April 3, 2022

Via E-Mail to publicaffairs@azgaming.gov
Attn: Ted Vogt, Director; Aiden Fleming, Assistant Director
110 W. Washington St.
Suite 450
Phoenix, AZ 85007

Re: Draft Final Rules Published March 28, 2022

Dear Director Vogt and Assistant Director Fleming,

Following receipt of the Arizona Department of Gaming's ("Department") notice of revision to their event wagering rules, DraftKings Inc. ("DraftKings") submits the following comments for consideration. While our comments do not address the draft rules amended by the Department in its March 28 rule document, DraftKings respectfully submits comments on the effective event wagering rules. Please note that some of the comments are similar to comments submitted last summer during the initial rulemaking process. DraftKings is available to speak with the Department about the below comments or any other matter related to event wagering.

R19-4-101. Definitions

Rule Reference: R19-4-101(16)

Reason for Change: DraftKings respectfully requests that the definition of "kiosk" be amended to allow event wagering operators more flexibility for where they may place kiosks. Generally speaking, the goal of kiosks is to offer the maximum convenience to operators and patrons and can be located all over event wagering facilities, not just retail wagering areas. Additionally, R19-4-143(C) requires that kiosks have dedicated cameras to cover all activities, so even if kiosks are located outside of a retail wagering area they would be monitored. Other jurisdictions, including Illinois, have adopted this approach and allow the placement of retail sports wagering kiosks outside of retail wagering areas.

Existing Rule Language/Proposed Rule Language:

> *16. "Kiosk" means a device ~~located within a retail wagering area~~ that interfaces with an event wagering system and may be utilized by a patron to place event wagers, redeem winning tickets, redeem vouchers, open a player account, and make player account deposits and withdrawals.*

Rule Reference: R19-4-101(B)(20)

Reason for Change: DraftKings respectfully requests amending the language for "marketing affiliate" to match other jurisdictions, including Michigan. As written, the rules could capture a broader group of

marketing affiliates than in other jurisdictions. The proposed changes expressly limit the persons required to be licensed as a marketing affiliate to those that receive a revenue share, receive compensation based on the number of account registrations they refer that complete the account creation process, or receive compensation based on the number of account registrations they refer that deposit into accounts.

Existing Rule Language/Proposed Rule Language:

> *20. "Marketing Affiliate" means a person who is involved in the promotion, marketing, and recruitment for event wagering business in exchange for* ***compensation based on the volume of customer referrals to an online gaming site or customer activity, including but not limited to, number of registrations, number of depositing registrations, or wagering activity, or both*** ~~*a commission or other fee*~~*.*

R19-4-103. Power and Authority

Rule Reference: R19-4-103(C)(3) & (4)

Reason for Change: DraftKings respectfully requests the following two provisions are narrowed in scope to ensure the Department's access is limited to event wagering operations in Arizona. By narrowing the scope of the below requirements, the Department can still access the relevant event wagering books, records and data, and inspect facilities narrowed to the defined "retail wagering area" and a server location in the state. As written, the Department's reach would be almost limitless. For example, since the authorizing statute allows event wagering to take place at sports facilities in the state, as written the Department could have access to the actual athletic fields and unrelated business operations connected to an event wagering facility. For these reasons we request these requirements are narrowed in the below manner.

Existing Rule Language/Proposed Rule Language:

> *3. Access, review, and/or copy* ~~*all*~~ *books, records, and/or data maintained by a licensee related to event wagering in the State; and*
>
> *4. Inspect all or any part of* ~~*an event wagering facility*~~ ***a retail wagering area, kiosk*** *or server location* ***in the State****.*

R19-4-104. License Categories

Rule Reference: R19-4-104(G)

Reason for Change: DraftKings respectfully requests this requirement be amended in order to limit the administrative burden on responsible parties and remove references to ancillary suppliers, which are not addressed by the Act. We also suggest changing the timeframe for reporting from quarterly to annually.

Currently, this requirement is overly burdensome, especially since the requirement includes ancillary suppliers, whose definition includes "any other person as determined by the Department." Given the

definition of ancillary suppliers, it makes this reporting requirement very expansive and setting an annual requirement would be more reasonable. This could also sync up with other annual requirements for compliance, for example paying the annual licensing fee as outlined in R19-4-105(B), and preserve the public policy goal sought by this rule.

Existing Rule Language/Proposed Rule Language:

> *G. On a**n annual*** ~~*quarterly*~~ *basis, responsible parties shall provide to the Department a list of the names and addresses of their suppliers,* ~~*including ancillary suppliers,*~~ *who provide goods and/or services for event wagering in the State.*

R19-4-110. Responsible Advertising

Rule Reference: R19-4-110(E)

Reason for Change: DraftKings respectfully requests the requirement that event wagering operators do not place their messages or logos on clothing, toys, games or game equipment intended primarily for persons under 21 be amended to provide exceptions for employees. Event wagering operators do send employees branded gifts, including gifts for their children (ex. A DraftKings onesie after an employee has a child). Event wagering operators understand the intent of this requirement and while it is not likely any event wagering operator would publicly distribute toys or clothing for children to market their brand, there are scenarios where this type of gift may be given privately and would ask the regulations be adopted to allow that.

Existing Rule Language/Proposed Rule Language:

> *E. Event wagering messages, including logos, trademarks, or brands, shall not be used, or licensed for use, on* ***publicly-available*** *clothing, toys, games, or game equipment intended primarily for persons under twenty-one (21) years of age.*

R19-4-111. Internal Control System

Rule Reference: R19-4-111(D)(2)-(9)

Reason for Change: DraftKings respectfully requests that the Department amend the Internal Control System section that speaks to accounting requirements in subsection D. The accounting requirements are overly burdensome and do not align with reporting required in other jurisdictions. Typical requirements found in other regulated jurisdictions require an annual audit to be performed and presented in accordance with generally accepted accounting principles and must contain the opinion of the independent certified public accountant as to its fair preparation and presentation in accordance with generally accepted accounting principles.

Existing Rule Language/Proposed Rule Language:

D. For event wagering under the Act, responsible parties shall maintain:

…

2. ***An annual audit to be performed and presented in accordance with generally accepted accounting principles and the audit must contain the opinion of an independent certified public accountant as to its fair preparation and presentation in accordance with generally accepted accounting principles*** *~~General accounting records using a double entry system of accounting with transactions recorded on a basis consistent with generally accepted accounting principles~~;*

~~3. Detailed supporting and subsidiary records;~~

~~4. Detailed records identifying revenues, expenses, assets, liabilities and fund balances or equity;~~

~~5. All records required by the internal control system including, but not limited to, those relating to any event wagering activity authorized by the Act;~~

~~6. Journal entries;~~

~~7. Detailed records sufficient to accurately reflect gross income and expenses relating to its operations;~~

~~8. Detailed records of any reviews or audits, whether internal or otherwise, performed in addition to the annual audit required in R19-4-111.E, including, but not limited to, management advisory letters, agreed upon procedure reviews, notices of non-compliance, and reports on the internal control system; and~~

~~9. Records of any proposed or adjusting entries made by an independent certified public accountant.~~

Rule Reference: R19-4-111(E)

Reason for Change: DraftKings respectfully requests clarification to the below requirement to resemble New Jersey's requirement.[1] Public companies are required to make certain information available through filings like: S-1, 8-K, 10-Q and 10-K, proxy or information statements and all registration statements, and DraftKings respectfully requests the Department consider those documents to help fulfill the audit requirement.

Existing Rule Language/Proposed Rule Language:

[1] NJ Admin Code 13:69D-1.7

E. ~~Financial statements of the responsible party related to event wagering operations in the State shall be audited, not less than annually at its fiscal year-end, by an independent certified public accountant at the expense of the responsible party. The audit shall also include, or be supplemented with, an attestation by the auditor that adjusted gross event wagering receipts are accurately reported.~~ ***Unless specifically exempted by the Department, each responsible party shall cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant. The annual financial statements shall be prepared on a comparative basis for the current and prior calendar year, and shall present financial position and results of operations in conformity with generally accepted accounting principles. Each responsible party shall require its independent certified public accountant to render a report expressing an opinion as to whether the responsible party has followed, in all material respects, its system of internal accounting controls. Whenever, in the opinion of the independent certified public accountant, the responsible party has materially deviated from its system of internal accounting controls or the accounts, records, and control procedures examined are not maintained by the responsible party in accordance with the Act and these rules, the report shall enumerate such deviations and shall make recommendations regarding improvements in the system of internal accounting control. If applicable, the responsible party shall prepare a written response to the report which shall indicate the actions taken to address the deviations and recommendations. If the responsible party or any of its affiliates is publicly held, the responsible party or the affiliate shall submit one copy to the Department of any report, including, but not limited to, forms S-1, 8-K, 10-Q and 10-K, proxy or information statements and all registration statements, required to be filed by such responsible party or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency, at the time of filing with such commission or agency.***

R19-4-136. Promotions and/or Bonuses

Rule Reference: R19-4-136(D)

Reason for Change: DraftKings respectfully requests clarification on this requirement. It is industry standard to promote free play to accompany a player's deposit, and the promotion's terms require that a person make a deposit in order to receive the free play. DraftKings respectfully requests the language be stricken, as the intent behind this requirement is already addressed by R19-4-136(C) (requiring promotion and bonus rules are clear and unambiguous) and R19-4-136(E) (requiring the promotion or bonus rules are available to eligible players).

Existing Rule Language/Proposed Rule Language:

~~D. Promotions and/or bonuses shall not be described as free unless they absolutely are free.~~

R19-4-139. Accounting

Rule Reference: R19-4-139(C)-(J) & (L)-(M)

Reason for Change: DraftKings respectfully requests that the Department remove these sections. Due to sections R19-4-139(B) and R19-4-138(D), the policy goal of this rule is already satisfied, making these requirements redundant and would not help identify additional issues/variances.

Existing Rule Language/Proposed Rule Language:

~~*C. Daily, select a random sample of five (5) paid retail transactions from the event wagering system transaction report and trace the transaction to the customer's copy of the paid ticket.*~~

~~*D. Daily, for all winning retail payouts equal to or greater than $10,000 and for a random sample of ten (10) of all other winning retail payouts:*~~

~~*1. The tickets shall be recalculated and regraded using the event wagering system record of event results; and*~~

~~*2. The date and starting time of the event per the results report shall be compared to the date and time on the ticket and in the event wagering system transaction report.*~~

~~*E. Daily, for retail payouts made without event wagering system authorization at the time of payment including such payouts for contest/tournament winners, shall:*~~

~~*1. Trace all payouts to the event wagering system transaction report or the purged tickets report to verify authenticity of the initial event wager;*~~

~~*2. For payouts subsequently entered into the event wagering system by employees, compare the manual payout amount to the event wagering system amount; and*~~

~~*3. For payouts not entered into the event wagering system by employees, enter the payout into the event wagering system and compare the manual payout amount to the event wagering system amount. If the system is inoperative, manually regrade the ticket to ensure the proper payout amount was made.*~~

~~*F. Daily, for all retail voided tickets:*~~

~~*1. The event wagering system reports which display voided ticket information shall be examined to verify that tickets were properly voided in the computer system;*~~

~~*2. The voided tickets shall be examined for a void designation; and*~~

~~*3. If the event wagering system prints void tickets, a void ticket shall be attached to the original ticket.*~~

~~*G. Daily, event wagering system exception reports shall be reviewed for propriety of transactions and unusual occurrences. All noted improper transactions or unusual occurrences noted during the review of exception reports shall be investigated with the results documented.*~~

~~*H. Monthly, foot the customer copy of paid retail tickets for a minimum of one (1) cashier station and trace the totals to those produced by the event wagering system.*~~

~~*I. Quarterly, for each kiosk, foot the vouchers redeemed for a minimum of one (1) day and trace the totals to the totals recorded in the event wagering system and the related accountability document. This procedure may be performed for different kiosks throughout the quarter as long as each kiosk's activity is examined once a quarter. Accounting/revenue audit shall document the test and the results of variance investigations, by kiosk.*~~

~~*J. Quarterly, for a minimum of one (1) day, the event wagering system reports shall be reviewed for the proper calculation of the following:*~~

~~*1. Amounts held by the responsible party for player accounts (if applicable);*~~

~~*2. Amounts accepted by the responsible party as wagers on events whose outcomes have not been determined (futures); and*~~

~~*3. For retail, amounts owed but unpaid on winning event wagers through the period established for honoring winning wagers (unpaid winners and unredeemed vouchers).*~~

…

~~*L. Annually, foot the write on the event wagering system record of written tickets for a minimum of three (3) cashiers for each wagering pool for one (1) day and trace the total to the total produced by the event wagering system.*~~

~~*M. Annually, for a minimum of one (1) day, foot the redeemed vouchers for one (1) cashier station and trace the totals to those produced by the event wagering system.*~~

Rule Reference: R19-4-139(N)-(Q)

Reason for Change: DraftKings respectfully requests that the Department remove this section. Event wagering operators treat and account for tournaments like all other event wagering markets, therefore due to the requirements in sections R19-4-139(B) and R19-4-138(D), the policy goal of this rule is already satisfied, making these requirements redundant and would not help identify additional issues/variances.

Existing Rule Language/Proposed Rule Language:

~~*N. Daily, reconcile all tournament entries and payouts to the dollar amounts recorded in the appropriate accountability document and/or event wagering system report.*~~

~~*O. When payment is made to the winners of a tournament, reconcile the tournament entry fees collected to the actual tournament payouts made.*~~

~~*P. Monthly, review all tournaments, promotions, and bonuses to determine proper accounting treatment and proper win/loss computation.*~~

~~*Q. Monthly, perform procedures to ensure that promotions and bonuses are conducted in accordance with conditions provided to the patrons.*~~

R19-4-148. Patron Disputes

Rule Reference: R19-4-148(A)-(B)

Reason for Change: DraftKings respectfully requests that the responsible party's notification duties under R19-4-148 be removed. As currently drafted this rule requires responsible parties to notify patrons of their right to file a complaint with the Department after the initial complaint and after performing an internal investigation and review.

We take customer service and complaints extremely seriously. Responsible parties provide significant responsible gaming information on their platforms, including links and information regarding jurisdiction-specific patron complaint processes. Providing these notices two additional times throughout the complaint process is likely to increase the number of trivial complaints filed to the Department, increasing its workload and causing redundant investigations and reviews by the responsible parties.

Moreover, the determination of when a complaint is "unresolved" is not something that responsible parties are in a position to ascertain and, as such, that determination should be made by the patrons. In other jurisdictions patrons are responsible for notifying regulators of their complaint via the regulator-managed complaint portal or system. The regulator will then contact the relevant responsible party to gather information and assist the patron and the responsible party to reach a resolution.

Existing Rule Language/Proposed Rule Language:

A. ***Responsible parties shall develop and publish procedures by which a patron may file a complaint with the responsible party. These procedures must include instructions for how a patron may submit unresolved complaints to the Department and the complaint resolution process.*** ~~*Whenever the responsible party refuses payment of alleged winnings to a patron or there is otherwise a dispute with a patron regarding their player account, wagers, wins, or losses from event wagering, and the responsible party and the patron are unable to resolve the dispute to the satisfaction of the patron, the responsible party shall notify the patron of their right to file a written complaint. The notice shall include the procedure for filing a written complaint and the complaint resolution process.*~~

B. Upon receipt of a complaint, the responsible party shall investigate and provide a written response to the patron within ten (10) days. ~~*The response shall include a statement that if the dispute is not resolved to the satisfaction of the patron, the patron may submit their complaint in writing to the Department.*~~

1. If the Department receives a written complaint from a patron with regard to an unresolved patron dispute, the responsible party shall provide to the Department a written response to the patron's complaint.

2. ***After receiving a complaint from a patron, the Department will contact the responsible party to gather additional information before*** ~~*T*~~*the Department, in its sole discretion, may*

investigate the dispute and reach a final decision which may include a requirement for appropriate corrective action.

3. The Department ~~shall~~ ***may, in its sole discretion****, provide a written response to the responsible party and the patron of the results of its investigation and the corrective action it directs, if any, within five (5) days of the completion of its investigation.*

R19-4-152. Retention of Records

Rule Reference: R19-4-152

Reason for Change: DraftKings respectfully requests that the Department amend the record retention requirement to specifically enumerate which records are required to be retained, ensuring responsible parties retain the ability to allow customers the option to have certain types of data deleted upon request. The current draft language is extremely broad and could be interpreted in a way that would diminish the privacy rights of Arizona consumers. Thus, DraftKings believes narrowing the type of information that must be retained for five years to solely include event wagering information will be beneficial for responsible parties, the Department and consumers.

Existing Rule Language/Proposed Rule Language:

The responsible party shall require that ~~all~~ books, records, and data relating to the operation and management of event wagering in the State are maintained for at least five (5) years from the date of creation. Upon written approval of the Department, books, records, and/or data may be destroyed prior to passage of the required five (5) year retention period. ***For the purposes of this section, books, records and data shall include records of all bets and wagers placed, including personally identifiable information of the bettor, amount and type of bet, time the bet was placed, location of the bet, including IP address if applicable, the outcome of the bet, and records of unusual wagering activity.***

* * * * *

Thank you for your consideration of DraftKings' comments, and please reach out if we can be a resource in any way.

Sincerely,

DraftKings Inc.

April 3, 2022

VIA E-MAIL ONLY

Aiden Fleming
Assistant Director
Arizona Department of Gaming
100 N. 15th Avenue, Suite 202
Phoenix, Arizona 85007

Re: Comments On Proposed Event Wagering Rule Changes

Dear Assistant Director Fleming:

On behalf of the Arizona Indian Gaming Association ("AIGA"), I hereby submit the following comments regarding the proposed draft amendments to the Event Wagering Rules (the "Rules") originally released on March 28, 2022 by the Arizona Department of Gaming (the "Department"). The Department published updated draft amendments on March 30, 2022. The draft amendments to the Rules regulate off-reservation event wagering in Arizona.

Comments and Proposed Changes

PROCEDURES FOR LICENSING

- R19-4-105(C)

The proposed amendment requires a change in the word "licensure" to "license" similar to the change at subsection (F).

- R19-4-105(J)

The proposed amendment addresses two issues that require comment.

First, the use of the word "robust" is vague, ambiguous, and generally subjective such that it lacks any practical use or application. In short, any action to revoke a license for failure to conduct a "robust" event wagering operation will certainly lead to disputes and is potentially inconsistent with A.R.S. § 5-1306(A)(1). The proposed amendment fails to include any objective criteria to determine what constitutes a "robust" event wagering operation. The potential to arbitrarily deem an event wagering operation as not satisfying the purely subjective standard potentially negatively affects event wagering operations that choose to operate in a manner that is different than any perceived

"robust" operations. For example, if a tribal event wagering operator does not spend millions to attract patrons through bet "insurance" or free play, but instead uses a different patron acquisition method, would that alternative use of business judgment satisfy the "robust" criteria? The proposed amendment appears to be contrary to the Legislature's actions to afford opportunities to licensed tribal operators.

Second, any requirement that an event wagering licensee effectively be prohibited from changing its operator, designee, or management service provider ignores business realities and unfairly prohibits Tribal event wagering operators from directly operating their own event wagering operations in the future. Any licensee presumably should be afforded the opportunity to utilize suitable operators, designees, or management service providers consistent with its business needs and return on investment. Those needs might require a change to a provider that offers a better product that is more attractive to patrons, better service or support, or better pricing. The language, as proposed, would prohibit changes that might be necessary or desirable to an event wagering licensee, including enhancing operations, revenues, and, ultimately, payment of privilege fees to the State.

The AIGA recommends that the Department delete the proposed amendment in its entirety.

ALLOCATION FOR APPLICANTS

- **R19-4-106(C)(3)**

The AIGA objects to the proposed amendment that appears to be contrary to existing law. The Department lacks authority to adopt a regulation waiving or modifying the statutory definition of a sports facility.

Existing law provides for licensing of a retail event wagering facility within or near a sports facility. "'Event wagering facility' means a facility at which event wagering is conducted under this chapter." See ARS § 5-1301(6). However, a "sports facility" is defined as: "a facility that is owned by a commercial, state or local government or quasi-governmental entity that hosts professional sports events and that holds a seating capacity of more than ten thousand persons at its primary facility, one location in this state that hosts an annual golf tournament on the PGA tour and one location that holds an outdoor motorsports facility that hosts a national association for stock car auto racing national touring race." See A.R.S. § 5-1301(18), emphasis added.

The proposed amendment would authorize for three years the use of a "sports facility" with a seating capacity smaller than the existing requirement of more than 10,000 persons. Of course, the three year period is speculative and any construction, renovation, or remodeling that exceeds three (3) years is not capable of being penalized other than to shut down the off-reservation retail wagering operation after the three year period.

Further, the proposed amendment would not implement the agreement between Arizona Tribes and the State that is embodied in the 2021 Compact and H.B. 2772 for a limited expansion of gaming in Arizona. Such changes are potentially inconsistent with the exclusivity provisions of the 2021 Compact as the proposed amendment would authorize "Off-Reservation Event Wagering" beyond the scope, nature, and location of "Off-Reservation Event Wagering" allowed in the "2021 Gaming Act." The Governor's office, professional sports teams or franchises, and Tribal Nations negotiated a comprehensive modernization to Arizona gaming. The Legislature approved the comprehensive legislation including the definition of "sports facility" that the Department now seeks to change. To the extent this proposed amendment could be interpreted to authorize retail event wagering within five blocks of a "temporary sports facility" that does not meet the sports facility capacity requirements of existing law, it would violate the 2021 Compact's exclusivity provisions.

The AIGA recommends the Department delete the proposed rule R19-4-106(C)(3).

RESPONSIBLE ADVERTISING

- **R19-4-110(G)**

The AIGA recommends changing this section to: "Event wagering shall not be or promoted or advertised on college or university campuses, except for generally available advertising, including television, radio, and digital advertising."

RESERVE REQUIREMENTS AND BANK ACCOUNTS

- **R19-4-113(C)**

The AIGA supports the concept of a responsible party notifying the Department of its intent to cease event wagering operations and player protection.

However, the AIGA suggests that the language be modified to: "The responsible party shall notify the Department no fewer than thirty (30) days prior to ceasing event wagering operations and shall provide a written plan to settle any outstanding liabilities and/or refund player account funds."

EVENTS AND WAGERS

- **R19-4-129(F)**

The proposed amendment published on March 30, 2022, would implement the limited expansion of off-reservation gaming to which tribes agreed in the 2021 tribal-state gaming compacts and H.B. 2772.

The AIGA supports the proposed amendment.

***

Thank you for your consideration of the AIGA's comments. Please contact AIGA's counsel, Bradley Bledsoe Downes, at bdownes@bdrlaw.com if you have any questions.

Sincerely,

Gwendena Lee Gatewood
Chairperson

cc: James Stipe, Counsel for Department of Gaming, jstipe@bcattorneys.com
Warren Nichols, Department of Gaming, wnichols@azgaming.gov

Leadership with Loyalty, Integrity & Wisdom

Tohono O'odham Nation
Office of the
Chairman and Vice Chairwoman

Ned Norris Jr.
Chairman

Wavalene M. Saunders
Vice Chairwoman

April 1, 2022

SENT VIA EMAIL

Aiden Fleming, Assistant Director
Arizona Department of Gaming
afleming@azgaming.gov

Re: Comments on Proposed Rule Changes

Dear Assistant Director Fleming,

On March 28, 2022, the Arizona Department of Gaming (the "Department") published draft amendments to its Event Wagering rules (the "Rules") published at Ariz. Admin. Code, T. 19, Ch. 4, Art. 1, which regulate off-reservation event wagering in Arizona pursuant to A.R.S. T. 5, Ch. 11 - Event Wagering. The Department published updated draft amendments on March 30, 2022.

Desert Diamond Mobile LLC ("Desert Diamond Mobile"), a wholly owned, subordinate economic organization of the Tohono O'odham Nation, is licensed by the Department to conduct off-reservation event wagering in Arizona on behalf of the Nation. The Nation submits these comments on the proposed amendments to the Rules on behalf of the Nation and Desert Diamond Mobile.

Comments and Proposed Changes

Procedures for Licensing
R19-4-105(C)
Comment on Rule: This amendment, and a corresponding change in R19-4-105(F), would clarify the dates from which certain deadlines will be calculated. The Nation supports the proposed change, but suggests a minor change in the proposed language.

Proposed Change: The Nation suggests changing the phrase "issued a licensure" to "issued a license."

Procedures for Licensing
R19-4-105(J)
Comment on Rule: This proposed amendment would allow the Department to revoke an event wagering operator's license if the licensee (1) "fails to conduct a robust event wagering operation" or (2) "fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management service provider that formed the basis for its license allocation."

The Nation objects to the first proposed basis to revoke a license, failure to conduct a "robust" event wagering operation, because (among other reasons) the proposed rule fails to set any standard for what is or is not a "robust" event wagering operation. The rule would, therefore, allow the Department to arbitrarily revoke an event wagering operator's license, at any time, without notice, and without any standard to benchmark whether the event wagering operation has been successful. Moreover, the proposed rule could be used to discriminate against Arizona-based event wagering operators, such as the tribally owned licensees, which will grow more slowly through sustainable grass-roots marketing, in comparison to the out-of-state corporate designees/licensees chasing short-term customers through costly and loss-producing marketing incentives that will disappear in time. The proposed rule not only conflicts with the statutory opportunities the legislature enacted for tribes and tribal entities to hold licenses, but the risk the proposed rule would present for all licensees will undermine their incentives to invest in their event wagering operations if their investment can be destroyed at any time an operation is deemed insufficiently "robust." Finally, the Legislature set license revocation criteria in A.R.S. § 5-1306.A.1. and the Department lacks authority to adopt wholly new revocation criteria by rule.

The Nation also objects to the second proposed basis to revoke a license, a licensee's decision to make a change in event wagering operator, designee, limited event wagering operator, or management service provider. The Nation will focus its comments on a change in management service providers, but its comments are applicable more broadly. A licensee might desire to make a change in management service providers for any number of reasons, including moving to a provider that offers a better product, or better service or support, or better pricing. A licensee might also desire to make a change in management service providers to differentiate its offerings from those of other licensees. At bottom, these all relate to offering Arizona's event wagering consumers a good experience on an operator's platform. The proposed amendment appears to require licensees to perpetually engage the management service providers with which they launched operations in Arizona, regardless of whether those providers offer Arizona's event wagering consumers a good experience, competitive products, competitive pricing, or good service—and that's bad for Arizona consumers and also bad for licensees. The Department should rely on event wagering operators to make business decisions that are good for their businesses and customers, rather than arrogating to a state regulatory agency the power to make such decisions.

Proposed Change: The Nation recommends deleting the proposed rule R19-4-105(J).

Allocation for Applicants
R19-4-106(C)(3)
Comment on Rule: This proposed amendment appears to be aimed at allowing the Department to waive, for up to three years, the statutory requirements under A.R.S. § 5-1301(18) and A.R.S. § 5-1304(D)(1) that a retail event wagering facility be "within a five-block radius of the event wagering operator's sports facility or, in the case of a designee, the sports facility or the designating owner, operator or promoter of a professional sports team, event or franchise," with a sports facility defined as a facility with "a seating capacity of more than ten thousand persons," by allowing the Department to approve retail event wagering within five blocks of a "facility smaller than 10,000 seats" under certain conditions. The Nation objects to the proposed amendment for two reasons.

First, the Arizona Legislature defined "sports facility" as a facility having a seating capacity of more than ten thousand persons and required retail event wagering facilities to be within a specified proximity to such a sports facility. The Department lacks authority to adopt a regulation waiving or modifying either the statutory requirement of proximity or the statutory definition of a sports facility.

Second, the proposed amendment may trigger a "poison pill" event under the 2021 tribal-state gaming compacts, as the amendment appears to authorize "Off-Reservation Event Wagering" beyond the scope, nature, and location of "Off-Reservation Event Wagering" allowed in the "2021 Gaming Act."

Proposed Change: The Nation recommends deleting proposed rule R19-4-106(C)(3).

Responsible Advertising
R19-4-110(G)
Comment on Rule:
This amendment would limit event wagering promotion or advertising on college or university campuses with an exception for certain forms of advertising. The Nation recommends a simple edit to better reflect the range of current and future "generally available" advertising.

Proposed Change:

The Nation recommends amending this rule to read, "Event wagering shall not be or promoted or advertised on college or university campuses, except for generally available <u>advertising, including</u> television, radio, and digital advertising."

Reserve Requirements and Bank Accounts
R19-4-113(C)
Comment on Rule: This amendment would require notice to the Department before an event wagering operator ceases operations, along with a written plan to settle any outstanding liabilities and refund player account funds. The Nation supports the substance of this player

protection measure, but suggests modifying the language to provide better clarity on when a notice would be required.

Proposed Change: The Nation suggests that the rule read: "The responsible party shall notify the Department no less than thirty (30) days prior to ceasing event wagering operations and shall provide a written plan to settle any outstanding liabilities and/or refund player account funds."

Events and Wagers
R19-4-129(F)
Comment on Rule: The proposed amendment, as revised on March 30, 2022, would implement the limited expansion of off-reservation gaming to which tribes agreed in the 2021 tribal-state gaming compacts and H.B. 2772. The Nation strongly supports the proposed amendment.

Thank you for your consideration.

Sincerely,

Ned Norris, Jr., Chairman

cc: James Stipe, Counsel for Department of Gaming, jstipe@bcattorneys.com
Warren Nichols, Assistant Director – Gaming Compliance, Department of Gaming, wnichols@azgaming.gov
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April 3, 2022

Aiden Fleming
Assistant Director
Arizona Department of Gaming
100 N. 15th Ave., Suite 202
Phoenix, AZ 85007

via electronic mail to
afleming@azgaming.gov

Re: Comments on Event Wagering Draft Final Rules

Dear Assistant Director Fleming,

Please accept these comments on behalf of the Yavapai-Apache Nation ("Nation") pertaining to the Event Wagering Draft Final Rules.

Rule: Procedures for Licensing

Rule Reference: R19-4-105.J

Comment on Rule: The Nation recommends that the Department split the new language in R19-4-105.J into two separate sections. The first part of the language ("The Department may revoke a license where the licensee fails to conduct a robust event wagering operation") applies to ongoing operations between a tribe or professional sports team and their partner, whereas the second part of the language ("or fails to continue operations with the [partner] that formed the basis for its license allocation") applies to operations that have ended between the tribe or professional sports teams and the partner that formed the basis for the license allocation. In this later circumstance, the Nation believes that the event wagering operator license should revert to the Department for reallocation and not be subject to a possibly drawn out revocation process.

The first part of the language involves a subjective determination by the Department of whether a licensee has failed to conduct a "robust" event wagering operation. A revocation process for this type of determination and its application to ongoing operations is warranted. However, the second part of the language involves a clear objective determination of whether the partner that formed the basis for the Department's allocation decision is present or not and there is no need for a revocation process. Instead, principles of fairness dictate that the license should revert to the Department for reallocation.

The allocation of event wagering operator licenses under R19-4-106.E is based on the Department's assessment of how closely the combined attributes of the tribe or professional sports team and the partner are aligned with the listed criteria. That combination, and therefore the basis for the license allocation, no longer exists with the exit of the partner. The allocation criteria are heavily focused on the partner's ability to create and maintain a successful event wagering operation and include consideration of the following: business ability, experience, and track record, both locally and internationally; good standing in obtaining and maintaining licenses in all markets; demonstrated culture of player protection and an effective governance program; competency to conduct event wagering and maximization of privilege fees to the State; demonstrated financial stability and resources; and demonstrated regulatory compliance and cooperation with regulatory authorities. The allocation criteria also consider whether the applicant would appeal to a unique or unaddressed market or unique brand, or increase the patron base in the State. The Department's application of the allocation criteria and hence the decision to allocate a license to one applicant over another is negated with the exit of the partner and the attendant withdrawal of the qualities brought by the partner to the allocation process. As such, the event wagering operator license should revert to the Department for reallocation. The allocation of a license cannot be viewed as a vested right where the joint qualifications upon which the allocation was based no longer exist.

If the event wagering operator license of a tribe or professional sports team reverts to the Department as described above, the tribe or professional sports team could reapply with a new partner if desired, but should do so only on the same basis as other applicants. If there are more qualified applications than the number of licenses available, the Department would apply the allocation criteria to determine which applicant(s) is awarded the license as provided in R19-4-106.H.

If the Department still finds that a revocation process is appropriate when a tribe or sports team fails to continue operations with the partner that formed the basis for its license allocation, the revocation should be mandatory and not discretionary.

Proposed Changes:
Recommended:

> J. The Department may revoke a license where the licensee fails to conduct a robust event wagering operation.
> K. A license shall revert to the Department where the licensee fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management service provider that formed the basis for its license allocation.

Alternative:

> J. The Department may revoke a license where the licensee fails to conduct a robust event wagering operation, and shall revoke a license where the licensee fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management service provider that formed the basis for its license allocation.

Rule: Allocation for Applicants

Rule Reference: R19-4-106.C.3

Comment on Rule: The Nation recommends that the Department put the new language in this section under a separate section as R19-4-106.C is a list of requirements for a professional sports team to be qualified for an event wagering operator license. The Event Wagering statute does not require the owner of an Arizona professional sports team to use or operate a "sports facility" that meets the definition of ARS § 5-1301(18) in order to qualify for an event wagering operator license. Rather, the statute just requires the use of "sports facility" in order for the professional sports team to operate retail event wagering. Use of a "sports facility" is not required to operate mobile event wagering.

Under ARS § 5-1304(A)(1), applicants for event wagering operator licenses must be either:

> 1. An owner of an Arizona professional sports team or franchise, operator of a sports facility that hosts an annual tournament on the PGA tour, promoter of a national association for stock car auto racing national touring race conducted in this state or the owner's, operator's or promoter's designee, contracted to operate event wagering for both retail event wagering at a sports facility or its complex as prescribed in subsection D of this section and mobile event wagering throughout the state.

Emphasis added. See also the definition of "Event wagering operator" at ARS § 5-1301(7)(a). There is no qualifier in ARS § 5-1304(A)(1) or ARS § 5-1301(7)(a) that the professional sports team use or operate a "sports facility" to qualify for a license. Furthermore, ARS § 5-1304(D) authorizes, but does not require an event wagering operator under ARS 5-1304(A)(1) to offer both retail and mobile event wagering. ARS § 5-1304(D) provides:

> D. A license issued by the department pursuant to this section authorizes an event wagering operator identified in subsection A, paragraph 2 of this section to operate only mobile event wagering or an event wagering operator identified in subsection A, paragraph 1 of this section to offer both:
>
> 1. Event wagering in this state through an event wagering facility within a five-block radius of the event wagering operator's sports facility or, in the case of a designee, the sports facility of the designating owner, operator or promoter of a professional sports team, event or franchise. An event wagering facility within one mile of a tribal gaming facility must be:
>
> (a) Within a sports complex that includes retail centers that are adjacent to the sports facility.
>
> (b) Not more than one-fourth of a mile from a sports facility within the sports complex.
>
> 2. Event wagering through a mobile platform as specified by the department. A licensed event wagering operator or its designated management services provider may offer event wagering through an event wagering platform as specified by the department.

Emphasis added. ARS § 5-1304(D) provides that a "sports facility" is required for a professional sports team to operate retail event wagering but is not required to operate mobile event wagering.

In addition, because ARS § 5-1304(D) provides that a "sports facility" is required to operate retail event wagering, the second part of the new language allowing for the temporary use of smaller facility is contrary to the statute. It is therefore also contrary to the Amended and Restated Gaming Compact which provides that "Off-Reservation Event Wagering" is "strictly limited solely and exclusively to the scope, nature and location of the activities as provided in the 2021 Gaming Act."

In sum, the new language should be removed from R19-4-106.C.3 because it suggests that a professional sports team must use or operate a "sports facility" to be qualified for an event wagering operator license when no such requirement is in the statute.

Proposed Changes:

Remove the proposed language from R19-4-106.C.3 and add the first part of the new language to R19-4-107, Event Wagering Facility Location, as follows:

A. Use or operation of a sports facility that meets the definition of A.R.S. § 5-1301(18) is required for the operation of retail event wagering under A.R.S. § 5-1304(D)(1).

Rule: Events and Wagers

Rule Reference: R19-4-129.F.

Comment on Rule: The Nation supports the revision to this Rule as the revision is consistent with the intent of the Off-Reservation Event Wagering exception to tribal exclusivity in the Amended and Restated Gaming Compact and the language in the Agreement to Amend Compact between Arizona Tribes and the State of Arizona.

Proposed Changes: none

The Nation appreciates the Department's consideration of these comments. Please contact me at (928) 567-1023 or lbluelake@yan-tribe.org if there are any questions.

Sincerely,

Lisa Estensen

Lisa Estensen
Assistant Attorney General

cc: Warren Nichols (wnichols@azgaming.gov)
Jim Stipe (jstipe@bcattorneys.com)

Cory Fox
cory.fox@fanduel.com

April 3, 2022

Via Email to afleming@azgaming.gov
Aiden Fleming, Assistant Director
Arizona Department of Gaming
100 N. 15th Ave., Suite 202
Phoenix, AZ 85007

Re: FanDuel comments on proposed "draft final rules."

Dear Assistant Director Fleming:

I write to provide comments on behalf of FanDuel Group, Inc. ("FanDuel") regarding the Arizona Department of Gaming's (Department) "draft final rules" ("Proposed Rules"). Based on our extensive experience as an operator in the online casino gaming, sports betting and fantasy sports industries and collaborator with regulators of sports betting in many states in the development of their regulations, we offer constructive feedback on ways in which the Proposed Rules can be improved for effectiveness and consistency with other state regulations.

Following the Supreme Court's decision to strike down the Professional and Amateur Sports Protection Act (PASPA) in May of 2018, FanDuel has now become the leading sports wagering operator, and the largest online real-money gaming operator, in the United States. FanDuel currently operates twenty-five (25) brick and mortar sportsbooks in fourteen (14) states and online sports wagering in fifteen (15) states. We appreciate the opportunity to share our perspective on sports betting regulation with you and have arranged our comments in three parts. Part I is focused on issues of concern in the Proposed Rules that impact the ability of sports wagering operators to successfully operate in Arizona. Part II is focused requests for clarification. Finally, Part III addresses concerns that are not reflected in the regulations, but deal with forms from the Department.

All changes will be shown as follows: proposed additional text will be bolded and underlined and all text to be deleted will be bolded, bracketed, and struck through. For the sake of clarity where we are suggesting edits, our suggested edits will be in red, and the Department's edits will be in black.

Part I – Operational Concerns.

- ***Issue 1 – Calculation of, and procedures for, remitting the privilege fee.***

Section R19-4-112 of the Proposed Rules details the process for event wagering operators to remit the privilege fee required by A.R.S. § 5-1318(A). However, there are two concerns that we have with the language in this Section.

First, is the lack of a clear ability for event wagering operators to carryover amounts of negative adjusted gross event wagering receipts from month to month. This has the impact on event wagering operators of increasing the effective rate of their privilege fee, since they are not able to offset positive adjusted gross event wagering receipts from one month with negative adjusted event wagering receipts from a previous month. For example, if an event wagering operator had negative $250,000 in adjusted gross event wagering receipts for online in one month and then positive $500,000 in the following month, their two-month adjusted event wagering receipts would be $250,000, thus creating a fee burden of $25,000. However, as calculated by the Department, the fee burden would be $50,000 ($0 for month one and $50,000 for month two) doubling the effective fee for the event wagering operator. This is a significant burden on event wagering operators. Many other states have recognized how event wagering is different from other forms of gaming in this way and provided authorization to carryover negative amounts from month to month, including Wyoming, which provided for it in regulation without any statutory language on the issue[1].

Second, regardless of the issue of carryover of negative adjusted event wagering receipts from month to month, the provision for remediating an overpayment by an event wagering operator following the completion of an annual audit, does not take into account the situation whereby an operator may be due more in an annual overpayment, than they owe in privilege fee for the month following the completion of the annual audit. For example, if an event wagering operator is found to have overpaid $500,000 in privilege fee payments for the year, but the following month only owes $250,000 in privilege fee, the are not able to carry the remaining amount forward and apply to subsequent months.

To address these concerns, we suggest the following edits:

Section R19-4-112:
"A. As per A.R.S. § 5-1318(A), the established fee for the privilege of operating event wagering shall be eight percent(8%) of adjusted gross event wagering receipts for retail operations and

[1] Wyoming Administrative Rules – Wyoming Gaming Commission - Online Sports Wagering – Chapter 3, Section 1(d)

ten percent (10%) of adjusted gross event wagering receipts for mobile operations.
B. The calculation of adjusted gross event wagering receipts shall be reported in the format required by the Department. The responsible party shall submit all necessary supporting documentation as directed by the Department to confirm the calculation of adjusted gross event wagering receipts. The report and supporting documentation shall be submitted to the Department no later than the twenty-fifth (25th) day of each month for the preceding month.

1. Fees paid pursuant to the Act and this Article shall be paid to the Department in the manner prescribed by the Department.
2. Following the Department's receipt of the annual audit pursuant to A.R.S. § 5-1319, any overpayment of fees by the responsible party shall be credited to the responsible party's next monthly fee payment. **If the application of any overpayment of fees determined per the annual audit conducted pursuant to A.R.S. § 5-1319 is greater than the next monthly fee payment, the excess overpayment that remains may be applied to reduce the fee payment for each subsequent month until the entire annual audit adjustment has been fully utilized.** Any underpayment of fees shall be paid by the responsible party within thirty (30) days of the Department's receipt of the annual audit.

C. If the amount of adjusted gross event wagering receipts for a month is a negative figure, the event wagering operator shall not remit a privilege fee payment for that month. Any negative adjusted gross event wagering receipts must be carried over and calculated as a deduction on the privilege fee payment form on the subsequent months until the negative figure has been brought to a zero balance."

Part II - Requests for Clarification.

- ***Issue 1 – Clarification of the ability of the Department to revoke a license when a licensee no longer continues operations.***

Section R19-4-105(J) of the Proposed Rules includes a new provision whereby the Department may revoke a license "where the licensee fails to conduct a robust event wagering operation or fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management services provider that formed the basis for its license allocation." While we understand that the Department does not want to have the limited available event wagering operator and limited event wagering operator licenses go unused or be underutilized, as written, this language is unclear about whether it extends beyond those licenses and potentially impact suppliers who no longer are doing business with the initial entity they provided services to.

For example, if an affiliate marketer no longer provides services to the event wagering operator it originally partnered with, but now partners with one or more different event wagering operators, is it subject to potential revocation of its license under this section? We do not believe that is the

intent of the Department, since there is a reference to "license allocation" and suggest the following clarifying edit which follows similar language in subsection (C) of this rule:

Section R19-4-105(J):
"**(J) The Department may revoke a license where the [~~licensee~~] responsible party fails to conduct a robust event wagering operation or fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management services provider that formed the basis for its license allocation.**"

Part 3 – Concerns with forms.

- ***Issue 1 – Error with wagering tax return excel file.***

The federal wagering excise tax deduction is calculated as a derivative of Line 1 of the AZ wagering return rather than operators simply reporting the actual federal excise tax paid on handle. Different operators calculate their federal wagering excise tax in diverse ways due to the terms of the market access agreements and their interpretation of certain ambiguous statues/regulations, so it is not proper for the federal wagering excise tax to be calculated formulaically on a wagering tax return. The field should be an open field to allow operators to report the actual federal wagering excise tax paid. Virginia shifted to this approach when we called out the same formulaic error within their wagering tax return Excel file.

****

We appreciate your time and consideration of our comments and would be happy to discuss at your convenience.

Sincerely,

Cory Fox
Government Affairs and Product Counsel Vice President

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LEWIS ROCA

April 3, 2022

Our File Number: 148900-00003

VIA EMAIL ONLY (AFLEMING@AZGAMING.GOV)

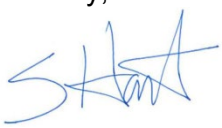
Mr. Aiden Fleming
Assistant Director
Arizona Department of Gaming
100 N. 15th Ave., Suite 202
Phoenix, AZ 85007

RE: Event Wagering Rules – Responses to the Department's Proposed Changes

Dear Aiden:

Thank you for the opportunity to review and comment on the Department's proposed changes to the event wagering rules. Attached please find our responses, which are filed on behalf of the Navajo Nation Gaming Enterprise. Please let us know if you have questions or if we can provide additional information.

Sincerely,



Stephen M. Hart
Lewis Roca Rothgerber Christie LLP

SMH/
Attachment

cc: Warren Nichols (wnichols@azgaming.gov)
Jim Stipe (jstipe@bcattorneys.com)
Brian Parrish (bparrish@nnge.org)

Rule Topics: **Procedures for Licensing - Revocation of License**
Allocation of Licenses – Revocation of Allocated Licenses

Rule References: **R19-4-105(J) (Proposed) and R19-4-106**

The Department may revoke a license where the licensee fails to conduct a robust event wagering operation or fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management service provider that formed the basis for its license allocation.

Comment On Rules:

Robust Not Defined

The term "robust" is not a legal term, does not appear anywhere else in the event wagering act or rules, and is too subjective for use in a provision that could lead to the revocation of a state gaming license. We recommend the term robust not be used unless it can be specifically defined. As you will see below, we have substituted the term with language used elsewhere in the rules.

Based on the allocation factors the Department set out in R19-4-106, it is our hope that the Department meant more by "robust" than a requirement to meet a specific revenue goal. If the "robust" concept is kept and it is tied to a revenue number, we believe it should also be tied to the significant investment that licensees have made in obtaining the license, customizing technology, marketing and advertising, contributing to local community(ies), serving a unique population, and/or building an event wagering operation within the State.

If the term "robust" is defined or interpreted by the Department to solely mean a requirement for the licensee to meet specific revenue goals, we believe such a requirement is not authorized by the event wagering statute.

Revocation Standards Set by Statute

Arizona's Event Wagering statute provides for 13 situations in which the Department may revoke, suspend, or deny an event wagering license. A.R.S. § 5-1306. The majority involve serious violations of ethics and criminal laws. None authorize the Department to revoke a license for failure to meet specific revenue goals. In fact, nowhere in the statute are revenue goals set out or required in order to obtain or maintain a license.

There is a reason for this. Gaming is a highly regulated industry. The revocation of a license in a single jurisdiction could trigger investigations and revocations in every other jurisdiction in which the licensee operates. The costs to defend such actions and the damage to the licensee's

reputation could be astronomical. Early revocation also jeopardizes the significant financial investment licensees and other responsible parties will have made in their event wagering operations in the attempt to become profitable. The statute allows up to twenty initial event wagering operator licensees, but only a few have had the resources and existing customer databases to take an early lead in the market by deploying the all-out spending strategies that have delayed and disturbed the natural settling of the mobile event wagering marketplace in Arizona.

The fact that other operators may be behind, or may be in the midst of product improvements, does not mean they aren't worthy of holding a license. We understand from consultants that it may take three to four years for some operators to develop a loyal patron base that will generate enough revenues to cover their initial operating and development costs. As a result, revoking the license of a good faith operator during this ramp-up period is likely to have an out-sized impact on smaller or rural operators who are qualified for licensure, but need a reasonable time to ramp up.

So long as the licensing fees in A.R.S. § 5-1305 and the 8% retail and 10% mobile privilege fees in A.R.S. § 5-1318 are timely reported and paid, it is our belief that the Department is not authorized to penalize a licensee for failure to meet an unknown and later-set financial metric.

Non-Allocated Licenses. The Department has 60 days after receiving a complete application to issue a license to an applicant unless a background investigation discloses that the Applicant has a criminal history or unless other grounds apparent on the face of the application are sufficient to disqualify the applicant. A.R.S. § 5-1305(C). Per the Department's own rules, an applicant is qualified for an event wagering operator license based on the criteria outlined in R19-4-106(B), none of which includes a requirement to raise a specific amount of revenue.[1]

Allocated Licenses. The allocation process created by the State Legislature required the Department to adopt a process for ensuring an equal opportunity for all qualified applicants to obtain a license "if more than ten applications are received for a particular license type." A.R.S. § 5-1305(C). The Department is granted significant deference during this process; however, once that allocation process has concluded, there is no requirement, obligation, or authority for the Department to reshuffle the deck and reallocate licenses because circumstances have changed or there is a subjective belief the license is not producing sufficient revenue. The only statutory exception would be if the applicant obtained

[1] An applicant is qualified if it meets the definition in 5-1301(7)(a) (for professional sports teams) and 5-1301(7)(b) (for Indian Tribes); It meets the requirements in 5-1304(A)(1)/(2), 5-1304(B) and (C); and It and its employees: submit to background checks per 5-1302(C) and (E); are not prohibited participants under 5-1301(16); and don't have criminal history or other grounds sufficient to disqualify the applicant on the face of the application per 5-1305(C) as determined by the factors in 5-1305(B)(1-5).

the license by fraud, misrepresentation, concealment, inadvertence or mistake. A.R.S. § 5-1306(A)(3).

In fact, the statute specifically anticipates that a license may need to be transferred to another person or entity because it gives the Department the right to grant prior approval to such a transfer. A.R.S. § 5-1305(I). Moreover, the statute does not disfavor transfers. In A.R.S. § 5-1305(I), the Department is required to work with applicants and licensees to ensure there is no gap in the validity of the license if a transfer is approved.

Time is of the Essence

We believe, and would advocate, that the proposed rule R19-4-105(J) be removed in its entirety for the reasons discussed above. Because the exemption from rulemaking granted in the statute (Section 7 of the act) expires soon and we understand the Department does not plan to seek additional stakeholder comments, if the Department keeps the provision, we recommend the following changes:

Proposed Changes: **R19-4-105(J) - Procedures for Licensing**

J. Under extraordinary circumstances, the Department may revoke a license where it can demonstrate by clear and convincing evidence that the licensee has failed~~s~~ to create and maintain a successful and stable ~~conduct a robust~~ event wagering operation within the State~~, or fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management service provider that formed the basis for its license allocation~~. A rebuttable presumption that a licensee has not done so is created where:

(a) The responsible party has been conducting event wagering within the State for at least 365 days and during that period it has generated less than 10% of the adjusted gross event wagering receipts it predicted it would generate in its initial application. A.R.S. § 5-1304(B)(9);

(b) The responsible party has for more than 90 days:
  (i) Not maintained a bankroll or equivalent provisions adequate to pay winning wagers to bettors when due. A.R.S. §5-1304(B)(6)(a);
  (ii) Not had the ability to meet ongoing operating expenses. A.R.S. § 5-1304(B)(6)(b);
  (iii) Not had the ability to pay, as and when due, all state and federal taxes. A.R.S. § 5-1304(B)(6)(c); and

(c) The Department has given the responsible party written notice of its concerns and at least 180 days to address them, but the

responsible party has not made a good faith effort to do so and does not have a commercially reasonable plan in place that would allow it to do so in the time provided.

The Department shall not revoke a license under this section during the first year after a license has been issued, regardless of the amount of revenue generated, so long as the responsible party has not abandoned its event wagering operation within the State. A rebuttable presumption of abandonment is created where:

(a) The responsible party has voluntarily ceased conducting event wagering within the State for at least 30 days;

(b) No emergency or force majeure reason exists for the cessation; and

(c) The responsible party does not have a commercially reasonable plan to resume event wagering within the State within 180 days after cessation.

R19-4-106(I). Allocation for Applicants

I. The Department may revoke a license within its first three years of licensure if the licensee fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management service provider that formed the sole or nearly substantial basis for which it was allocated a license under R19-4-106(E) or (F), as applicable.

(a) Notwithstanding anything in R19-4-106(I), so long as the primary commitments and goals of the supplemental allocation application provided by the applicant under R19-4-106 remain valid, the Department shall not revoke a license where the change was the result of:

(i) Mergers, acquisitions, corporate restructuring, debt to equity conversions, and the like;

(ii) The licensee or other responsible party has made a significant investment in obtaining the license, customizing technology, marketing and advertising, contributing to the local community(ies), serving a unique population, and/or building its event wagering operation within the State; or

(iii) The licensee or responsible party has otherwise created and maintained a successful and stable event wagering operation within the State, as those terms are further defined in R19-4-105(J).

(b) If the licensee or other responsible party requests a transfer of the license, per Section 5-1305(I), before considering revocation of the license, the Department shall first make every effort to work in good faith to approve a transfer of the affected license and ensure there is no gap in the licensure.

Rule Topics: **Procedures for Licensing – 180-Day Launch**

Rule References: **R19-4-105(C) (Proposed)**

Within one hundred and eighty (180) days of being issued a licensure, the responsible party shall conduct event wagering in the State or the license shall revert to the Department.

Comment On Rules: It is our understanding that the purpose of the 180-day rule was to prevent the creation of a secondary market for event wagering licenses, particularly amongst tribal applicants where there was likely to be more applicants than licenses available. An objective 180-day standard was a reasonable way to ensure applicants had a good faith intent to conduct sports betting and did not intend to sell their license to other applicants. However, there is no reason to interpret the rule in a formalistic manner, especially when the COVID-19 pandemic created labor shortages and supply chain problems. We believe the Department would be well within its rights to interpret the 180-day rule in R19-4-105(C) in a way that recognized excusable delay.

Proposed Changes: **R19-4-105(C)**

Within one hundred and eighty (180) days of being issued a final licens~~ure~~, the responsible party shall conduct event wagering in the State or the license shall revert to the Department. The 180 days shall be calculated based on the responsible party being issued a final license and shall not be calculated based on the issuance of a temporary license. Nothing in this section shall prevent the Department from waiving the 180-day requirement for excusable delay, which shall include the following:

(a) The responsible party has made and continues to make a good faith effort to conduct event wagering in the State, will be able to do so within a commercially reasonable time, and has been delayed because of:

(i) Testing, approval, or third-party scheduling delays;

(ii) A necessary approval has been denied due to minor errors or requested changes during the approval process will be difficult to efficiently and cost-effectively make within the 180-day period;

(iii) Labor shortages, supply chain disruption issues, or other delays caused or aggravated by the COVID-19 pandemic or other force majeure causes;

(iv) The responsible party holding the event wagering operator license had demonstrated in its application preparedness to actively engage in event wagering within the required timeframe, but its technology provider is unable to meet the 180-day period. Demonstrated preparedness may be shown by the existence of agreements or letters of intent with the Suppliers, Ancillary Suppliers, Designees, Management Services Providers, or other technology providers necessary to operate online, mobile and/or retail sports betting in the State.

(v) Any other criteria deemed by the Department to demonstrate the responsible party had a good faith intent to conduct event wagering when filing its application, continues to have a good faith intent to conduct event wagering in the State, and did not intend to create or contribute to a secondary market for event wagering operator licenses.

Rule Topics: **Procedures for Licensing**

Rule References: **R19-4-105(F)**

Responsible parties shall remit the annual license fee to the Department within twelve (12) months of the date in which they were issued a license, and annually thereafter.

Comment On Rules: For clarity and consistency with our comments to R19-4-105(C) above, we recommend the Department clarify that the deadline turn on the date the final license is issued.

Proposed Changes: Responsible parties shall remit the annual license fee to the Department within twelve (12) months of the date in which they were issued a final license, and annually thereafter.

Rule Topics: **Procedures for Licensing**

Rule References: **Former 19-4-105(J)**

~~Applicants and licensees may appeal a summary suspension, or a determination by the Department of a revocation, suspension, or denial of licensure~~.

Comment On Rules: We do not object to the removal of these due process rights because they are provided for in the event wagering statute at A.R.S. § 5-1306(B), which states, "Any applicant for licensure or holder of a license shall be entitled to a full hearing on any final action by the department that may result in the revocation, suspension or denial of licensure. The hearing shall be conducted in accordance with the procedures as provided in title 41, chapter 6 and the Department's rules."

Rule Topics: **Responsible Advertising**

Rule References: **R19-4-110(G)**

Event wagering shall not be promoted or advertised on college or university campuses, except for generally available television, radio, and digital advertising

Comment On Rules: Because the medium upon which advertising appears can change, we recommend removing the list of generally available advertising used in the rule so the rule does not need to be periodically updated.

Proposed Changes: R19-4-110(G) – Event wagering shall not be promoted or advertised on college or university campuses, except for <u>on</u> generally available ~~television, radio, print, and digital~~ advertising.

If the Department feels strongly that the list of advertising is required then "print" advertising should be added (i.e. "… except for <u>on</u> generally available television, radio, <u>print</u>, and digital advertising.")

Rule Topics: **Reserve Requirements and Bank Accounts**

Rule References: **R19-4-113(C)**

The responsible party shall immediately notify the Department upon determining that it may cease operations and shall provide a written plan to settle any outstanding liabilities and/or refund player account funds.

Comment On Rules:

A mobile event wagering entity must have and maintain the financial resources to pay all winning wagers – all monies wagered are held in an operating "escrow" account until the contest is played and the outcome is determined. It should NOT matter if the "house" comes away with a positive or negative financial result once the outcome of a contest is determined. The operator MUST have adequate financial resources to pay winning wagers to the players. If the house books a bet, the house accepts the financial responsibility and liability of paying out the winning wager.

Because the term "may" in the proposed language is subjective, we recommend the Department add an objective timeframe that allows sufficient time for the Department to review the winddown plan to ensure there are appropriate player protections. It is important an operator be allowed to stop taking new bets immediately, without prior notice if necessary, so long as it pays out existing bets, settles outstanding liabilities, and refunds player accounts as required by law and per its house rules, terms and conditions, and related consumer agreements.

Proposed Changes: **R19-4-113(C)**

The responsible party shall ~~immediately~~ notify the Department no less than 30 days prior to ~~upon determining that it may~~ ceasing~~ceasing~~ event wagering operations and shall provide to the Department, along with its notice, a written plan to wind down operations in an orderly manner. Such plan shall include a timeline for the winddown, including when and how the responsible party will notify players and the public of its decision, stop accepting new bets, pay out existing bets, handle patron disputes, and settle any outstanding liabilities and/or refund player account funds. Nothing in this section shall require a responsible party to continue to accept new bets during the 30-day period.

Terry Rambler
Chairman

SAN CARLOS APACHE TRIBE

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Tao Etpison
Vice-Chairman

April 3, 2022

Via Email

Aiden Fleming
Assistant Director
Arizona Department of Gaming
1110 West Washington Street, Suite 450
Phoenix, AZ 85007
E-M: afleming@azgaming.gov

Re: Comments On *NEW* Draft Final Rules dated March 30, 2022

Dear Assistant Director Fleming:

On behalf of the nearly 17,000 members of the San Carlos Apache Tribe ("Tribe"), I have reviewed the Draft Final Rules regarding event wagering as released for public comment by the Arizona Department of Gaming (the "Department") on March 28, 2022. The Department subsequently issued an amended draft on March 30, 2022. I understand that public comments are now open until April 3, 2022. Please please accept this letter as the Tribe's comments to the Draft Final Rules as amended.

I request that the Department address the following concerns and proposed solutions in the final regulation.

R19-4-105(J)

The proposed amendment must be deleted because the provision is too ambiguous and subjective, and could prove harmful to Arizona Indian Tribes and other statewide event wagering licensees.

The proposed amendment fails to include any objective criteria to determine what constitutes a "robust" event wagering operation. Instead, there exists the potential to arbitrarily deem an event wagering operation as not satisfying the purely subjective standard

potentially negatively affects event wagering operations that choose to operate in a manner that is different than any perceived "robust" operations.

Moreover, any requirement that an event wagering licensee effectively be prohibited from changing its operator, designee, or management service provider ignores business realities and unfairly prohibits event wagering operators from directly operating their own event wagering operations in the future.

R19-4-106(C)(3)

The proposed amendment must be deleted because it contravenes existing law. Furthermore, the Department lacks authority to adopt a regulation waiving or modifying the statutory definition of a sports facility.

Existing law provides for licensing of a retail event wagering facility within or near a sports facility. "'Event wagering facility' means a facility at which event wagering is conducted under this chapter." ARS § 5-1301(6). However, a "sports facility" is defined as: "a facility that is owned by a commercial, state or local government or quasi-governmental entity that hosts professional sports events and that holds a seating capacity of more than ten thousand persons at its primary facility, one location in this state that hosts an annual golf tournament on the PGA tour and one location that holds an outdoor motorsports facility that hosts a national association for stock car auto racing national touring race." A.R.S. § 5-1301(18), emphasis added.

The proposed amendment would authorize for three years the use of a "sports facility" with a smaller seating capacity, one smaller than the existing requirement of more than 10,000 persons. Of course, the three-year period is speculative and any construction, renovation, or remodeling that exceeds a period of three years is not capable of being penalized other than to shut down the retail wagering operation after the three-year period.

Further, the proposed amendment would not implement the agreement between Arizona Tribes and the State that is embodied in the 2021 Compact and H.B. 2772 for a limited expansion of gaming in Arizona. Such changes are potentially inconsistent with the exclusivity provisions of the 2021 Compact as the proposed amendment would authorize "Off-Reservation Event Wagering" beyond the scope, nature, and location of "Off-Reservation Event Wagering" allowed in the "2021 Gaming Act." The Governor's Office, professional sports teams or franchises, and Tribes negotiated a comprehensive modernization to Arizona gaming. The Legislature approved the comprehensive legislation, including the definition of "sports facility", that the Department now seeks to change. To the extent this proposed amendment could be interpreted to authorize retail event wagering within five blocks of a "temporary sports facility" that does not meet the "sports facility" capacity requirements under existing law, it would violate the 2021 Compact's exclusivity provisions.

As we say in our Apache language, Ahi'yi'é (thank you) for your consideration of these comments.

Sincerely,

SAN CARLOS APACHE TRIBE

Terry Rambler
Chairman

Cc: Arizona Department of Gaming
James Stipe, Counsel for Department of Gaming, jstipe@bcattorneys.com
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Chrono

MEMORANDUM

TO: Ted Vogt, Director, Arizona Department of Gaming

CC: Aiden Fleming, Assistant Director, Arizona Department of Gaming
James Stipe, Outside Counsel, Arizona Department of Gaming

FROM: Amanda Lomayesva, on behalf of the Pascua Yaqui Tribe

DATE: April 1, 2022

SUBJECT: Comments to "Revised Final Event Wagering Rules"

CRITICAL ISSUES TO THE PASCUA YAQUI TRIBE

Thank you for the opportunity to respond to the Revised Final Event Wagering Rules. The Pascua Yaqui Tribe ("Tribe") reiterates its objection stated previously in its comment memorandum of July 15, 2021 to all of the criteria established at R19-4-106 E(1)-(19). As stated previously, these criteria are inconsistent with the criteria established at A.R.S. 5-1304(B)(1)-(11). Further, in practice the criteria have proven to be an arbitrary means of allocating licenses amongst the tribes that the Arizona Department of Gaming ("Department") found to be "qualified".

In addition to reiterating the previously submitted comment, the Tribe submits comments on two areas of the Revised Final Event Wagering Rules: R19-4-105(J) and R19-4-106(C) as further described in this memorandum.

Procedures for Licensing

Rule Reference: R19-4-105(J)

Existing Rule Language:

> J. The Department may revoke a license where the licensee fails to conduct a robust event wagering operation or fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management service provider that formed the basis for its license allocation.

Proposed Rule Language:

> J. The Department may revoke a license for any of the reasons found at A.R.S. 5-1306(A) including:
>
> 1. Revocation for failure to conduct a robust event wagering operation. In a decision to revoke a license for this reason, the Department will include consideration of the adjusted gross receipts the applicant expected to generate pursuant to the information requirement at A.R.S. 5-1304(9).
> 2. Revocation where a licensee fails to continue operations with the event wagering operator, designee, limited event wagering operator, or management service provider that formed the basis for the Department's decision to issue the license.

Reason for Change:

The Tribe supports the addition of this rule. The proposed language change makes it clear that the rule is based on statutory authority by adding specificity to the factors found in the statute that the Department would have relied upon in making a decision to issue the license. Breaking the Department's proposed "J" into two separate sub-parts makes sense because the reasons for revocation are different.

Allocation for Applicants

Rule Reference: R19-4-106(C)(3)

Existing Rule Language:

3. Use or operation of a Sports Facility that meets the definition of A.R.S. § 5-1301(18) is required for facilities operating retail event wagering under A.R.S. § 5-1304(D)(1). To maintain qualification to operate under A.R.S. § 5-1304(D)(1), the use or operation of a Sports Facility that meets the definition of A.R.S. § 5-1301(18) is required unless a different facility smaller than 10,000 seats is approved by the Department for temporary use pending the construction of a new Sports Facility or the remodeling of an existing Sports Facility, and the period does not exceed three (3) years.

Proposed Rule Language:

The tribe does not support the addition of this rule and believes that the Department exceeds its authority in in the proposed draft language. If the Department finds it has the authority to change the literal wording of the event wagering statute, as this rule does, then the Department should also add language that states that a sports facility can be a location that hosts an event on the LPGA tour. This would make clear what the legislature almost certainly intended: i.e. not to exclude an entire gender in its law.