



NOTICE OF MEETING AND AGENDA

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

Wednesday | July 12, 2023 | 10:00 a.m.
VIA REMOTE ACCESS: 1-646-741-5292
MEETING ID/ PARTICIPANT CODE: 112 517 7379
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 - #465

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

2. Administrative Update – Karen Wells, Executive Director

3. Legal – Todd Grossman, General Counsel, Caitlin Monahan, Deputy General Counsel, Carrie Torrisi, Deputy General Counsel
 - a. **205 CMR 222: Capital Investment and Monitoring of Project Construction** – Regulation and Amended Small Business Impact Statement for final review and possible adoption. **VOTE**
 - b. **205 CMR 239: Continuing Disclosure and Reporting Obligations of Sports Wagering Licenses** – Regulation and Amended Small Business Impact Statement for final review and possible adoption. **VOTE**
 - c. **205 CMR 256.01: Sports Wagering Advertising** – Regulation and Amended Small Business Impact Statement for final review and possible adoption. **VOTE**



Massachusetts Gaming Commission

4. Commissioner Updates

- a. Farewell to Executive Director Karen Wells – All Commissioners

5. 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: July 10, 2023 | 10:00 a.m. EST

July 10, 2023

Cathy Judd-Stein

Cathy Judd-Stein, Chair

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



Massachusetts Gaming Commission



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

FROM: Caitlin Monahan, Deputy General Counsel
Mina Makarious, Esq, Anderson & Kreiger

CC: Karen Wells, Executive Director

DATE: July 5, 2023

RE: 205 CMR 222, 239, and 256.01(3)

Enclosed for the Commission's review and final vote are three regulations:

- 205 CMR 222: *Capital Investment and Monitoring of Project Construction*
- 205 CMR 239: *Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees*
- 205 CMR 256.01: *Sports Wagering Advertising: Third Parties*

No changes are recommended to any of these regulations. When these regulations were last before the Commission, the Commission adopted 205 CMR 222 in whole. The Commission also approved the proposed amendments to 205 CMR 239 and 256.01(3). The adopted amendments can be seen in redline in the packet.

As of July 5, 2023, we have not received any public comments on these regulations. If any public comments are received, we will add them to the packet.



Massachusetts Gaming Commission

205 CMR 222: CAPITAL INVESTMENT AND MONITORING OF PROJECT CONSTRUCTION

Section

- 222.01: Definitions
- 222.02: Project Plans and Reporting
- 222.03: Design Review Process
- 222.04: Inspection of Construction and Related Records
- 222.05: Certification that Licensee Has Met Expenditure Requirement
- 222.06: Grounds for Discipline
- 222.07: Capital Investment

222.01: Definitions

Minority Business Enterprise (MBE). A minority owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Greater New England Minority Supplier Development Council, or both.

Project. Construction of or on the Category 2 Sports Wagering Facility in order to meet the required capital investment. For purposes of 205 CMR 222.00, Project may also include construction of on or off-site infrastructure required by a permitting or licensing authority (including the Commission) for the construction of the Sports Wagering Facility.

Small Business. An entity, including all of its affiliates combined that:

- (a) Has its principal place of business in Massachusetts;
- (b) Employs a combined total at all locations of 50 or fewer full-time employees;
- (c) Has been in business at least one year; and
- (d) Has gross revenues of \$40 million or less based on a three-year average, and meets all legal obligations for tax status and required registration in the Commonwealth.

Veteran's Business Enterprise (VBE). A Veteran Business Enterprise shall be any entity certified as a "Veteran-owned small business concern" by the U.S. Department of Veterans Affairs, or certified as such by the Massachusetts Supplier Diversity Office; provided, that vendors, registrants, or subcontractors verified by the Licensing Division will continue to be recognized as such until the end of their existing contract.

Women's Business Enterprise (WBE). A women-owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Women's Business Enterprise National Council or both.

222.02: Project Plans and Reporting

- (1) The Commission may create guidelines under 205 CMR 222.00 to aid the Commission in its review and monitoring of each project. Any such guidelines will be shared with the Category 2 Sports Wagering Licensees and may be amended as necessary by the Commission.
- (2) The Commission shall approve for each Category 2 Sports Wagering Licensee a project plan for the Licensee's capital investment in its Sports Wagering Facility and related infrastructure. The Commission shall not unreasonably withhold approval of elements of the Licensee's project plan that are consistent with information disclosed to and approved by the Commission during the Commission's licensing proceedings. The project plan shall include:
 - (a) A detailed project schedule, consistent with any representations or commitments made to the Commission while the licensee was applying for a Sports Wagering License or in accordance with 205 CMR 222.03, which includes all major stages of design and construction; and
 - (b) An affirmative action program of equal opportunity whereby the licensee establishes specific goals for the utilization of minorities, women and veterans on construction jobs and for contracting with minority, women or veteran owned businesses during either design or construction; provided, however that unless the licensee demonstrates that there is good cause otherwise, such goals shall be equal to or greater than the goals contained in Executive Office of Administration and Finance Administrative Bulletin Number 14, and consistent with or greater than any representations made to the Commission while the licensee was applying for a Sports Wagering License.
 - (c) A narrative describing the project, and including both a pictorial representation of the project design concept and a narrative description of the project.
- (3) If unforeseen or changed circumstances necessitate a change to an approved project plan which will affect the date when the Sports Wagering Licensee expects to meet the minimum capital investment required by 205 CMR 222.07(1), or would make the project inconsistent with a representation or commitments made to the Commission during the licensing process or in accordance with 205 CMR 222.03, the Sports Wagering Licensee may submit to the Commission for its approval a revised project plan, with a detailed statement of the unforeseen changed circumstances which justify the revised project plan. If the Commission approves such revised project plan, it shall substitute and supersede the previously approved project plan.

- (4) To ensure adherence to the approved project plan, the Sports Wagering Licensee shall submit to the Commission in a media, format and level of detail acceptable to the Commission, biannually a status report including:
- (a) If the Commission has not yet approved in accordance with 205 CMR 222.05(3) a certification that the licensee has met the minimum capital investment requirement:
 - 1. a report regarding expenditures made in accordance with the approved project plan and 205 CMR 222.07 in the prior six months and the licensee's progress towards the minimum capital investment required by 205 CMR 222.07(1); and
 - 2. a copy of all design and construction contracts executed within the prior six months that are to be included in the required capital investment.
 - (b) A status report reflecting the progress of construction. In the event that the progress of construction does not comply with the approved project plan, the Licensee shall submit a detailed plan to bring the progress of construction into compliance with the approved project plan or submit a request for a revised project plan pursuant to 205 CMR 222.02(3).
 - (c) A statistical report on the number, gender and race, and veteran status of individuals by job classifications hired to perform labor as part of the construction of the Sports Wagering Facility and related infrastructure, and a comparison of this report with the goals established by the Sports Wagering Licensee and Commission pursuant to 205 CMR 222.02(b). In the event the hiring of the aforementioned persons does not comply with the goals established, the Licensee shall submit within 20 days of a request by the Commission a response as to why the goals have not been achieved, identify any good faith efforts that have been undertaken to achieve those goals, and provide a plan to bring the hiring into compliance with the goals.
 - (d) A report describing the number of contracts, total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises for design and construction of the Sports Wagering Facility and related infrastructure, and the total number and value of all subcontracts awarded to a minority, women and veteran owned business, and a comparison of these reports with the goals established by the Sports Wagering Licensee and Commission pursuant to 205 CMR 222.02(b). In the event the Licensee's hiring of the aforementioned entities does not comply with the goals established the Licensee shall submit within 20 days of a request by the Commission a response as to why the goals have not been achieved,

identify any good faith efforts that have been undertaken to achieve those goals, and provide a plan to bring the dollar amount contracted and spent into compliance with the goals.

- (5) The Licensee shall have a continuing obligation to timely provide to the Commission all documents and information listed in 205 CMR 120.01(1), as applicable, such that the Commission is continuously apprised of all material developments with respect to all permits and approvals required for the project.
- (6) In furtherance of specific goals for the utilization of minorities, women and veterans on construction jobs, the Licensee shall send and provide a copy to the Commission, and to each labor union or representative of workers with which the Licensee has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Licensee's commitments pursuant to its Sports Wagering License and 205 CMR 222.02(2)(b).

222.03: Design Review Process

- (1) The Commission or its representative may participate in any design review process for the design of the project as follows:
 - (a) When the licensee has completed the schematic design phase, the Commission or its representative may request that the licensee submit the schematic design for review. Such schematic design may include descriptions of the external facade of any structures that are part of the project, all the major systems, a floor plan and any off site infrastructure improvements planned by licensee.
 - (b) The Commission or its representative may request for review the final site plan and architectural design package. Such final design package shall be in the form ready for licensee's use in creating construction bid packages.
 - (c) The Commission or its representative may request construction packages for review prior to putting such construction packages out for bid.

222.04: Inspection of Construction and Related Records

- (1) At all times the Commission or its representative may physically inspect the progress of construction, subject to reasonable construction site safety rules, to determine the Sports Wagering Licensee's compliance with the approved project plan, the terms and conditions of the license, M.G.L. c. 23N, or 205 CMR.
- (2) The Commission or its representative may request or have access to, at any time, plans, specifications, submittals, contracts, financing documents or other records concerning the construction of the project or related infrastructure. The licensee shall provide the requested materials to the Commission or its representative within ten days of the Commission's request for such documents.

- (3) Following an inspection of construction pursuant to 205 CMR 222.04(1) or review of records pursuant to 205 CMR 222.04(2), the Commission or its representative may notify the Sports Wagering Licensee of any non-compliance with the terms of the license or with an approved project plan. Upon receipt of such notification, the Sports Wagering Licensee shall present a plan to the Commission to address such non-compliance to the satisfaction of the Commission.

222.05: Certification that Licensee Has Met Expenditure Requirement

- (1) The Sports Wagering Licensee shall certify to the Commission that it has made a capital investment in its project of at least \$7,500,000, and in accordance with an approved project plan.
- (2) Upon receipt of such certification, the Commission or its representative may inspect the construction pursuant to 205 CMR 222.04(1), and request relevant plans, contracts, financing documents or additional records pursuant to 205 CMR 222.04(2).
- (3) The Commission may either approve or disapprove the Sports Wagering Licensee's certification pursuant to 205 CMR 222.05(1). If the Commission disapproves the Licensee's certification, the Commission will notify the Licensee of the reasons for such disapproval.

222.06: Grounds for Discipline

- (1) Pursuant to M.G.L. c. 23N, § 3, a Category 2 Sports Wagering Licensee who fails to make a capital investment in its project of at least \$7,500,000, and in accordance with an approved project plan, within three years after receiving a Sports Wagering License shall be subject to discipline in accordance with 205 CMR 232.00, unless the Licensee shows that its failure resulted from extraordinary circumstances. Disciplinary action in accordance with 205 CMR 222.06(1) shall be presumed to include the suspension or revocation of the License, but the Commission may impose other or lesser discipline as it deems appropriate.
- (2) The Commission or Bureau may discipline a Category 2 Sports Wagering Licensee in accordance with 205 CMR 232.00 for other violations of or failing with respect to this 205 CMR 222.05.

222.07: Capital Investment

- (1) Pursuant to M.G.L. c. 23N, § 3, the minimum capital investment for a Category 2 Sports Wagering Licensee to make on a project in accordance with an approved project plan shall be \$7,500,000. The capital investment shall be calculated in accordance with 205 CMR 222.07(2) and 205 CMR 222.07(3).

- (2) For purposes of calculating the capital investment for a Category 2 Sports Wagering License, the following costs shall be included:
- (a) Costs related to the actual construction of the Sports Wagering Facility and site including any amenities, and including overhead and indirect costs attributable to the construction activities.
 - (b) Costs related to preparation of the site including, clearing, demolition and abatement.
 - (c) Costs related to the design of the project, including building design, interior design, and exterior site design.
 - (d) Costs associated with consulting and due-diligence necessary to fund studies and devise engineering solutions including traffic studies, environmental studies, and other associated mitigation studies.
 - (e) Costs associated with minimizing the environmental impact of the project including upfront costs aimed at minimizing a carbon footprint or implementing sustainable elements and/or smart growth practices.
 - (f) Costs associated with designing, improving or constructing the infrastructure inside the property boundaries of the site of the Sports Wagering Facility including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation.
 - (g) Costs associated with the pre-opening purchase of fixtures; equipment; Sports Wagering Equipment including self-service kiosks; simulcasting equipment, provided that the costs associated with simulcasting equipment included in calculating the capital investment shall not exceed one-half of the costs associated with Sports Wagering Equipment included in calculating the capital investment; information technology equipment; safety, surveillance, and security equipment; software; and personal property to be used within the Sports Wagering Facility and site including those within hotels, restaurants, retail and other service businesses associated with the establishment.
 - (h) Costs associated with applying for federal, state, or municipal permits.
 - (i) Professional and management fees including for engineers, architects, developers, contractors, or operators to the extent that they represent indirect and overhead costs related to the development of the project, and do not represent profits or payout as part of partnership agreements or “home office” overhead (i.e., out of state).

- (j) Costs associated with the safety, training, quality assurance, or testing incurred during the construction of the Sports Wagering Facility and site.
- (3) For purposes of calculating the capital investment for a Category 2 Sports Wagering License, the following costs may not be included:
- (a) Any expenditures that a Sports Wagering Licensee makes before receiving its Sports Wagering License and applying for the approval of an initial project plan in accordance with 205 CMR 222.02(2).
 - (b) Any expenditures that a Sports Wagering Licensee makes that are not consistent with an approved project plan.
 - (c) Costs associated with the purchase or lease or optioning of land where the Sports Wagering Facility will be located including costs relative to registering, appraising, transferring title, or obtaining title insurance for the land.
 - (d) Carried interest costs and other associated financing costs.
 - (e) Costs associated with mitigating impacts on nearby communities, whether directly attributable to a specific impact or not.
 - (f) Costs associated with designing, improving or constructing the infrastructure outside the property boundaries of the site of the Sports Wagering Facility including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation whether or not such costs are required by any regulatory body or as part of the permitting process.
 - (g) Any and all legal fees.
 - (h) Fees and costs paid to the commission in accordance M.G.L. c. 23N, and/or 205 CMR 214.00 or 221.00, and other similar fees and costs paid to municipalities.
 - (i) Licensing costs including any costs payable to the Commission to obtain pre-opening licensing of individuals or vendors.
 - (j) Costs associated with marketing, advertising and promotions.
 - (k) Upfront costs designed to implement workforce development plans.
 - (l) Upfront costs designed to implement efforts to combat problem gambling and/or support the efforts of the commission's research agenda.



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed **205 CMR 222.00: Capital Investment and Monitoring of Project Construction** for which a public hearing will be held on **July 11, 2023**.

205 CMR 222.00 was developed as part of the process of promulgating regulations governing the operation of sports wagering in the Commonwealth. The proposed regulation sets forth how the Commission will oversee and assess the construction of Category 2 Sports Wagering Facilities. It also sets forth how the Commission will assess whether operators have met the required capital investment in accordance with G.L. c. 23N, § 3.

This regulation will apply to licensed sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses.

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

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

As a general matter, no small businesses are likely to be impacted by this regulation. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

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

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

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

There are no compliance or reporting requirements within this regulation that are likely to pertain to small businesses.

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



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There are no standards within this regulation that are likely to pertain to small businesses. In any event, the standards set out in the regulation 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, which addresses the procurement of design and construction services for capital projects, will likely support 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 this regulation will adversely impact small businesses.

Massachusetts Gaming Commission
By:

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

Dated: July 5, 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 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 (twice a per month) 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);
- (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.~~040~~5; 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.



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 239.00: Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees** for which a public hearing will be held on **July 11, 2023**.

205 CMR 239.00 was developed as part of the process of promulgating regulations governing the operation of sports wagering in the Commonwealth and is primarily governed by G.L. c. 23N, § 4. The proposed regulation sets forth the disclosure and reporting obligations imposed upon sports wagering operators.

This regulation will apply to sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses.

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

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

As a general matter, no small businesses are likely to be impacted by this regulation. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

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

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

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

There are no compliance or reporting requirements within this regulation that are likely to pertain to 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 standards within this regulation that are likely to pertain to small businesses.

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 have an impact on 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 this regulation will adversely impact small businesses.

Massachusetts Gaming Commission
By:

/s/ Caitlin Monahan

Caitlin W. Monahan
Deputy General Counsel

Dated: July 5, 2023



Massachusetts Gaming Commission

205 CMR 256: SPORTS WAGERING ADVERTISING

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 or any other agreement for consideration or remuneration, 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, in exchange for a percentage of ~~net~~-sports wagering revenue earned from users that the third party directs or causes to be directed to the Operator.
- (4) Any advertisement or promotion for Sports Wagering shall disclose the identity of the Sports Wagering Operator and whether a financial relationship exists between any Person providing an endorsement or promotion and the Sports Wagering Operator.



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendment to **205 CMR 256.01(3): Sports Wagering Advertising** for which a public hearing will be held on **July 11, 2023**.

205 CMR 256.01(3) was developed as part of the process of promulgating regulations governing the operation of sports wagering in the Commonwealth and is primarily governed by G.L. c. 23N, § 4. The proposed regulation governs the advertising of sports wagering.

This regulation will apply to licensed sports wagering operators. Accordingly, this regulation is unlikely to have an impact on small businesses.

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

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

As a general matter, no small businesses are likely to be impacted by this regulation. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

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

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

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

There are no compliance or reporting requirements within this regulation that are likely to pertain to 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 standards within this regulation that are likely to pertain to small businesses.

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 impact 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.

Massachusetts Gaming Commission
By:

/s/ Caitlin Monahan

Caitlin W. Monahan
Deputy General Counsel

Dated: July 5, 2023



Massachusetts Gaming Commission

Monahan, Caitlin

From: MGC Website <massgamingcomm@gmail.com>
Sent: Wednesday, July 5, 2023 5:10 PM
To: Monahan, Caitlin
Subject: Regulations Public Comment Submission

Submitted By

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Andrew Winchell

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Regulation

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

Subsection

239.03(1)(i)

Comments

In this subsection the Commission requires operators to submit a bi-monthly (twice per month) disbursement report for all licensed and registered vendors. We strongly encourage the Commission to reconsider this requirement entirely, or at least reduce the frequency of the required reports. It is a significant use of resources for operators to take the time to repeatedly create, and Commission staff repeatedly review, these reports. As the Commission has noted with its budget proposal for FY 2024, there is a significant amount of resources necessary to regulate sports wagering and they should be directed toward more fruitful endeavors.

Monahan, Caitlin

From: MGC Website <massgamingcomm@gmail.com>
Sent: Wednesday, July 5, 2023 5:11 PM
To: Monahan, Caitlin
Subject: Regulations Public Comment Submission

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Regulation

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

Subsection

239.03(1)(m)

Comments

In this subsection the Commission requires operators to submit a quarterly report covering all complimentary services offered or engaged in by the operator during the immediately preceding quarter. As part of this report, Operators are required to provide information on promotional Sports Wagering Credits issued.

As the Commission has decided not to provide for a deduction of promotional Sports Wagering Credits from Adjusted Gross Sports Wagering Receipts, we are unsure as to what value, if any, this report would provide to the Commission. Additionally, as specific information has to be provided for any services or items valued in excess of \$2,000 provide to patrons, including detailed reasons as to why they were provided, this would require operators to disclose personally identifiable information about those patrons. This would also risk disclosure of commercially sensitive information around promotional mechanics. This is specifically a concern in light of the lack of the same protections around sharing of data with the Commission that currently exist for casinos.

Monahan, Caitlin

From: MGC Website <massgamingcomm@gmail.com>
Sent: Wednesday, July 5, 2023 5:12 PM
To: Monahan, Caitlin
Subject: Regulations Public Comment Submission

Submitted By

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Regulation

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

Subsection

239.03(1)(m)

Comments

In this subsection the Commission requires operators to submit a quarterly report covering all complimentary services offered or engaged in by the operator during the immediately preceding quarter. As part of this report, Operators are required to provide information on promotional Sports Wagering Credits issued.

As the Commission has decided not to provide for a deduction of promotional Sports Wagering Credits from Adjusted Gross Sports Wagering Receipts, we are unsure as to what value, if any, this report would provide to the Commission. Additionally, as specific information has to be provided for any services or items valued in excess of \$2,000 provide to patrons, including detailed reasons as to why they were provided, this would require operators to disclose personally identifiable information about those patrons. This would also risk disclosure of commercially sensitive information around promotional mechanics. This is specifically a concern in light of the lack of the same protections around sharing of data with the Commission that currently exist for casinos.

For the above stated reasons we strongly encourage the Commission to remove this requirement.

Monahan, Caitlin

From: MGC Website <massgamingcomm@gmail.com>
Sent: Wednesday, July 5, 2023 5:13 PM
To: Monahan, Caitlin
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Regulation

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

Subsection

239.04(4)

Comments

In this subsection the Commission requires Operator to provide to the Commission upon request “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.”

Our first concern with this provision is that “state tax returns” is not limited to those for Massachusetts. We would request such clarification be added to this provision. This is specifically a concern in light of the lack of the same protections around sharing of data with the Commission that currently exist for casinos.

Secondly, we seek clarification that Operators are only required to submit copies of any tax returns that have been timely filed, i.e. if an Operator has been granted an extension for filing a federal return, if the Commission requests copies of federal returns of an Operator right after the federal filing deadline, the Operator will not be required to provide the return until after it has been filed in accordance with the granted extension.

Monahan, Caitlin

From: MGC Website <massgamingcomm@gmail.com>
Sent: Wednesday, July 5, 2023 5:14 PM
To: Monahan, Caitlin
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Regulation

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

Subsection

239.05(2)(b)

Comments

In this subsection the Commission requires that operators have their Chief Financial Officer attest on a quarterly basis that the operator "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."

We have a concern that this language may include situations where an Operator has not yet paid because they are contesting the assessed tax liability via an appeals process or in court. We would ask the following be added to the end of this provision to provide clarification:

"but excluding assessed tax liabilities that have not yet been paid because the Operator is still in the process of contesting the validity of the applicable underlying tax assessment."

Monahan, Caitlin

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Sent: Wednesday, July 5, 2023 5:09 PM
To: Monahan, Caitlin
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Regulation

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

Subsection

205 CMR 239 Generally

Comments

205 CMR 239 generally requires Sports Wagering Licensees to file several reports and maintain other records for Commission review. The proposed regulation is similar to the reporting required by the Gaming Licensees pursuant to 205 CMR 139.00. Many of the records required to be produced and/or maintained by Gaming Licensees and Sports Wagering Licensees are commercially sensitive. Commercially sensitive information produced by Gaming Licensees may be covered by a non-disclosure agreement (NDA) between the Commission and the Gaming Licensee as provided under G.L. c. 23K, § 21(a)(7) to shield commercially sensitive records and information from public disclosure under the Public Record Laws. The Sports Wagering Act does not have a similar provision that governs the general exchange of commercially sensitive or proprietary information between the Commission and licensees outside of the application process.

The Commission should take this into consideration in what records it will require a Sports Wagering Licensee to file with the Commission under 205 CMR 239.03(1) and how the Commission accesses records that are required to be maintained pursuant to 205 CMR 239.04. First, the Commission should not require records that contain commercial sensitive information to be filed with the Commission including: declared events of default (205 CMR 239.03(1)(h)); amounts paid to vendors (205 CMR 239.03(i)); and complimentary services (205 CMR 239.03(1)(m)). Many of these same records and reports filed by the Gaming Licensees are covered under NDAs with the Commission. Absent a similar protection for the same commercially sensitive information, the Commission should only require this information be maintained and available for inspection.

Turning to the records that must be maintained by a Sports Wagering Licensee under section 239.04, likewise, many of these records are also commercially sensitive. As such, the Commission should take care in how these records are accessed to avoid taking possession, custody or control of the records which in turn may subject the record to disclosure under the Public Records Law. Like several of the reports required to be produced under section 239.03 of the regulation, several of the records required to be maintained are similar to commercially sensitive records required to be maintained by Gaming Licensees, many of which are covered by NDAs executed under the Gaming Act. These include: business structure records (205 CMR 239.04(1)); state and federal tax returns (205 CMR 239.04(4)); loyalty card data (205 CMR 239.04(6)); annual business plan (205 CMR 239.04(7)); compliance plans (205 CMR 239.04(8)); and board of director meeting minutes (205 CMR 239.04(9)). Where these commercially sensitive records may not be protected from further disclosure under the Sports Wagering Act through an NDA or otherwise, the Commission should deploy alternative strategies to protect confidential or sensitive business records sought by the Commission that will allow records to be accessed in a limited manner but not otherwise "received" by the Commission for the purposes of the Public Records Law.

Monahan, Caitlin

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Sent: Wednesday, July 5, 2023 5:15 PM
To: Monahan, Caitlin
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Regulation

205 CMR 256: SPORTS WAGERING ADVERTISING

Subsection

256.01(4)

Comments

In this subsection the Commission provides that “Any advertisement or promotion for Sports Wagering shall disclose the identity of the Sports Wagering Operator and whether a financial relationship exists between any Person providing an endorsement or promotion and the Sports Wagering Operator.”

While we wholeheartedly agree that there should be disclosure of any financial relationships, we ask the Commission to consider the impact of requiring every promotion individually to have such a disclosure, especially in social media where character, space and platform-based limitations would make the implementation of the disclosures contemplated by a literal interpretation of this regulation exceptionally difficult. We suggest that the following be added to the end of the existing subsection:

“For purposes of social media, the financial relationship disclosure requirement of this subsection may be satisfied through inclusion of the disclosure in the publicly available profile information of the Person who is providing an endorsement or promotion.”