parimutuel wagering purposes only.

That if the above vendor accepts wagering in Massachusetts on greyhound dog racing, it do so only until August 1, 2023, consistent with Chapter 128 of the Acts of 2022.



Massachusetts Gaming Commission



February 27, 2023

Via email

Dr. Alex Lightbown
Director of Racing and Chief Veterinarian
Massachusetts Gaming Commission
alexandra.lightbown@massgaming.com

Re: Suffolk Downs's Request for Approval of DK Horse as an ADW Provider

Dear Dr. Lightbown:

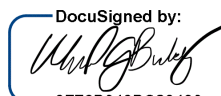
I write in accordance with 205 CMR 6.20 to request that the Commission approve DK Horse, LLC ("DK Horse") as an account wagering, or advance deposit wagering (ADW), vendor for Sterling Suffolk Racecourse, LLC ("Suffolk Downs") for 2023.

DK Horse is a subsidiary of Draft Kings. It has a marketing affiliation with Churchill Downs Technology Initiatives Company (CTDIC), which operates the Twin Spires ADW platform that has been an approved account wagering vendor in the Commonwealth for over a decade. The DK Horse app plans to launch in early 2023, subject to necessary regulatory approvals. As of now, DK Horse has been approved in Oregon, Virginia, Minnesota and Montana, and it has approval requests pending in several other jurisdictions.

CTDIC has informed us that parimutuel wagering on horse racing through the DK Horse-branded app will operate on the existing CTDIC infrastructure. CTDIC will host the patron accounts and wallets and provide KYC procedures and customer service. Wagering on DK Horse will utilize CTDIC's tote, streaming, data, settlement and related operations. We seek approval of DK Horse as an ADW provider for parimutuel wagering only.

CTDIC has provided the enclosed presentation to describe the relationship and how DK Horse will operate on its backbone. We are happy to provide any additional information or answer any questions you or the Commission may have in order to be able to act on this request. Thank you for your time and consideration.

Sincerely,

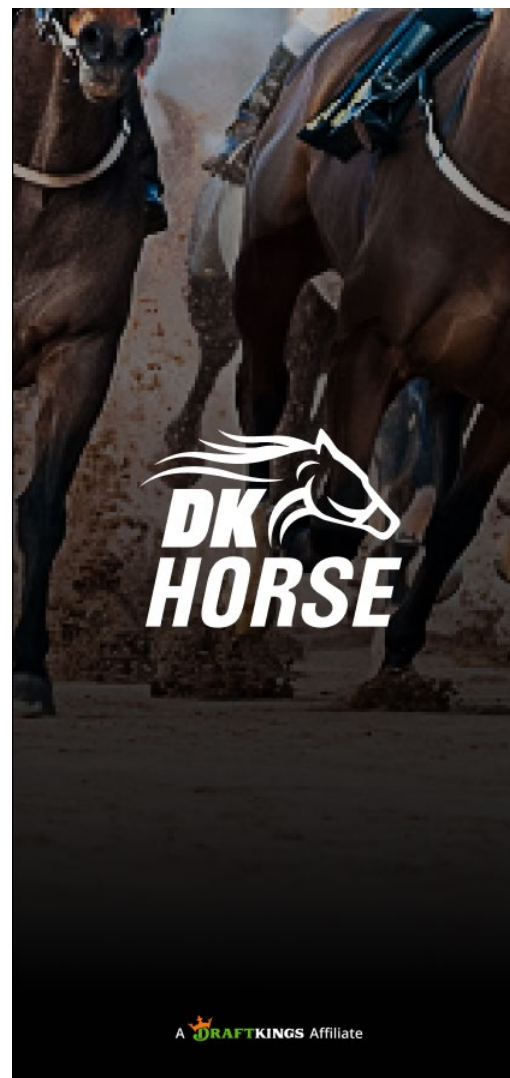
DocuSigned by:

9F76B849BC29498...
Michael Buckley
Chief Operating Officer



DK HORSE 



DK Horse, Affiliate of Churchill Downs Technology Initiatives Company (CDTIC)

- CDTIC, a wholly owned subsidiary of Churchill Downs Incorporated, owns and operates an Advance Deposit Wagering (ADW) platform
- CDTIC and its TwinSpires platform are recognized as a leader within the racing industry
- Under a technology and services agreement between CDTIC and DK Horse, LLC (a subsidiary of DraftKings), CDTIC plans to launch DK Horse as a white label affiliate in early 2023, subject to obtaining appropriate regulatory approvals
- As of Feb. 27, DK Horse has been approved to launch by regulators in Oregon, Virginia, Montana, and Minnesota with requests for approval pending in several additional jurisdictions





1

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CONTACTADDRESSACCOUNT

Sign up. Only takes a minute to join.

FIRST NAME

LAST NAME

EMAIL


OFFER CODE (OPTIONAL)

NEXT

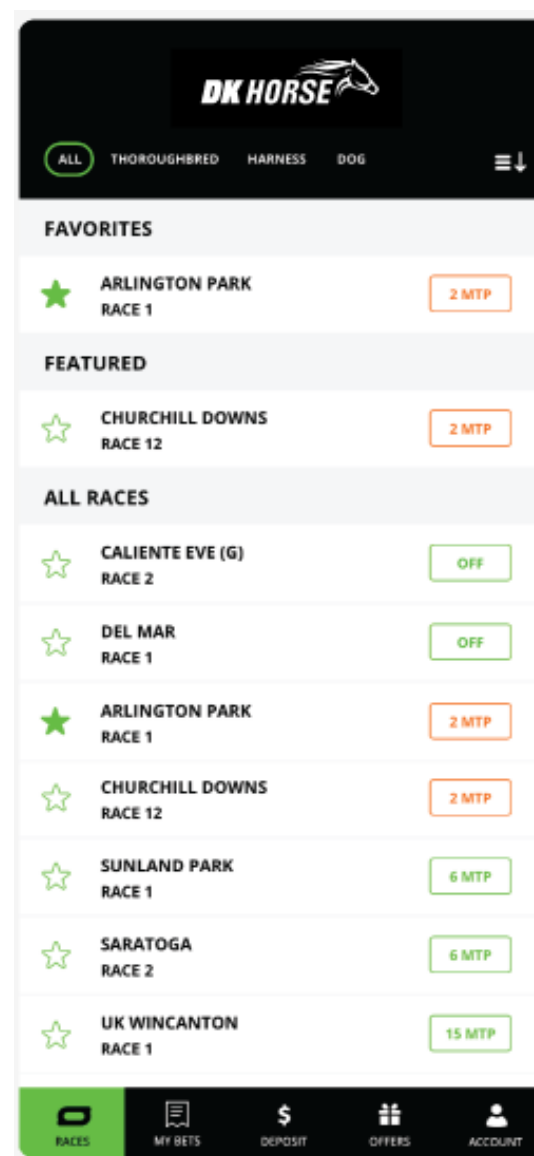
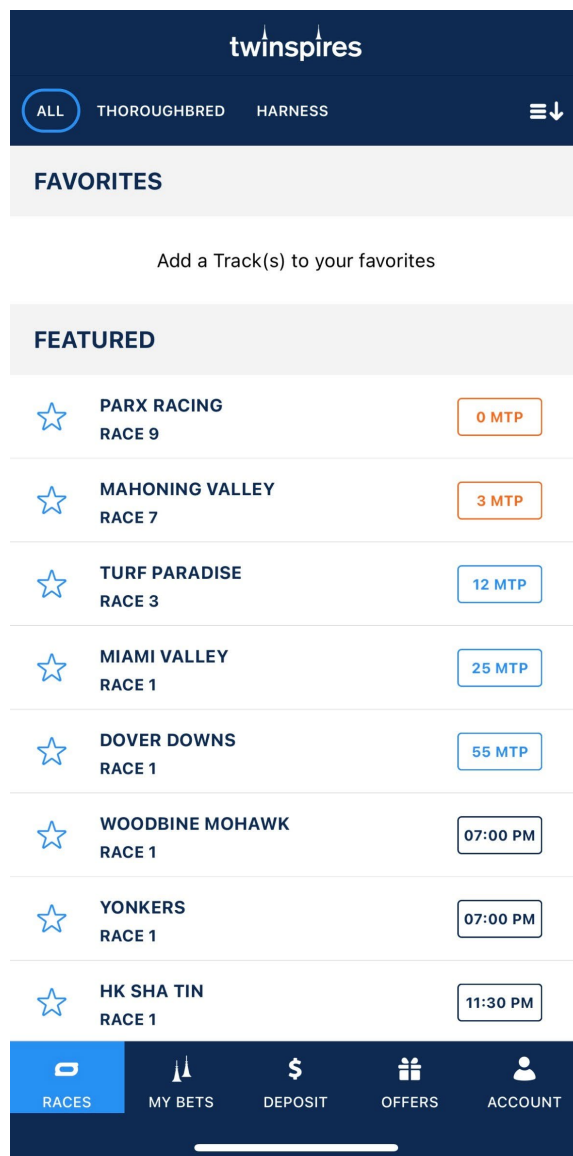
Please be advised that registering for DK Horse does not register you for any other DraftKings product and your DK Horse account is separate and distinct from any existing DraftKings account you may have.

Already have an account? [Login](#)

We safeguard your personal information with SSL encryption so that it cannot be read in transit by a third party.

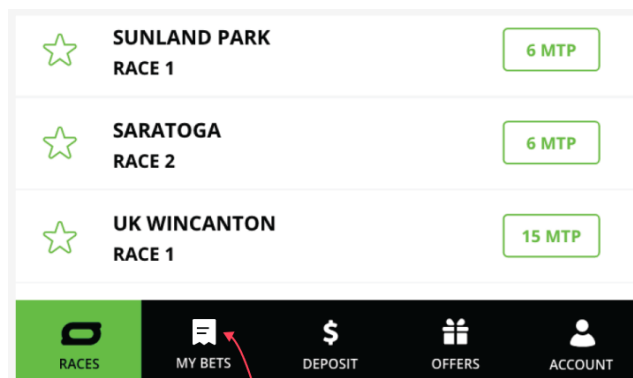
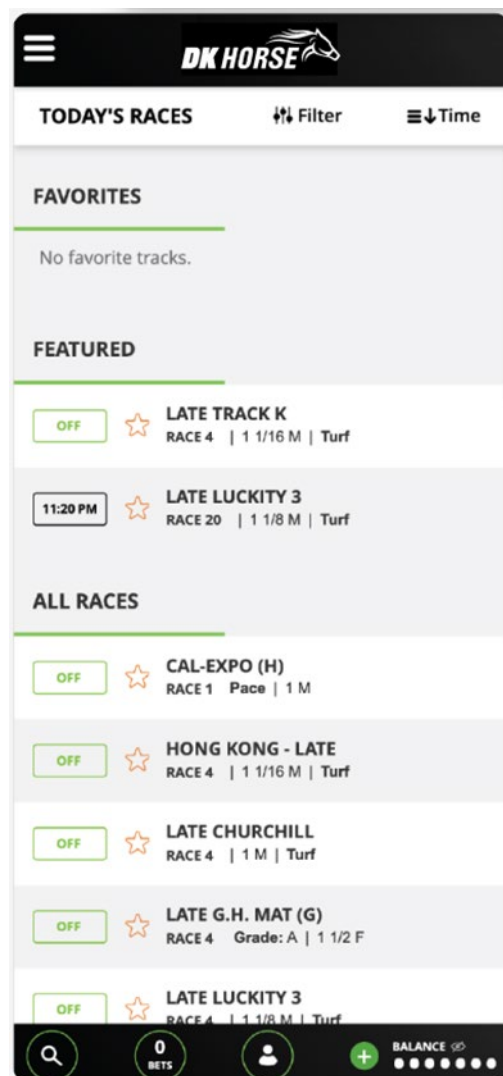
A  DRAFTKINGS Affiliate

DK Horse Utilizes Existing CDTIC Infrastructure



- DK Horse is a full white label affiliate which will utilize the existing CDTIC technology platform to grant customers to U.S. and international horse racing content and wagering (see comparison of CDTIC's TwinSpire interface to DK Horse interface, pictured at right)
- Via the partnership with CDTIC, DK Horse will bring the CDTIC platform and horse racing content to a new audience
- DK Horse will utilize the same CDTIC account creation and KYC procedures, all of which will be managed and operated by CDTIC
- All account funding and wagering mechanisms are also fully administered by CDTIC on CDTIC's technology platform

Customer Access to and Management of DK Horse



- Customers can access DK Horse via the www.dkhorse.com website or via mobile application
- DK Horse accounts and funds are separate from any other DraftKings offering, and existing DraftKings customers must create a separate DK Horse account
- After creating a DK Horse account, customers will have access to the “Today’s Races” menu managed by CDTIC and will have the ability to access video and handicapping content and wager on races
- CDTIC manages all customer service functions for DK Horse, with live chat and email customer service facilitated through CDTIC’s existing call center in Lexington, Ky.
- CDTIC and its finance team oversees and facilitates all settlements



Division of Sports Wagering



TO: Chair Cathy Judd-Stein
Commissioner Bradford R. Hill
Commissioner Jordan Maynard
Commissioner Eileen M. O'Brien
Commissioner Nakisha L. Skinner

FROM: Sterl Carpenter – Sports Wagering Operations Manager

CC: Karen Wells – Executive Director
Bruce Band – Sports Wagering Division Director

DATE: March 17, 2023

RE: Interpretation of Russian-Belarusian restriction language

Introduction:

On January 23, 2023, the commission adopted the sports wagering catalog for all licensees in the Commonwealth of Massachusetts. In doing so two motions were voted on. At 15:54, Commissioner Bradford R. Hill motions the removal of '*Wagers on any sports or sporting event overseen by Russian or Belarusian governing bodies, leagues, events and players are not allowed in the Commonwealth of Massachusetts.*'

Section 11 'Guidelines & Comments' tab in the sports wagering catalog:

The following question was brought to us by DraftKings:

Lastly, for the Russian and Belarus directive, we wanted to confirm that we may offer wagers (e.g. Tennis and MMA) on Russian players competing under a neutral flag.

They also provided what other states have used as language for this type of restriction:

** Note: Players from other countries who play under the affiliation of Russian and/or Belarussian governing bodies, leagues, teams or events **shall be prohibited** from sports betting wager offerings in Colorado. Conversely, Russian and/or Belarussian players who participate in sports for, governing bodies, leagues, teams (professional or amateur) or in events in other countries outside of Russia or Belarus shall be permissible wager offerings.*

Sports wagering and legal are asking greater clarity and a possible change in language to reflect a prohibition on Russian and Belarussian governing bodies statement.



Was the goal of this restriction to not apply to an individual(s) who are from Russia or Belarus participating in an approved event, but not representing or promoting said countries?

If the restriction was intended on just the countries and governing bodies and not the specific athletes who might be from these countries should the language in this section be replaced as follows:

Until further notice the following rules apply to all events overseen by Russian and Belarussian governing bodies:

Any events or leagues overseen by Russian and Belarussian governing bodies are not allowed to be offered in the Commonwealth of Massachusetts. Any athlete competing in an approved event or league representing Russia or Belarus would not be eligible for wagering. If an athlete from Russia or Belarus is competing in an approved event outside of these countries and not representing them, wagering on these athletes would be permitted.