

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 139.00: CONTINUING DISCLOSURE AND REPORTING OBLIGATIONS OF GAMING LICENSEES

Section

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139.01: Access to Premises and Production of Records

The commission shall have access to, and may inspect the premises of the gaming establishment and/or request the production of records of the gaming licensee in accordance with 205 CMR 142.00: *Regulatory Monitoring and Inspections*.

139.02: Non-disclosure Agreements

All documents submitted by a gaming licensee or obtained by the commission in accordance with 205 CMR 139.00 shall be deemed to have been submitted pursuant to a gaming related investigation to ensure compliance with M.G.L. c. 23K and 205 CMR, adherence to the principles articulated in M.G.L. c. 23K, § 1, and/or to ensure the ongoing suitability of gaming licensees in Massachusetts. Accordingly, pursuant to M.G.L. c. 23K, § 21(a)(7) any information or reports, or parts thereof, that are required to be filed or otherwise submitted to or obtained by the commission, the IEB, or their respective agents, in accordance with 205 CMR 139.00 that contain material or information that the gaming licensee considers a trade secret or believes would be detrimental to the gaming licensee if it were made public may be identified as confidential by the gaming licensee. Pursuant to M.G.L. c. 23K or 205 CMR 139.00 the gaming licensee may request that the commission enter into a written nondisclosure agreement under the terms of which the commission agrees not to release the specified material or information publicly, in response to a request for public records or otherwise, and will assert the statutory exemption, M.G.L. c. 4, §7(26)(a), and/or any other applicable exemptions, and withhold the applicable materials in response to any request for such record or information. The agreement may provide for coverage for specific materials or information, or categories of materials or information, which will be, or are likely to be, submitted to or obtained by the commission on more than one occasion. A request for a non-disclosure agreement shall be on a form provided by the commission. Upon review of the gaming licensee's request, the commission may execute such an agreement in its discretion. In *lieu* of withholding a record in its entirety, the gaming licensee and the commission may agree that the material or information be publicly released in a redacted form, an aggregated fashion, or in other agreed upon manner. Nothing contained in 205 CMR 139.02, nor in an executed non-disclosure agreement, shall be construed so as to prevent the commission from making use of any information or material as part of an investigation, disciplinary matter, or otherwise as deemed necessary by the commission.

139.03: Fiscal Year

The gaming licensee shall establish a fiscal year for accounting purposes and shall advise the commission of such.

139.04: Reports and Information to Be Filed with the Commission

The following reports and information shall be filed with the commission, or its designee, in the manner and time provided:

- (1) Pursuant to M.G.L. c. 23K, § 21(a)(12), 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 at the gaming establishment.

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(2) Pursuant to M.G.L. c. 23K, § 21(a)(23), on a quarterly basis, a detailed statistical report, on the number, gender, race, and veteran status of individuals hired to perform labor as part of the construction of the gaming establishment. For purposes of 205 CMR 139.04(2), the term “construction” shall, unless the context clearly requires otherwise, include all major stages of design and construction; including all permitting and approvals, design deliverables, site preparation, foundation, structure, plumbing, electrical, mechanical, exterior finish and fenestration, long lead items, insulation, interior finish and furnishings and landscaping, building commissioning and commissioning of gaming equipment and information technology systems; and shall further include the initial and subsequent periods in which any structures upon a licensee’s gaming establishment are altered, converted, fitted out, commissioned, renovated, repaired, maintained, demolished, decommissioned, or dismantled by through utilization of net gaming revenue in accordance with the capital expenditure plan under 205 CMR 139.09.

(3) Pursuant to M.G.L. c. 23K, § 21(a)(24) and 205 CMR 135.00: *Monitoring of Project Construction and Licensee Requirements*, 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 in:

- (a) Design contracts;
- (b) Construction contracts (as the term “construction” is defined in accordance with 205 CMR 139.04(2)); and
- (c) Contracts for every good and service procured by the gaming establishment.

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.

(4) Pursuant to M.G.L. c. 23K, § 23(a) on an annual basis, and at other times as directed by the commission, a report explicitly stating the gaming licensee’s progress on meeting each of the stated goals and stipulations put forth in its RFA-2 application, including compliance with any executed impacted live entertainment venue agreements;

(5) Reports prescribed in accordance with 205 CMR 138.05(2) relative to registered and licensed employees;

(6) Daily, monthly, and annual gross gaming revenue remittance and reconciliation reports required in accordance with 205 CMR 140.00: *Gross Gaming Revenue Tax Remittance and Reporting*. Monthly gross gaming revenue reports shall include statistics relative to the drop/handle, win or loss, and win or loss percentage relative to slot machines played in the gaming establishment for the month. The commission shall make the monthly slot machine payback statistics publicly available on its official website.

(7) Promptly upon discovery, the gaming licensee shall notify the commission’s on-site gaming agent and/or member of the Gaming Enforcement Unit assigned to the gaming establishment of any violation, or suspected violation, of M.G.L. c. 23K, 205 CMR, and/or any gaming related law and file any requested written report.

(8) By the tenth day of each month, an underage person report with the IEB containing the information required in accordance with 205 CMR 150.05: *Reporting Requirements Related to Minors and Underage Persons*.

(9) A gaming licensee shall promptly notify the commission’s on-site gaming agent and/or member of the Gaming Enforcement Unit assigned to the gaming establishment, if an individual on the voluntary self-exclusion list established in accordance with 205 CMR 133.00: *Voluntary Self-exclusion* is found in the gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed.

(10) Any declared event of default related to any debt obligation maintained by the gaming licensee, 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.

(11) Quarterly reports of the gaming licensee in accordance with 205 CMR 139.06.

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(12) If the gaming licensee elects to establish a capital expenditure plan in accordance with M.G.L. c. 23K, § 21(a)(4) and 205 CMR 139.09, in *lieu* of making annual improvements to its gaming establishment, such plan shall be submitted to the commission for approval and updates included in the gaming licensee's quarterly report in accordance with 205 CMR 139.06.

(13) Documents and other materials required to be submitted in accordance with the terms of the gaming licensee's gaming license.

(14) A gaming licensee's system of internal controls approved in accordance with 205 CMR 138.02: *Licensee's System of Internal Controls*, amendments thereto, and any documents or information required to be submitted in accordance with the approved system of internal controls.

(15) Analysis reports which, by each slot machine/electronic gaming device, compare actual payout percentages by month to theoretical payout percentages as established in accordance with 205 CMR 143.01(1). *See* GLI 13, § 3.4.2(d).

(16) A daily meter drop comparison report and export file, in a format prescribed by the commission, submitted after appropriate financial meter or accounting adjustments have been made, which contains the following information relative to each slot machine in use in the gaming establishment: the location of the slot machine, the state identification number, the venue identification number, a field that represents the metered gross gaming revenue figure, and a field that represents the gross gaming revenue that is determined after the drop process. These two GGR fields must represent amounts at the time of the drop. *See* GLI 13, § 4.4.2.

(17) A daily gaming day summary report, in a format prescribed by the commission, submitted after appropriate financial meter or accounting adjustments have been made, which contains the following information relative to each slot machine in use in the gaming establishment: the location of the slot machine, the state identification number, the venue identification number, total cash wagered, total cash won, total promotional gaming credits played, the gross gaming revenue figure. *See* GLI 13, § 3.4.2(f).

139.05: Reports and Information to Be Compiled and Maintained by the Gaming Licensee

The following reports and information shall be compiled and maintained by the gaming licensee, or where applicable the gaming licensee'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 gaming licensee, where applicable, and the gaming licensee'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 gaming licensee, 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;

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- (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 gaming licensee, 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 gaming licensee only) Detailed records regarding all capital contributions;
  - (j) (for the gaming licensee 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 gaming licensee, 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 gaming licensee, 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 gaming licensee, 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 gaming licensee designed to ensure the accurate recording and reporting its assets, liabilities, equity, revenue and expenses. The gaming licensee's system of financial accounting shall provide a level of detail so as to allow it to accurately compute gross gaming revenue in accordance with M.G.L. c. 23K, § 2 and 205 CMR 140.02: *Administrative Monitoring and Inspections*, and to report the gaming licensee's drop, win, and hold percentage for each form of gaming activity, the value of complimentary goods or services and promotional gaming credits issued during the accounting period, and any other information necessary to allow the commission to understand the gaming licensee's results of operations. The gaming licensee shall maintain detailed information and documentation to support all amounts reported to the commission as being the gaming licensee's assets, liabilities, equity, revenue and expenses.
- (6) Data derived from the gaming licensee's player card/rewards card/loyalty program, cashless wagering system, player tracking software, or other similar information systems including:
- (a) Pursuant to M.G.L. c. 23K, §§ 21(a)(15) and 29, the amount of money spent and lost on gaming (excluding the value of promotional gaming credits played, but including any amounts that were subject to discretionary discounting for marketing or other similar purposes) by patrons at the gaming establishment who have been issued a player card or rewards card or who participated in a cashless wagering system, 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.
  - (b) Pursuant to St. 2011, c. 194, § 97, information, compiled by year, on player characteristics for patrons of the gaming establishment including, but not limited to, gender, age and region of residence, player behavior including, but not limited to, frequency of play, length of play, speed of play, denomination of play, amounts wagered at the gaming establishment and, if applicable, number of lines or hands played and characteristics of games played including, but not limited to, reel configuration, return-to-player or RTP, volatility index and denomination.

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(7) Pursuant to M.G.L. c. 23K, § 28(b), a quarterly report, covering all complimentary services offered or engaged in by the gaming licensee 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 gaming 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).

(8) The gaming licensee's Disbursement Report relative to vendors in accordance with 205 CMR 138.06(2);

(9) Counter check information maintained by the gaming licensee in accordance with 205 CMR 138.43(2)(l) through (n).

(10) An annual business plan for the gaming licensee, which will include financial projections in a format as prescribed by the commission no later than 30 days prior to the commencement of the fiscal year.

(11) A compliance plan and any amendments thereto, for the gaming licensee 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.

(12) Copies of the minutes of all board of directors or equivalent governing authority meetings and committee meetings including the audit and compliance committee meeting minutes pursuant to 205 CMR 138.04(2)(g) and (h), for the gaming licensee or holding company or intermediary company thereof.

139.06: Quarterly Report

(1) On a quarterly basis, the gaming licensee shall create a report that provides a continuing view of the gaming licensee's financial position including key performance measures, narrative commentary on operating results, and where applicable, the capital reserve account contributions made in accordance with the plan submitted pursuant to 205 CMR 139.09. The quarterly report shall be attested to by any two of the following: the Chief Executive Officer, Chief Gaming Executive, Chief Financial Officer, Treasurer, Financial Director, Controller, or their functional equivalent.

(2) The quarterly report required in accordance with 205 CMR 139.06(1) shall be accompanied by a statement attested to by the gaming licensee's Chief Financial Officer, or their functional equivalent, that the gaming licensee 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 gaming 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 gross gaming revenues imposed by M.G.L. c. 23K, § 55 and any fees imposed under M.G.L. c. 23K or 205 CMR.

(c) It has the ability to make annual capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5% of the net gaming revenues derived from the establishment or in accordance with a multi-year capital expenditure plan approved by the commission pursuant to M.G.L. c. 23K, § 21(a)(4) and 205 CMR 139.09.

(d) 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.

139.07: Annual Audit and Other Reports

(1) On an annual basis a gaming licensee 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 gaming establishment. The gaming licensee may satisfy this requirement by submission of the audit of the consolidated financial statement, including applicable notes, of the gaming licensee'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 gaming licensee which includes an audited financial statement containing, at a minimum, a balance sheet, income statement, and a statement of cash flows for the gaming licensee. In either event, the independent certified public accountant shall attest to the financial condition of the gaming licensee, disclose whether the accounts, records and control procedures examined are maintained by the gaming licensee as required by M.G.L. c. 23K and 205 CMR, and opine as to whether there are material weaknesses in the gaming licensee's system of internal controls.

In the event that the independent certified public accountant makes recommendations to improve the system of internal controls, or to increase the gaming licensee's level of compliance, the gaming licensee'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.

(2) To ensure the independence of the annual audit, at least every five years a gaming licensee, 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 a gaming licensee, 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 gaming licensee throughout the year, the gaming licensee 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 139.07(1) shall be filed with the commission within three months following the end of the quarter following the end of the gaming licensee's fiscal year.

(5) In cases where a gaming licensee's parent or holding company is not publicly traded, in the event the gaming licensee's independent certified public accountant shall resign or be removed as the gaming licensee's principal accountant or auditor, the gaming licensee 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 gaming licensee's system of internal accounting control and, if so, a complete and detailed description of the differences for consideration by the commission. The gaming licensee shall submit as an exhibit to this report a letter from the former independent certified public accountant stating whether he or she agrees with the statements made by the gaming licensee in the report submitted to the commission.

In cases where a gaming licensee's parent or holding company is publicly traded, the gaming licensee 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.

(6) To the extent possible, any adjustments resulting from the annual audit required in accordance with 205 CMR 139.07 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 gaming licensee'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 gaming licensee. The revised filing shall be due within 30 calendar days after notification to the gaming licensee, unless an extension is granted by the commission.

139.08: Audit of Gaming Licensee Operations by Commission

In accordance with M.G.L. c. 23K, § 65 the commission shall audit on an annual basis, and at other times the commission, or the IEB, determines necessary the accounts, programs, activities, and functions of a gaming licensee and/or any aspect of the gaming establishment and compliance with any provision of the gaming licensee's system of internal controls approved in accordance with 205 CMR 138.02: *Licensee's System of Internal Controls*. To conduct the audit, authorized officers and employees of the commission shall be given access by the gaming licensee 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 and as otherwise provided in accordance with 205 CMR 142.00: *Regulatory Monitoring and Inspections*; provided however, that a gaming licensee'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 a gaming licensee 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 139.07.

Prior to submitting the requisite report required in accordance with M.G.L. c. 23K, § 65 to the clerks of the house of representatives and the senate, the gaming licensee shall be offered an opportunity to review the commission's report and make any requests allowed in accordance with 205 CMR 139.02. The commission may modify the information contained in the report to address the concern, but shall not adjust the findings of the audit.

139.09: Capital Expenditure Plan

(1) For purposes of 205 CMR 139.09, net gaming revenue means gross gaming revenue as calculated in accordance with 205 CMR 140.02: *Computation of Gross Gaming Revenue*, minus taxes remitted to the commonwealth in accordance with 205 CMR 140.03: *Remittance*.

(2) Pursuant to M.G.L. c. 23K, § 21(a) (4), A gaming licensee shall annually make, or cause to be made, capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5% of the net annual gaming revenues derived from the gaming establishment; provided, however, that a gaming licensee may make capital expenditures in an amount less than 3.5% per year as part of a multi-year capital expenditure plan approved by the commission. If the gaming licensee intends to make capital expenditures as part of a multi-year capital plan, the plan shall be submitted to the commission for approval at least three months prior to the end of the first fiscal year included in the multi-year plan. A multi-year capital plan must, at a minimum, provide for the establishment of, and annual contribution to, a capital reserve account. Over the term of the plan, the total expenditures shall equal or exceed 3.5% of the net annual gaming revenues derived from the gaming establishment during the covered term of years unless good cause is demonstrated to the contrary by licensee.

## REGULATORY AUTHORITY

205 CMR 139.00: M.G.L. c. 23K, §§ 4(28), 4(37), 21(a)(4) and 5.