

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 218.00: GENERAL SPORTS WAGERING APPLICATION REQUIREMENTS, STANDARDS, AND PROCEDURES

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218.01: Pre-application Consultation

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

218.02: Application Requirements

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

218.03: Administrative Sufficiency Review

- (1) The Commission's Division of Licensing will review each Sports Wagering License Application for administrative sufficiency.
- (2) When determining whether an application is administratively sufficient, the Division of Licensing shall review only the portions of the application required by 205 CMR 211.01(1)(c) and (f) and only determine whether all information or materials required to be provided in response to each question or request has been submitted.
- (3) If an application is determined to be insufficient:
 - (a) The Division shall notify the Applicant by email. The notification shall specifically identify the deficiencies.
 - (b) The Applicant shall have the right to submit supplemental or corrected information to cure the deficiencies within 14 days.
 - (c) For each deficient application component, the 14 day period established in 205 CMR 218.03(3)(b) shall begin the day after:
 1. The applicable deadline established by the Commission under 205 CMR 218.02(1), if that deadline has not passed; or
 2. The date on which the notification sent pursuant to 205 CMR 218.03(3)(a) was sent, if the applicable deadline established by the Commission under 205 CMR 218.02(1) has passed.

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(4) A positive determination of administrative sufficiency shall not constitute a finding with respect to the accuracy of the information submitted, and shall not bar a request for further information by the Commission, the Bureau or their agents and employees with respect to the application.

218.04: Review Procedures

(1) In reviewing the merits of the Sports Wagering License Application, the Commission may, at such times and in such order as the Commission deems appropriate, take some or all of the following actions:

(a) Refer the application, or any parts thereof, for advice and recommendations, to any or all of the following:

1. The Executive Director;
2. The Bureau;
3. Any office, agency, board, council, commission, authority, department, instrumentality, or division of the commonwealth;
4. Commission staff; and
5. Any consultant retained by the Commission to aid in the review of the application;

(b) Retain, or authorize the Executive Director or the Executive Director's designee to retain, using the application fee and investigation reimbursements described in 205 CMR 214.00: *Sports Wagering Application Fees*, such professional consultants (including without limitation financial and accounting experts, legal experts, Sports Wagering experts, contractor investigators, and other qualified professionals) as the Commission in its discretion deems necessary and appropriate to review the request and make recommendations; and

(c) Require or permit, in the Commission's discretion, the Applicant to provide additional information and documents.

218.05: Public Meetings Regarding Sports Wagering Applications

(1) The Commission may conduct one or more meetings to:

- (a) receive public feedback on sports wagering license applications;
- (b) allow any Applicant to make a presentation; and
- (c) allow any Applicant to respond to questions or public comments.

(2) Prior to any meeting held in accordance with this 205 CMR 218.05, the commission will prescribe the manner in which it will receive comments from members of the public.

218.06: Evaluation of the Application by the Commission

(1) Once a submitted Sports Wagering License Application is deemed administratively sufficient, the Commission shall commence a substantive evaluation of its contents. The Commission may utilize any technical assistance it deems necessary to aid in its review.

(2) The Commission shall analyze the factors and considerations set out in 205 CMR 218.06(5) and 218.06(6) in no particular order, and giving any particular weights, or no weight, to any factor.

(3) In reviewing any application, the Commission may also utilize any of the following methods, without limitation:

- (a) Public meetings and presentations; or
- (b) Requests for additional information, modified proposals, or applications from Applicants, including requesting the Applicants' "best and final" proposals.

(4) The Commission shall deliberate on license applications in a public meeting, and shall not be required to use the procedures set out in 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

218.06: continued

(5) In determining whether any Applicant will be awarded a Sports Wagering License, the Commission will evaluate the Sports Wagering License Application to determine whether a license award would benefit the Commonwealth, and consider the following factors:

- (a) The Applicant's experience and expertise related to Sports Wagering, including:
 - 1. The Applicant's background in Sports Wagering;
 - 2. The Applicant's experience and licensure in other jurisdictions with Sports Wagering;
 - 3. A description of the Applicant's proposed Sports Wagering operation, or description, technical features, and operation of Sports Wagering platform, as applicable; and
- (b) The economic impact and other benefits to the Commonwealth if the Applicant is awarded a License, including:
 - 1. Employment opportunities within the Commonwealth;
 - 2. The projected revenue from wagering operations, and tax revenue to the Commonwealth;
 - 3. For Category 1 and 2 Sports Wagering License Applicants, the Applicant's proposed plans for construction and capital investments associated with the license award; and
 - 4. Community engagement; and
- (c) The Applicant's proposed measures related to responsible gaming, including:
 - 1. The Applicant's responsible gaming policies;
 - 2. The Applicant's advertising and promotional plans; and
 - 3. The Applicant's history of demonstrated commitment to responsible gaming; and
- (d) A description of the Applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion, including:
 - 1. Within the Applicant's workforce;
 - Through the Applicant's supplier spend; and
 - 2. In the Applicant's corporate structure; and
- (e) The technology that the Applicant intends to use in its operation, including:
 - 1. Geofencing;
 - 2. Know-your-customer measures; and
 - 3. Technological expertise and reliability; and
- (f) The suitability of the Applicant and its qualifiers, including:
 - 1. Whether the Applicant can be or has been determined suitable in accordance with 205 CMR 215;
 - 2. The Applicant's and all parties in interest to the license's integrity, honesty, good character, and reputation;
 - 3. The Applicant's financial stability, integrity, and background;
 - 4. The Applicant's business practices and business ability to establish and maintain a successful sports wagering operation;
 - 5. The Applicant's history of compliance with gaming or sports wagering licensing requirements in other jurisdictions; and
 - 6. Whether the Applicant is a defendant in litigation involving its business practices; and
- (g) Any other appropriate factor, in the Commission's discretion.

(6) Additional Considerations for Applications for Untethered Category 3 Licenses

- (a) In determining whether a particular Applicant will be awarded an Untethered Category 3 License, the Commission shall take into consideration the variations between the Applicants as they relate to any other Sports Wagering License Applicants or licensees, and how granting any particular Application, or combination of Applications, would maximize overall benefits and minimize overall harms or the risk of harms to the Commonwealth.
- (b) The Commission may, in its discretion, implement competitive processes for awarding Untethered Category 3 Licenses, and may, without limitation:
 - 1. Utilize scored or unscored selection systems;
 - 2. Grant or deny one or more particular applications, while reserving action on other applications for future deliberation; or
 - 3. Review applications in multiple phases or rounds, and use different review methodologies in each phase or round.

218.06: continued

(7) Supplemental Suitability Determinations

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

218.07: Sports Wagering License Determinations

- (1) After evaluating each Sports Wagering License application in accordance with 205 CMR 218.06, the Commission may:
- (a) Find the Applicant preliminarily suitable in accordance with 205 CMR 215.01(2): *Preliminary Finding of Suitability*, and deem the Applicant eligible to request a Temporary License, which shall be subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.00: *Sports Wagering: License Conditions*;
- (b) Find the Applicant suitable in accordance with 205 CMR 215.01(1): *Durable Finding of Suitability*, and award the Applicant a Sports Wagering License, subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.00: *Sports Wagering: License Conditions*; or
- (c) Deny the application for any of the reasons set out in M.G.L. c. 23N §§ 6(e), 9, or in 205 CMR.
- (2) The Commission shall not take make a determination in accordance with 205 CMR 218.07(1) on any Untethered Category 3 License Application until the deadline applicable to Untethered Category 3 License Applications has passed, and the Commission has provided an opportunity for public feedback at one or more public meetings held in accordance with 205 CMR 218.05.

218.08: Provisions Applicable to All Sports Wagering Licensing Determinations

- (1) Upon granting an application, the Commission shall prepare and file its decision, and shall issue a statement of the reasons for the grant, including specific findings of fact, and noting any conditions of licensure imposed under 205 CMR 220.00: *Sports Wagering: License Conditions*.
- (2) Upon denial of an application, the Commission shall prepare and file its decision and, if requested by the Applicant, shall further prepare and file a statement of the reasons for the denial, including specific findings of fact.
- (3) For purposes of 205 CMR and M.G.L. c. 23N, the award of a Sports Wagering License shall be deemed to have occurred immediately upon a majority vote by the Commission to issue the license, unless otherwise determined by the Commission.
- (4) An Applicant awarded a Sports Wagering License, or deemed eligible to request a Temporary License, shall not conduct sports wagering until it meets all other applicable requirements of M.G.L. c. 23N and 205 CMR including having been issued an operation certificate.

REGULATORY AUTHORITY

205 CMR 218.00: M.G.L. c. 23N, § 4.