

SENATE No. 2726

Senate, April 11, 2024– Report from the Massachusetts Gaming Commission (pursuant to Section 9B of Chapter 128A of the General Laws) submitting proposed regulation 205 CMR 15.00: Procedures for the Approval of a Simulcast-Only Facility.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

April 2, 2024

VIA FIRST CLASS MAIL

and EMAIL: (Senate.clerk@ma.state.us) (michael.d.hurley@state.ma.us)

The Honorable Michael D. Hurley
Senate Clerk
Office of the Senate Clerk
24 Beacon Street
Room 335- State House
Boston, MA 02133

Senate Clerk Hurley:

Pursuant to M.G.L. c. 128A, §9B, the Massachusetts Gaming Commission (“Commission”) hereby files **205 CMR 15.00 – Procedures for the Approval of a Simulcast-Only Facility**. The proposed regulation would govern the process by which the Commission receives, reviews, and evaluates requests for approval by a licensed simulcast entity to simulcast at a new location. The regulation is particularly concerned with input from the community or communities where the proposed facility will be located.

These regulations are largely governed by M.G.L. c. 128A, § 9. A public hearing was held regarding these proposed amendments on March 5, 2024. If you have any questions or need additional information, please feel free to reach me at judith.young@massgaming.gov or (617) 979-8426.

Thank you for your attention to this matter.

Respectfully submitted,
Massachusetts Gaming Commission
By:

Judith A. Young, Esq.
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Enclosures

205 CMR 16: PROCEDURES FOR THE APPROVAL OF A SIMULCAST-ONLY FACILITY

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16.01 Authority and Definitions

(1) Authority. 205 CMR 16.00 is issued pursuant to M.G.L. c. 128C, §§ 2, 8.

(2) Definitions. As used in 205 CMR 16.00, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise.

Words and phrases not defined below shall have the meaning given them in M.G.L. c. 128A and M.G.L. c. 128C, unless the context clearly requires otherwise. Words and phrases not defined below or in M.G.L. c. 128A or M.G.L.

c. 128C shall have the meaning given to them in 205 CMR 102.00 or 205 CMR 202.00, unless the context clearly requires otherwise.

Applicant means a racing meeting licensee who applies for site approval in accordance with this 205 CMR 16.00.

Host community means a municipality in which a simulcasting facility is located or in which an applicant has proposed locating a new simulcasting facility.

Simulcasting Facility means a facility operated by a racing meeting licensee and approved by the Commission for simulcast wagering.

Site approval application shall mean a racing meeting licensee's application for site approval.

Site approval shall mean authorization in accordance with M.G.L. c. 128C, § 2 to conduct simulcast wagering at a particular location.

Surrounding community means a municipality abutting a host community.

16.02 Application Requirements

- (1) A site approval application shall be submitted using the appropriate application form or forms issued by the Commission, and in accordance with the instructions included in the application form.
- (2) The site approval application form shall require the following:
 - (a) The location of the proposed simulcasting facility;
 - (b) A detailed description of the proposed simulcasting facility;
 - (c) An explanation of the ownership of the real property on which the proposed simulcasting facility is proposed to be constructed or operated, and the applicant's rights to construct or operate the simulcasting facility on said real property;
 - (d) Information relative to any proposed responsible gaming initiatives to be offered on the premises;
 - (e) A schedule of any other state, municipal, or Federal environmental, land use, hospitality-related, or other permits, licenses, or approvals required for the development and operation of the proposed simulcasting facility;
 - (f) Any agreements, written or otherwise, that the applicant has made or executed with racing governing bodies, the municipality where the applicant proposes to hold racing meetings, other municipalities, or any other entities;
 - (g) A project schedule, including a date for the proposed simulcasting facility to become open for wagering, and a date for each proposed amenity or attraction to become available to the public;
 - (h) The projected costs of developing the facility;
 - (i) A traffic study performed for the proposed simulcasting facility;
 - (j) An attestation signed and sworn to that the applicant will comply, should site approval be granted, with all applicable laws and with all applicable rules and regulations prescribed by the Commission, and that the applicant shall have an affirmative obligation to abide by every statement made in the application to the Commission should it be awarded a license;
 - (k) An attestation signed and sworn to that the applicant will comply, should site approval be granted, with all affirmative representations, promises or inducements made to government officials of the host or and surrounding communities or local organizations and any mitigation agreements, formal or informal; and
 - (l) Any other information required by the Commission.

- (3) The site approval application form issued by the Commission may include information regarding how certain materials submitted in the course of the application may be withheld from public disclosure pursuant to M.G.L. c. 66, § 10.
- (4) Pre-Application Consultation. The Commission or its designees may conduct one or more consultation meetings or information sessions with an applicant or prospective applicant to provide guidance on application procedures, including the requirements of G.L. c. 128A or 128C, or 205 CMR 16.00. In addition, the Commission may use other methods to respond to inquiries regarding the application process, such as publishing responses to questions submitted by any applicant.

16.03 Administrative Sufficiency Review

- (1) The Division of Licensing will review each site approval application for administrative sufficiency.
- (2) If a site approval 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 sixty days.
 - (c) Failure to cure the deficiencies may result in the administrative closure of the site approval application.
 - (d) In the event that a site approval application is administratively closed under 205 CMR 16.03(2), the Division of Licensing or the Bureau will notify the applicant of the determination in writing.
- (3) 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.

16.04 Review Procedures

- (1) In reviewing the merits of the site approval 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:
 - (i) The Executive Director;

- (ii) The Bureau;
 - (iii) Any office, agency, board, council, commission, authority, department, instrumentality or division of the commonwealth;
 - (iv) Commission staff; and
 - (v) Any consultant retained by the Commission to aid in the review of the application;
- (b) Retain, or authorize the Executive Director or the Executive Director's designee to retain, using the application fee and investigation reimbursements described in 205 CMR 16.10, such professional consultants (including without limitation financial and accounting experts, legal experts, racing experts, contractor investigators, and other qualified professionals) as the Commission in its discretion deems necessary and appropriate to review the request and make recommendations; and
 - (c) Require or permit, in the Commission's discretion, the applicant to provide additional information and documents.

16.05 Public Meetings Regarding the Site Approval Application

- (0) The Commission shall conduct the following public meetings:
 - (a) one meeting in each host community to receive public feedback from members of the host community or communities; and
 - (b) at least one other meeting to receive public feedback.
- (1) The Commission may conduct one or more additional meetings to:
 - (a) receive additional public feedback on the site approval application;
 - (b) allow the applicant to make a presentation; or
 - (c) allow the applicant approval to respond to questions or public comments.
- (2) At least two weeks prior to any meeting held in accordance with 205 CMR 16.05(1)(a), the Commission shall provide a copy of the site approval application to the host community's mayor and city council, town council, or select board. The site approval application may be redacted consistent with the Massachusetts Public Records Law, G.L. c. 66, and other sources of law.
- (3) Prior to any meeting held in accordance with this 205 CMR 16.05, the Commission will prescribe the manner in which it will receive comments from members of the public.

16.06 Evaluation of the Site Approval Application by the Commission

- (0) Once a submitted site approval application is deemed administratively complete, 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.
- (1) The Commission shall deliberate on site approval applications in an adjudicatory proceeding pursuant to 205 CMR 101.01.
- (2) The Commission shall analyze the factors and considerations set out in 205 CMR 16.05(5) in no particular order, and giving any particular weights, or no weight, to any factor. Those factors include but are not limited to:
 - (a) The financial ability of the applicant to develop and operate the proposed simulcasting facility;
 - (b) The maximization of state revenues;
 - (c) The circumstance that simulcast wagering patrons require safe and convenient facilities;
 - (d) The interest of members of the public in simulcast wagering honestly managed and of good quality;
 - (e) The necessity of according fair treatment to the economic interest and investments of those who in good faith have provided and maintained simulcasting facilities;
 - (f) The applicant's business practices and business ability to establish and maintain a successful simulcasting facility;
 - (g) Any support or opposition voiced by the municipal government or residents of the host community or communities;
 - (h) Any projected benefits to, or impacts on, the host community or communities, and surrounding communities; and
 - (i) Any other appropriate and pertinent factors.

16.07 Site Approval Determinations

- (0) After evaluating the site approval application in accordance with 205 CMR 16.06, the Commission may:
 - (a) Approve the application;
 - (b) Deny the application; or

- (c) Postpone decision pending further analysis or the provision of additional information by the applicant, Commission staff, consultants to the Commission, or any other person.

16.08 Provisions Applicable to All Site Approval Determinations

- (0) Upon granting an application, the Commission shall prepare and file its decision, and shall issue a statement of the reasons for the approval, including specific findings of fact, and noting any conditions of approval imposed under 205 CMR 16.09.
- (1) 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.
- (2) Site approval shall be deemed to have occurred immediately upon a majority vote by the Commission to approve the site, unless otherwise determined by the Commission.

16.09 Conditions

- (0) All site approvals shall be issued subject to the following conditions:
 - (a) That the licensee comply with all terms and conditions of the site approval;
 - (b) That the licensee comply with M.G.L. c. 128A, c. 128C, and all rules and regulations of the Commission;
 - (c) That the licensee consents to the Commission or its representative physically inspecting the progress of construction or development, subject to reasonable construction site safety rules, to determine the licensee's compliance with the terms and conditions of the site approval, M.G.L. c. 128A, M.G.L. c. 128C, or 205 CMR;
 - (d) That the licensee shall grant 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;
 - (e) That the licensee shall not conduct simulcast wagering at the proposed simulcasting facility without an operation certificate, which shall not issue until the licensee has demonstrated to the Commission that it has complied with all requirements of M.G.L. c. 128A, M.G.L. c. 128C, 205 CMR, and all applicable laws. Such compliance includes, but is not limited to:

- (i) The simulcasting facility has been built and is of a superior quality and complies with any applicable conditions of site approval;
 - (ii) A copy of an emergency response plan that includes, but is not limited to, the elements listed in 205 CMR 151.01(3)(g) and which is filed with the Commission and with fire department and police department of the Host Community; or an update to such plan already filed pursuant to 205 CMR 151.01 or 205 CMR 251.01(3)(d);
 - (iii) A copy of the certificate of occupancy issued by a building commissioner or inspector of buildings of the host community in accordance with 780 CMR 111.00: Certificate of Occupancy that includes an approval under 521 CMR: Architectural Access Board, indicating the necessary use and occupancy to operate the simulcasting facility; as well as copies of any other permits required to be issued by the host community prior to the opening of a like facility;
 - (iv) Compliance with any other condition imposed by the Commission to secure the objectives of M.G.L. c. 23N and 205 CMR.
- (2) The Commission may impose any other conditions on particular site approvals that it determines are appropriate to secure the objectives of M.G.L. c. 128A, M.G.L. c. 128C, and 205 CMR.

16.10 Application fee

- (0) General provisions
 - (a) An applicant shall pay the Commission a nonrefundable application fee of \$25,000 to defray the costs associated with the processing and review of the site approval application; provided, however, that if the costs of processing and review exceed the initial application fee, the applicant shall pay the additional amount to the Commission within 30 days after notification of insufficient fees or the site approval application shall be rejected.
 - (b) The applicant shall pay the non-refundable application fee of \$25,000 by certified check or secure electronic funds transfer made payable to the "Massachusetts Gaming Commission." The applicant shall submit this non-refundable application fee with or before its site approval application.
 - (c) All required application fees shall be non-refundable, due and payable notwithstanding the withdrawal or abandonment of any site approval application.

- (d) All fees in this section 205 CMR 16.10 shall be deposited into the Racing Development and Oversight Trust Fund.
- (1) Additional processing fees
 - (a) Pursuant to 205 CMR 16.10(1), the applicant shall be responsible for paying to the Commission all costs incurred by the Commission, directly or indirectly, for processing and reviewing the site approval application. As required by the procedure established pursuant to 205 CMR 114.04(5), the applicant shall pay to or reimburse the Commission for all such review costs that exceed the initial application fee.
 - (b) For purposes of 205 CMR 16.10, the costs for processing and review shall include, without limitation:
 - (i) All fees for services, disbursements, out of pocket costs, allocated overhead, processing charges, administrative expenses, professional fees, and
 - (ii) other costs directly or indirectly incurred by the Commission, including without limitation all such amounts incurred by the Commission to and through the Bureau, the Division, the Gaming Enforcement Unit, the Gaming Liquor Enforcement Unit, and any contract investigator.
 - (c) The Commission in its discretion shall establish, and, post on its website, a schedule of hourly fees, wages, applicable fringe benefits, payroll taxes, overhead rates and other charges to be assessed by the Commission to applicants for in-house personnel, services and work of the Commission, the Bureau, the Division, the Gaming Enforcement Unit, and the Gaming Liquor Enforcement Unit.
 - (d) The Commission shall assess to the applicant all other costs paid by or for the Commission, directly or indirectly, to any other person for conducting an investigation into an applicant, plus an appropriate percent for overhead, processing and administrative expenses.

16.11 Interaction with Other Provisions of 205 CMR

- (0) The Commission shall not unreasonably withhold approval of elements of the licensee's proposed simulcasting facility that are consistent with information disclosed to and approved by the Commission in accordance with 205 CMR 222, 238, or any other statute, regulation, license condition, or comparable source of authority administered by the Commission.

REGULATORY AUTHORITY

M.G.L. chs. 128C, § 2 and 128A § 9.