



**MEETING AGENDA
MAY 23, 2016**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF APRIL 25, 2016
3. REPORT OF EXECUTIVE DIRECTOR
4. RULEMAKING
 - A. ADOPTION: SGC-12-16-00002-P PROBLEM GAMING, PREVENTION AND OUTREACH
 - B. ADOPTION: SGC-12-16-00002-P SELF-EXCLUSION
 - C. ADOPTION: SGC-12-16-00009-P CONSEQUENCES FOR COMMISSION LICENSEES, AGENTS, AND OTHER REGULATED PARTIES WHO VIOLATE PROHIBITION ON UNDERAGE WAGERING
 - D. PROPOSED CASINO RULEMAKING: INDEPENDENT TESTING LABORATORIES
5. ADJUDICATIONS
 - A. IN THE MATTER OF CORNING VFW #524
 - B. IN THE MATTER OF LA SOCIETE DES QUARANTE HOMMES ET HUIT CHEVAUX
 - C. IN THE MATTER OF DAVID RUSSO
6. OLD BUSINESS/NEW BUSINESS
7. SCHEDULING OF NEXT MEETING
8. ADJOURNMENT

###

NEW YORK STATE
GAMING COMMISSION

MINUTES

MEETING of APRIL 25, 2016

BETHEL, NEW YORK

A meeting of the Commission was conducted in Bethel, New York.

1. Call to Order

Executive Director Robert Williams called the meeting to order at 12:32 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Commissioners John Crotty, Peter Moschetti, John Poklemba, Barry Sample and Todd Snyder. Commissioner Moschetti was unanimously elected as presiding officer for the meeting.

2. Consideration of the Minutes from February 29, 2016

The Commission considered previously circulated draft minutes of the meeting conducted on February 29, 2016. The minutes were accepted as circulated.

3. Report of the Executive Director

Executive Director Williams provided a brief report on construction status of the three commercial casino licensees. Williams also discussed certain legislation and the results of the Division of the Lottery's recently closed fiscal year.

4. Rulemaking

a. Adoption: SGC-07-16-00001-P, Use of Cellular Telephones in Harness Paddocks (9 NYCRR § 4104.14)

The Commission considered adoption of proposed rule regarding the use of cellular telephones or other electronic communication devices in a designated area of a harness racing paddock or receiving barn.

ON A MOTION BY: Commissioner Snyder
APPROVED: 5-0

b. Adoption: SGC-07-16-00011-P, Pick-Four, Pick-Five and Pick-Six Pools (9 NYCRR §§ 4011.23, 4011.24, 4011.25 and 4011.26)

The Commission considered adoption of proposed revisions to pari-mutuel wagering rules regarding the pick-four, pick-five and pick-six pools on thoroughbred horse races to be effective July 22, 2016.

ON A MOTION BY: Commissioner Sample
APPROVED: 5-0

c. Proposal: Commercial Casino Conduct and Operation of Gaming

The Commission considered proposal of rules addressing certain conduct and operation at commercial casino gambling facilities.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

d. Proposal: Commercial Casino Surveillance

The Commission considered proposal of rules addressing surveillance at commercial casino gambling facilities.

ON A MOTION BY: Commissioner Snyder
APPROVED: 5-0

e. Proposal: Voidable Claims in Standardbred Racing

The Commission considered a proposal to amend Standardbred claiming rules to permit a claimant to void a claim when samples collected the day of the claiming race test positive for an impermissible drug administration.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

5. Adjudications

a. In the Matter of Jerome Palumbo

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had

agreed, on a 5-0 vote, to modify the Hearing Officer's recommendation that Mr. Palumbo be fined \$5,000 and be barred from applying for any New York racing license for a period of one year from the date of the Commission's decision. The Commission determined that Mr. Palumbo be excluded from all New York racetracks as a licensee, participant and patron for a period of five years and fined \$10,000.

b. In the Matter of Stop & Shop Deli

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 5-0 vote, to accept the Hearing Officer's recommendation.

6. Old Business/New Business

No old or new business was offered for discussion.

7. Scheduling of Next Meeting

It was announced that the next meeting date would be May 23, 2016.

8. Adjournment

The meeting was adjourned at 12:55 p.m.

###



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500

www.gaming.ny.gov

John A. Crotty, Commissioner
Peter J. Moschetti, Jr., Commissioner
John J. Poklemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: May 16, 2016

Re: Adoption of Rulemaking for Casino Problem Gambling and Self-Exclusion (9 NYCRR Parts §§ 5325 and 5326).

For Commission consideration is the adoption of proposed regulations for casinos in regard to problem gambling and patron self-exclusion.

Staff has renumbered the proposals to accommodate other contemplated casino rulemaking. Part 5325 was proposed and posted on the Commission's website as proposed Part 5323. Part 5326 was proposed and posted on the Commission's website as proposed Part 5324. The renumbering is not a substantive amendment of the proposal.

Part 5325 seeks to promote best responsible gaming practices. The rules prescribe the contents of a problem gambling plan that each gaming facility license applicant must submit to the Commission, require that the gaming facility's problem gambling plan identify policies and procedures that would be implemented to combat problem gambling, require quarterly and annual reporting to the Commission in regard to the gaming facility licensee's problem gambling plan progress and results and set forth procedures and restrictions on gaming facility advertising and signage.

Part 5326 sets forth a process by which a person can request to be excluded from participation in gaming activities. The rules require that a person file a request for self-exclusion, which includes the length of exclusion sought (one year, five years or lifetime) and release any claims that could arise from a failure by the State, Commission or gaming facility licensee to withhold or restore gaming privileges or from confiscation of the individual's winnings. The rules require the Commission to maintain an official list of self-excluded persons and to notify promptly a gaming facility licensee's agents of any additions to or deletions from such list. The rules prescribe that a self-excluded person may not collect winnings or recover losses during the period of exclusion. A gaming facility licensee would be required to establish procedures and training for its employees to identify and manage any self-excluded persons found to be present on the gaming floor or involved in gaming related activities.

A conforming definition would also be added to section 5300.1.

Commissioners
May 16, 2016
Page 2

The Commission proposed this rulemaking on February 29, 2016. The proposal was published in the March 23, 2016 *State Register*. A copy of that notice is attached. The public comment period ended on May 9, 2016. No public comment was received.

The text of the proposed rules is attached.



attachment

cc: Robert Williams, Executive Director
Chris Palmer, Acting Director, Division of Gaming

Section 5300.1 of Title 9 of the NYCRR would be amended to read as follows:

§ 5300.1. Definitions.

(f) *Excluded person* means a person who is excluded from a gaming facility pursuant to Part 5326 of this Subchapter.

{Sections 5300.1(f) through (m) are redesignated as (g) through (n)}

Title 9 of the NYCRR would be amended to add new Parts 5325 and 5326, to read as follows:

PART 5325

Problem Gambling Prevention and Outreach

Section	
5325.1	Purpose, scope and applicability
5325.2	Problem gambling plan
5325.3	Employee training program
5325.4	Reports
5325.5	Signage requirements
5325.6	Advertising

§ 5325.1. Purpose, scope and applicability.

The purpose of this Part is to establish standards, criteria and procedures by which the commission and gaming facility licensees maximize the effectiveness of a problem gambling prevention and outreach program established pursuant to section 5325.2 of this Part for individuals, families and communities, as well as promote best responsible gaming practices in all aspects of gaming facility activities and use principles of responsible gaming in introducing new and emerging technologies.

§ 5325.2. Problem gambling plan.

(a) At least 90 days prior to projected issuance of an operation certificate, a gaming facility licensee shall submit for commission review and approval a problem gambling plan.

(b) A problem gambling plan shall include the following:

- (1) the goals of the plan, including procedures and timetables to implement the plan;
- (2) identification of the individual who will be responsible for implementation and maintenance of the plan;
- (3) policies and procedures that clearly illustrate:
 - (i) the commitment of the gaming facility licensee to train appropriate employees;
 - (ii) the duties and responsibilities of the employees designated to implement or participate in the problem gambling plan;

(iii) procedures for compliance with the self-exclusion program set forth in Part 5326 of this Subchapter;

(iv) procedures to identify patrons and employees exhibiting suspected or known problem gambling behavior;

(v) procedures to limit or prevent loyalty and other rewards and marketing programs for patrons exhibiting suspected or known problem gambling behavior;

(vi) procedures for providing information to individuals and responding to patron/employee requests for information in regard to the self-exclusion program and any community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat or monitor problem gamblers and to counsel family members;

(vii) the provision of printed material to educate patrons and employees about problem gambling and to inform them about the self-exclusion program set forth in Part 5326 of this Subchapter and treatment services available to problem gamblers and their families. The gaming facility licensee shall provide examples of the materials to be used as part of its problem gambling plan, including brochures and other printed material and a description of how the material will be disseminated;

(viii) advertising and other marketing and outreach to educate the general public about problem gambling and the self-exclusion program set forth in Part 5326 of this Subchapter;

(ix) an employee training program as set forth in section 5325.3 of this Part, including sample training materials to be used and a plan for periodic reinforcement training and a certification process established by the gaming facility applicant to verify that each employee has completed the training required by the plan;

(x) procedures to prevent underage gambling;

(xi) procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling; and

(xii) a signage plan containing information on gambling treatment and on the self-exclusion program set forth in Part 5326 of this Subchapter. The gaming facility licensee shall provide examples of the language and graphics to be used on the signs as part of the problem gambling plan. Additionally, the signage plan shall include posting of signs on appropriate languages other than English, depending upon the patron demographics in a facility.

(4) a list of community, public and private treatment services, gamblers anonymous programs and similar treatment therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members and procedures for making such list available upon request; and

(5) any other information, documents and policies and procedures as the commission may request.

(c) Each gaming facility licensee shall submit to the commission for review and approval any amendments to such gaming facility licensee's problem gambling plan at least 30 days prior to the intended implementation of such amendment. The gaming facility licensee may implement a

proposed amendment on the 30th calendar day following the filing of such amendment with the commission, unless the commission provides notice pursuant to subdivision (d) of this section objecting to such amendment.

(d) If during the 30-day review period the commission determines that any amendment is inconsistent with the intent of this Part, the commission shall, by delivering written notice to the gaming facility licensee, object to such amendment. Such objection notice shall:

- (1) specify the nature of the objection and, when possible, an acceptable alternative; and
- (2) direct that such amendment not be implemented.

(e) When an amendment has been objected to pursuant to subdivision (d) of this section, the gaming facility licensee may submit a revised amendment for review pursuant to subdivision (c) of this section.

§ 5325.3. Employee training program.

(a) The employee training program required pursuant to subparagraph (viii) of paragraph (3) of subdivision (b) of section 5325.2 shall include instruction in the following:

- (1) characteristics and symptoms of problem gambling behavior;
- (2) the relationship of problem gambling to other addictive behavior;
- (3) techniques to be used when problem gambling is suspected or identified;
- (4) techniques to be used to discuss problem gambling with patrons and advise patrons in regard to community, public and private treatment services;
- (5) procedures designed to prevent serving alcohol to visibly intoxicated patrons;
- (6) procedures designed to prevent persons from gambling after having been determined to be visibly intoxicated;
- (7) procedures for the dissemination of written materials to patrons explaining the self-exclusion program as set forth in Part 5326 of this Subchapter;
- (8) procedures for removing an excluded person, as defined in section 5300.1 of this Subchapter, an underage individual or a person on the self-exclusion list from a gaming facility, including, if necessary, procedures that include obtaining the assistance of appropriate law enforcement personnel;
- (9) procedures to prevent an excluded person or a person on the self-exclusion list from being mailed any advertisement, promotion or other target mailing as soon as practicable after receiving notice from the commission that the person has been placed on the excluded person or self-exclusion list;
- (10) procedures to prevent an individual under 21 years of age from receiving any advertisement, promotion or other target mailing;

(11) procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from directly accessing or receiving complimentary services, or other like benefits; and

(12) procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from cashing checks or vouchers that require ID on gaming facility premises.

(b) Training and training materials shall be reviewed annually to be updated, if applicable, to include new or revised information on responsible and problem gambling or empirical research.

(c) Training for employees shall be conducted by a person with specialized knowledge, skill, training and experience in responsible gaming training programs as part of the employee's orientation.

(d) Employees who have received training shall be acknowledged by the gaming facility licensee upon completion of training.

(e) Employees are required to receive periodic reinforcement training at no less than once every 12 months, starting with the year following the year in which the employee was hired. The gaming facility licensee shall retain a record of the date of the reinforcement trainings.

(f) Employees shall report suspected or identified problem gamblers to a designated casino key employee or other designated supervisory employee.

(g) Gaming facility licensees may collaborate with a person with specialized knowledge, skill, training and experience in responsible gaming employee training programs to develop an in-house or Internet-based employee training program to provide the training and reinforcement training required under this Part.

§ 5325.4. Reports.

(a) Each gaming facility licensee shall submit to the commission quarterly updates and an annual summary of its problem gambling plan and goals.

(b) The quarterly updates and annual summary must contain, at a minimum, detailed information in regard to:

(1) employee training, including the dates of live or Internet-based new-hire and annual reinforcement problem gambling training, the individual or group who conducted the training, the number of employees who completed the new hire problem gambling training and the number of employees who completed the annual reinforcement problem gambling training;

(2) an estimated amount of printed materials provided to patrons in regard to problem gambling, the self-exclusion program, responsible gambling and available treatment services;

(3) the annual dollar amount spent on the problem gambling plan for employee training, printed materials and outreach including information on sponsorships, memberships and other problem-gambling-related expenditures; and

(4) additional information including:

- (i) the number of underage individuals who were denied access to the gaming floor;
- (ii) the number of self-excluded individuals who were discovered on the gaming floor at the gaming facility;
- (iii) the number of signs within the gaming facility that contain the approved problem gambling statement and helpline number; and
- (iv) a summary of any additional employee training, problem gambling related conferences or problem gambling awareness events conducted by the gaming facility licensee or in which employees of the gaming facility licensee participated.

§ 5325.5. Signage.

Each gaming facility licensee shall post signs in a size as approved in writing by the commission that include the problem gambling assistance message as set forth in section § 5325.6 of this Part at each of the following locations:

- (a) within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by the commission;
- (b) above or below the cash-dispensing opening on all automated teller machines, automated gaming voucher and coupon redemption machines and other machines that dispense cash to patrons at the gaming facility;
- (c) on all gaming devices;
- (d) in all gaming facility employee break areas;
- (e) in the player club location or locations;
- (f) in or near cage areas; and
- (g) in any other location, as the commission may require.

§ 5325.6. Advertising.

(a) Advertisements used by a gaming facility licensee shall comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1363 and with advertising guidelines issued by the National Council on Problem Gambling.

(b) Advertisements shall contain a problem gambling assistance message comparable to one of the following:

- (1) If you or someone you know has a gambling problem, help is available. Call (877-8-HOPENY) or text HOPENY (46769);
- (2) Gambling Problem? Call (877-8-HOPENY) or text HOPENY (46769); or
- (3) any other message approved in writing by the commission.

(c) Unless otherwise approved in writing by the commission, the problem gambling assistance message shall meet the following requirements:

(1) for signs, direct mail marketing materials, posters and other print advertisements, the height of the font used for the problem gambling assistance message must be the greater of:

- (i) the same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; and
- (ii) two percent of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement;

(2) for billboards, the height of the font used for the problem gambling assistance message must be at least five percent of the height or width, whichever is greater, of the face of the billboard;

(3) for video and television, the problem gambling assistance message must be visible for either:

(i) the entire time the video or television advertisement is displayed, in which case the height of the font used for the problem gambling assistance message must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; or

(ii) from the first time a table game, table game device, slot machine, associated equipment or gaming facility name is displayed or orally referenced, and on a dedicated screenshot visible for at least the last three seconds of the video or television advertisement. If the gaming facility licensee elects to use this option, the height of the font used for the problem gambling assistance message displayed:

(a) during the advertisement must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; and

(b) on the dedicated screen shot must be at least eight percent of the height or width, whichever is greater, of the image that will be displayed;

(4) for websites, including social media sites and mobile phone applications:

(i) the problem gambling assistance message must be posted on each webpage or profile page and on any gaming-related advertisement posted on the webpage or profile page;

(ii) the height of the font used for the problem gambling assistance message must be at least the same size as the majority of the text used in the webpage or profile page; and

(iii) for advertisements posted on the webpage or profile page, the height of the font used for the problem gambling assistance message must comply with subparagraph (ii) of this paragraph.

PART 5326

Self-Exclusion

Section

5326.1 Request for self-exclusion

5326.2 Self-exclusion list

- 5326.3 Duties of gaming facility licensees
- 5326.4 Removal from self-exclusion list
- 5326.5 Exceptions for individuals on the self-exclusion list
- 5326.6 Disclosure of information related to persons on the self-exclusion list

§ 5326.1. Request for self-exclusion.

As set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1344, the commission shall provide for the establishment of a list of persons who have chosen voluntarily to be excluded from participation in all gaming activities and to be prohibited from collecting any winnings or recovering any losses at gaming facilities. For purposes of this Part, the term “gaming facility” shall mean any room, premises or designated gaming area where gaming is conducted.

(a) A person requesting placement on the self-exclusion list shall submit to the commission a request for self-exclusion from gaming activities. The submission may be made by appearing at the commission’s Schenectady office during regular business hours or at designated commission offices. Persons who are unable to travel to a commission office due to employment, financial or medical reasons may request, in writing, a reasonable accommodation in a manner or at a site and time designated at the sole discretion of the commission secretary. Nothing in this section shall require that an accommodation be granted.

(b) A request for self-exclusion from gaming activities shall include the following identifying information:

- (1) name, including any aliases or nicknames;
- (2) date of birth;
- (3) address of current residence;
- (4) telephone number;
- (5) social security number, when voluntarily provided in accordance with section seven of the Privacy Act of 1974 (5 U.S.C. § 552a) or Article 6-A of the N.Y. Public Officers Law (Personal Privacy Protection Law);
- (6) height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person; and
- (7) a copy of a current government-issued photo identification such as a driver’s license or passport.

(c) Any person requesting self-exclusion pursuant to this Part shall be required to have his or her photograph taken by the commission upon submission of the request.

(d) A self-excluded person shall update any of the information provided in subdivision (b) of this section within 30 days of any change.

(e) The length of self-exclusion requested by a person shall be one of the following:

- (1) one year;

(2) five years; or

(3) lifetime.

(f) Each person requesting self-exclusion shall provide:

(1) a waiver and release that shall release and forever discharge the State of New York, the commission and its employees and agents and all gaming facility licensees and their employees and agents, from any liability to the person requesting self-exclusion and his or her heirs, administrators, executors and assigns for any harm, monetary or otherwise, that may arise out of or by reason of any act or omission relating to the request for self-exclusion or request for removal from the self-exclusion list, including:

(i) the processing or enforcement of the self-exclusion request;

(ii) the failure of a gaming facility licensee to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person;

(iii) permitting a self-excluded person to engage in gaming activity in a gaming facility while on the list of self-excluded persons; and

(iv) disclosure of the information contained in the self-exclusion request or list, except for a willfully unlawful disclosure of such information; and

(2) the signature of the person submitting the request for self-exclusion, indicating acknowledgment of the following statement:

“I voluntarily request exclusion from all casino gaming activities at all licensed New York gaming facilities. I certify that the information that I have provided above is true and accurate, and that I have read and understand and agree to the waiver and release included with this request for self-exclusion. I am aware that my signature below authorizes the Commission to direct all New York gaming facility licensees to restrict my gaming activities in accordance with this request and, unless I have requested to be excluded for life, until such time as the Commission removes my name from the self-exclusion list. I am aware and agree that during any period of self-exclusion, I shall not collect any winnings or recover any losses resulting from any gaming activity at all licensed gaming facilities, and that any money or thing of value obtained by me from, or owed to me by, a gaming facility licensee as a result of wagers made by me while on the self-exclusion list shall be subject to forfeiture.”;

(g) The commission shall document a description of the type of identification credentials examined containing the signature of a person requesting self-exclusion, and whether said credentials included a photograph or general physical description of the person.

(h) The commission shall document the signature of the commission employee authorized to accept a self-exclusion request, indicating that the signature of the person on the request for self-exclusion appears to agree with that contained on the requester’s identification credentials and that any photograph or physical description of the person appears to agree with the requester’s actual appearance.

(i) Each self-excluded person shall acknowledge that no gaming facility shall allow such person to redeem any points or complimentaries earned by such person as of the time such person completes the request for placement on the self-exclusion list. Points or complimentaries refer to credits earned by a person under the terms of a licensee's marketing program and shall include, without limitation, food vouchers or coupons, chip or free play vouchers or coupons, hotel complimentaries or any other such noncash benefit owing to such person. The terms and conditions of the player club shall remain in effect during the period of self-exclusion.

(j) Each person requesting self-exclusion for one or five years shall be advised that if such person is found violating the rules set forth in this Part, in addition to any other penalty that may otherwise be imposed, the commission shall revise the start date of such person's self-exclusion period to correspond with the date such violation occurred.

§ 5326.2. Self-exclusion list.

(a) The commission shall maintain the official self-exclusion list and notify each gaming facility licensee of additions to or deletions from the list within five business days of the verification of the information received pursuant to section 5326.1 of this Part.

(b) The notice that the commission provides to gaming facility licensees shall include the information provided pursuant to subdivision (b) of section 5326.1 of this Part and a copy of the photograph taken by the commission pursuant to subdivision (c) of section 5326.1 of this Part.

(c) A gaming facility licensee shall maintain a current copy of the self-exclusion list and ensure that all appropriate employees and agents of the gaming facility licensee are promptly notified of any addition to or deletion from the list within three business days after the day notice is provided to each gaming facility licensee.

(d) Gaming facility licensees, employees or agents thereof may not disclose the name of, or any information about, a person who has requested self-exclusion to anyone other than employees and agents of the gaming facility licensee whose duties and functions require access to the information. Notwithstanding anything to the contrary in this subdivision, a gaming facility licensee may disclose the identity of a self-excluded person to appropriate employees of other gaming facility licensees in the State of New York or affiliated gaming entities in other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs.

(e) A self-excluded person shall not collect in any manner any winnings or recover any losses arising as a result of any gaming activity for the period of time that such person is on the commission's self-exclusion list, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1345(1).

(f) Winnings of a self-excluded person shall be subject to forfeiture and deposited into the commercial gaming revenue fund, subject to the requirements of Racing, Pari-Mutuel Wagering and Breeding Law 1345(3).

(g) For the purposes of this section, winnings issued to, found on or about, or redeemed by, a self-excluded person shall be presumed to constitute winnings subject to remittance to the commission.

§ 5326.3. Duties of gaming facility licensees.

(a) A gaming facility licensee shall train its employees and establish procedures to:

(1) identify a self-excluded person when present on the gaming floor, in areas off the gaming floor where gaming activity is conducted or engaging in gaming-related activities and, upon identification, immediately notify, unless section 5326.5 of this Part applies, the following persons:

- (i) employees of the gaming facility licensee whose duties include the removal of self-excluded persons;
- (ii) the commission's designated staff at the licensed facility; and
- (iii) if the gaming facility licensee deems appropriate, a law enforcement agency;

(2) refuse wagers from and deny gaming privileges to a self-excluded person;

(3) deny gaming-related activities including casino credit, check-cashing privileges, player club membership, complimentary goods and services, redemption of any previously earned complimentary goods and services, gaming junket participation and other similar privileges and benefits to a self-excluded person;

(4) ensure that self-excluded persons do not receive, either from the gaming facility licensee or any agent thereof, gaming junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities at its licensed facility;

(5) comply with section 5326.2 of this Part; and

(6) make available to patrons written materials explaining the self-exclusion program and resources for treatment and assistance.

(b) A gaming facility licensee shall submit amendments to the procedures and training materials required under subdivision (a) of this section to the commission for review and approval at least 30 days prior to the intended implementation date of such amendments. Such gaming facility licensee may implement the amendments on the 30th calendar day following the submission of such amendments unless such gaming facility licensee receives a notice under subdivision (d) of this section objecting to such amendments.

(c) If during the 30-day review period the commission determines that an amendment is inconsistent with the intent of this Part, the commission shall, by written notice to the gaming facility licensee, object to such amendment. The objection shall:

- (1) specify the nature of the objection and, when possible, an acceptable alternative; and
- (2) direct that the amendments not be implemented until approved by the commission.

(d) When amendments to procedures and training materials have been objected to pursuant to subdivision (c) of this section, a gaming facility licensee may submit revised amendments in accordance with subdivision (b) of this section.

(e) Each gaming facility licensee shall post signs within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by the commission indicating that a person who is on the self-exclusion list will be subject to arrest for trespassing pursuant to Penal Law sections 140.10, 140.15 and 140.17 if such person is on the gaming floor, in areas off the gaming floor where gaming activity is conducted or engaging in gaming-related activities in the gaming

facility. The text and font size of such signs shall be submitted to the commission for review and approval.

§ 5326.4. Removal from self-exclusion list.

For a person who is self-excluded for one year or five years, upon the conclusion of such period of self-exclusion, such person shall be removed from the self-exclusion list unless such person requests in writing, no later than 30 days prior to the expiration of such self-exclusion period, that the commission extend the term of such self-exclusion.

§ 5326.5. Exceptions for individuals on the self-exclusion list.

The prohibition against allowing self-excluded persons to be on the gaming floor or in areas off the gaming floor where gaming activity is conducted shall not apply to a person who is on the self-exclusion list, if all of the following apply:

- (a) the individual is carrying out the duties of employment or incidental activities related to employment;
- (b) the gaming facility licensee's security department has received prior notice, unless it was impracticable to have done so;
- (c) access to the gaming floor or areas off the gaming floor where gaming activity is conducted is limited to the time necessary to complete the individual's assigned duties; and
- (d) the individual does not otherwise engage in gaming activities.

§ 5326.6. Disclosure of information related to persons on the self-exclusion list.

- (a) Information furnished to or obtained by the commission pursuant to this Part shall be deemed confidential and not be disclosed as disclosure would constitute an unwarranted invasion of personal privacy under the provisions of the Public Officers Law section 89(2);
- (b) The commission may periodically release to the public demographics and general information in regard to the self-exclusion list, such as the total number of persons on the list, gender breakdown and age range.
- (c) The commission may make selected data available, upon request, for the limited purpose of assisting in the proper administration of responsible gaming programs.

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Problem Gambling Awareness and Training and to Establish a Process for Gaming Facility Patron Self-Exclusion

I.D. No. SGC-12-16-00002-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of section 5300.1; and addition of Parts 5323-5324 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(2)(p), 1344, 1345, 1362 and 1363

Subject: Problem gambling awareness and training and to establish a process for gaming facility patron self-exclusion.

Purpose: To promote best responsible gaming practices and establish a process for gaming facility patron self exclusion.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov): The addition of Parts 5323-5324 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission (“Commission”) to prescribe rules that require a gaming facility licensee to develop programs and provide resources to its employees and patrons to help combat problem gambling. The proposed rules provide for the establishment of a problem gambling plan and a self-excluded persons list. The proposed rules also establish parameters to prevent gaming facilities from disseminating false, deceptive or misleading advertising.

Section 5323.1 sets forth the purpose and scope of the rules which is to ensure that the Commission and gaming facility licensees minimize harm

from casino gaming to individuals, families and communities and promote best responsible gaming practices. Section 5323.2 prescribes the contents of a problem gambling plan which each gaming facility licensee must submit to the Commission. The rule requires that the problem gambling plan include goals, procedures and a timetable for implementation as well as identify an individual responsible for implementing and overseeing the plan. Section 5323.3 requires that the problem gambling plan include an employee training program. Section 5323.4 requires quarterly and annual reporting to the Commission in regard to the gaming facility licensee’s problem gambling plan progress and results. Sections 5323.5 and 5323.6 set forth procedures and restrictions on gaming facility advertising and signage, including the content and placement of gambling assistance messages.

Part 5324 sets forth a process by which an individual can request to be excluded from participation in gaming activities. The rule requires that an individual file a request for self-exclusion which includes the length of exclusion sought (1 year, 5 year or lifetime) and release any claims that could arise from a failure by the State, Commission or gaming facility licensee to withhold or restore gaming privileges or from confiscation of the individual’s winnings. Section 5324.2 requires the commission to maintain an official list of self-excluded persons and to promptly notify a gaming facility licensee’s agents of any additions to or deletions from such list. The rules prescribe that a self-excluded person may not collect winnings or recover losses during the period of exclusion. Section 5324.3 requires that a gaming facility licensee establish procedures and training for its employees to identify and manage any self-excluded persons found to be present on the gaming floor or involved in gaming related activities. Section 5324.4 provides that an individual is removed from the self-exclusion list upon the conclusion of the 1 year or 5 year period of self-exclusion unless the individual requests that the Commission extend the term. Section 5324.5 provides exceptions to the prohibition against allowing self-excluded persons to be on the gaming floor or in areas where gaming activity is conducted. Section 5324.6 sets forth limitations on the disclosure of information related to persons on the self-exclusion list.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, 6th floor, Schenectady, NY 12305, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) section 104(19) grants authority to the Gaming Commission (“Commission”) to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1307(2)(p) prescribes that the Commission adopt regulations to prevent deceptive gaming-related advertising by gaming facility licensees and their employees and agents.

Racing Law section 1344(1) and (2) prescribe that the Commission establish a list of persons self-excluded from gaming activities and establish procedures for placement on and removal from such list. In addition Racing Law section 1344(1) and (2) requires the Commission to establish procedures for transmitting identifying information about such persons to a gaming facility licensee and for preventing such persons from receiving gaming-related advertising from the gaming facility licensee.

Racing Law section 1345 prescribes that self-excluded persons forfeit winnings arising as a result of gaming activities and that any such winnings be deposited into the commercial gaming revenue fund.

Racing Law section 1362 prescribes prevention and outreach efforts that a gaming facility applicant and licensee must establish and maintain to combat compulsive and problem gambling.

Racing Law section 1363 prescribes restrictions intended to prevent gaming facilities from disseminating false, deceptive or misleading advertising.

2. **LEGISLATIVE OBJECTIVES:** The above referenced statutory provisions carry out the legislature's stated goal "to develop programs and resources to combat compulsive and problem gambling" as set forth in Racing Law section 1300(12). These provisions also enable the Commission to carry out the Upstate New York Gaming Economic Development Act of 2013 as embodied in Chapter 174 of the Laws of 2013 including to maintain the public confidence and trust in the credibility and integrity of legalized gaming activities in order to support the continued growth of the gaming industry that will contribute to economic development and job development in the state.

3. **NEEDS AND BENEFITS:** The proposed rules represent best practices in problem gambling awareness and prevention and are the result of input from (i) experts hosted by the Gaming Commission at numerous forums held throughout the state, including the New York Council on Problem Gambling, National Council on Problem Gambling and National Center on Responsible Gaming, among others; (ii) stakeholder and industry working groups; and (iii) other gambling jurisdiction best practices and regulation.

Best practices addressed in the proposed rules include requiring each gaming facility licensee to submit its problem gambling plan for Commission approval; establish an employee problem gambling training program; provide quarterly and annual reports to the Commission in regard to the progress and results of the problem gambling plan. The proposed rules also establish procedures and restrictions on gaming facility advertising and signage, including the content and placement of gambling assistance messages and the process by which an individual can request to be excluded from participation in gaming activities.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: One of the three gaming facility licensees has indicated that the anticipated costs of implementing and complying with the proposed regulations will be approximately \$100,000 per year.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The Commission currently operates problem gambling programs, including self-exclusion, in video lottery and horse racing. Based on that experience the Commission anticipates that the costs associated with the proposed rules would be negligible.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. **LOCAL GOVERNMENT:** There are no local government mandates associated with these rules.

6. **PAPERWORK:** These rules impose paperwork burdens on gaming facility licensees to establish, submit and maintain a problem gambling plan that is aimed to help identify and address problem and compulsive gambling through an employee training program, public and private treatment services and advertising. Gaming facility licensees will submit quarterly and annual reports to the Commission regarding the progress and results of problem gambling plans.

7. **DUPLICATION:** These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** In developing the proposed rules the Commission consulted various experts in the field of problem gambling including the New York Council on Problem Gambling, National Council on Problem Gambling, and National Center on Responsible Gaming, among others. In addition, the Commission consulted stakeholders and industry working groups and reviewed other gambling jurisdiction best practices and regulation. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1307(2)(p) and 1344(1) through (2).

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of casino gambling in New York State. The rules will ensure that licensed gaming facilities develop programs and provide resources to employees and patrons that will combat compulsive and problem gambling. The rules will provide for the establishment of a self-excluded persons list and prohibit licensed gaming facilities from creating and disseminating deceptive advertising.

These rules do not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state and solely apply to licensed gaming facilities.

These rules will have no adverse impact on job opportunities.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Consequences for Commission Licensees, Agents, and Other Regulated Parties Who Violate Prohibition on Underage Wagering

I.D. No. SGC-12-16-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 4003.39, 4122.6, 4404.10, 4602.1, 4622.2, 4622.3, 5001.27, 5007.5, 5007.13, 5013.3 and 5117.1 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104, 108 and 116; Tax Law, sections 1601, 1604, 1610 and 1612; General Municipal Law, sections 195-a and 486

Subject: Consequences for Commission licensees, agents, and other regulated parties who violate prohibition on underage wagering.

Purpose: To further enforce the age restriction laws for gambling by imposing fines, suspensions and/or license revocation.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov): The amendments to these sections will allow the New York State Gaming Commission ("Commission") to ensure that all lawful gaming and horse racing activity conducted in this State is of the highest integrity. In co-operation with the Responsible Play Partnership (a standing collaboration between the Commission, the Office of Alcohol and Substance Abuse Services and the New York Council on Problem Gambling) the amendments address problem gambling issues and awareness in New York State. Amendment of these regulations furthers such purpose by increasing the consequences for non-compliance with the legal gambling age requirements.

The amendments to sections 4003.39 and 4122.6 establish a penalty structure for a thoroughbred track operator and a Standardbred track operator, respectively, found to have allowed betting by minors. A track operator would be penalized by a fine of \$1,000 for a first violation, \$5,000 for a second violation within one year of a violation, \$10,000 for a third violation within one year of a violation and \$25,000 for a fourth or subsequent violation within one year of a violation, in addition to such further action as the commission may deem appropriate, which may include without limitation suspension or revocation of any license or privilege to operate or manage a track in this State.

The amendments to section 4404.10 provide that an off-track betting corporation is responsible for not permitting a person who is actually or apparently under 18 years of age to enter an off-track betting branch office (other than a simulcast theater) or directly or indirectly place a bet at a branch office (including a simulcast theater). The amendments establish a penalty structure for an off-track betting corporation found to have violated such provisions. An off-track betting corporation would be penalized by a fine of \$1,000 for a first violation, \$5,000 for a second violation within one year of a violation, \$10,000 for a third violation within one year of a violation and for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the corporation's plan of operation. A different penalty structure applies to branch offices operated by entities other than an off-track betting corporation (commonly referred to as EZ Bet or Quick Bet locations). Such branch offices would be penalized by a written warning for a first violation, \$500 for a second violation within one year of a violation, \$1,000 for a third violation within one year of a violation and \$25,000 for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the off-track betting corporation's plan of operation with respect to such branch office.

The amendments to 4602.1 establish a penalty structure for a charitable organization authorized to conduct raffles found to have allowed a minor



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

John A. Crotty, Commissioner
Peter J. Moschetti, Jr., Commissioner
John J. Poklemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: May 18, 2016

Re: Adoption of Proposed Rulemaking for Underage Play in Horse Racing Wagering, Lottery, Video Lottery and Charitable Gaming (9 NYCRR §§ 4000.39, 4122.6, 4404.10, 4602.1, 4622.2, 4622.3, 5001.27, 5007.5, 5007.13, 5013.3, 5117.1 and 5117.2).

For Commission consideration is the adoption of proposed regulations in regard to consequences for Commission licensees, agents and other regulated parties who violate prohibitions on underage play in horse racing wagering, lottery, video lottery and charitable gaming. These rules provide the Commission with the ability to issue violations that could result in fines, suspensions or revocation of an entity's license to participate or provide such services in New York, depending on the number of violations at a location.

The rulemaking includes a graduated penalty structure, as follows:

Violation	Racetrack, OTB & Teletheater	VLT	Unescorted minors on VLT Gaming floor	Lottery Retailer, Charitable Gaming Licensee and EZ Bet Location
First	\$1,000	\$5,000	\$1,000	Written Warning
Second	\$5,000	\$20,000	\$5,000	\$500
Third	\$10,000	\$25,000	\$10,000	\$1,000
Additional	\$25,000 and possible further action (including revocation of track license or withdrawal of approval of OTB plan of operation)	\$25,000 and possible further action (including revocation of key employee license)	\$25,000 and possible further action (including revocation of key employee license)	Possible further action (including suspension or revocation of license or withdrawal of approval of OTB plan of operation)

This proposal was published in the March 23, 2016 *State Register*. A copy of that notice is attached. The public comment period ended on May 9, 2016. Two public comments were received, one from the New York Gaming Association ("NYGA") and one from six collaborating trade associations representing convenience stores, grocery stores, gas stations, taverns and other retail establishments that are licensed to sell New York Lottery products.

Comments Received and Staff Response

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

would

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The text of the proposed rules is attached.

[REDACTED]

Commissioners

May 18, 2016

Page 4

cc: Robert Williams, Executive Director
Gardner Gurney, Director, Division of Lottery
Stacy Harvey, Director, Division of Charitable Gaming
Ronald Ochrym, Director, Division of Horse Racing and Pari-Mutuel Wagering
Chris Palmer, Acting Director, Division of Gaming

➤ **For thoroughbred tracks:**

§ 4003.39. Betting by minors.

(a) No licensed association or corporation shall permit any person who is actually or apparently under 18 years of age to bet at the race meetings of such association or corporation.

(b) The commission shall penalize a track operator found to have violated subdivision (a) of this section as follows:

(1) for a first violation, a fine of \$1,000;

(2) for a second violation within one year of a violation, a fine of \$5,000;

(3) for a third violation within one year of a violation, a fine of \$10,000; and

(4) for a fourth or subsequent violation within one year of a violation, a fine of \$25,000 and, in addition, such further action as the commission may deem appropriate, which may include without limitation suspension or revocation of any license or privilege to operate or manage a track in this State.

➤ **For harness tracks:**

§ 4122.6. Betting by minors.

(a) No licensed association or corporation shall permit any person who is actually or apparently under 18 years of age to bet at such association or corporation's race meetings.

(b) The commission shall penalize a track operator found to have violated subdivision (a) of this section as follows:

(1) for a first violation, a fine of \$1,000;

(2) for a second violation within one year of a violation, a fine of \$5,000;

(3) for a third violation within one year of a violation, a fine of \$10,000; and

(4) for a fourth or subsequent violation within one year of a violation, a fine of \$25,000 and, in addition, such further action as the commission may deem appropriate, which may include without limitation suspension or revocation of any license or privilege to operate or manage a track in this State.

➤ **For off-track betting facilities:**

§ 4404.10. Betting by a person under the age of 18.

(a) (1) No corporation shall permit any [A] person who is [less than] actually or apparently under 18 years of age [shall not] to enter a branch office[, and shall not]. For purposes of this paragraph, a branch office shall not include a simulcast theater, as defined in Racing, Pari-Mutuel Wagering

and Breeding Law section 1001(l), or a branch office operated by an entity other than the corporation (commonly referred to as an EZ Bet location, a Quick Bet location or a similar name).

(2) No corporation shall permit any person who is actually or apparently under 18 years of age to place a bet at any branch office directly for himself or herself or for or through another person.

(b) The commission shall penalize a corporation found to have violated paragraph (1) of subdivision (a) of this section or paragraph (2) of subdivision (a) of this section with respect to a simulcast theater, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1001(l) as follows:

(1) for a first violation, a fine of \$1,000;

(2) for a second violation within one year of a violation, a fine of \$5,000;

(3) for a third violation within one year of a violation, a fine of \$10,000; and

(4) for a fourth or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the corporation's plan of operation.

(c) The commission shall penalize an entity, other than a corporation, that operates a branch office (commonly referred to as an EZ Bet location, a Quick Bet location or a similar name), found to have violated paragraph (2) of subdivision (a) of this section, as follows:

(1) for a first violation, a written warning of such violation;

(2) for a second violation within one year of a violation, a fine of \$500;

(3) for a third violation within one year of a violation, a fine of \$1,000; and

(4) for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the corporation's plan of operation with respect to such branch office.

➤ **For charitable raffles:**

§ 4602.1. Form for application.

* * *

(1) No person under the age of eighteen shall be permitted to play, operate or assist in any raffle conducted pursuant to this subdivision [(b) of this section].

(2) Raffles conducted pursuant to this subdivision [(b) of this section] shall [only] be conducted only within a municipality in which the authorized organization is domiciled that has passed a local law, ordinance or resolution in accordance with Sections 187 and 188 of the General Municipal Law approving the conduct of games of chance that are located within the county or contiguous to the county in which the organization is domiciled.

(3) The commission shall penalize a licensee found to have violated paragraph (1) of this subdivision as follows:

- (i) for a first violation, a written warning of such violation;
- (ii) for a second violation within one year of a violation, a fine of \$500;
- (iii) for a third violation within one year of a violation, a fine of \$1,000; and
- (iv) for a fourth or subsequent violation within one year of a violation, such further actions as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to conduct raffles in this State.

➤ **For charitable games of chance:**

§ 4622.2. Minors.

(a) Persons under 18 years of age may be permitted to attend games of chance license periods at the discretion of the games of chance licensee, but shall not be allowed to participate in the operation or play of any game or games of chance.

(b) One or more signs restricting participation of persons under 18 years of age shall be prominently displayed in each playing area.

(c) The commission shall penalize a licensee found to have violated subdivision (a) of this section as follows:

(1) for a first violation, a written warning of such violation;

(2) for a second violation within one year of a violation, a fine of \$500;

(3) for a third violation within one year of a violation, a fine of \$1,000; and

(4) for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to conduct games of chance in this State.

§ 4622.3. Restriction on participation.

(a) No person shall assist in the management of games of chance except a bona fide member of the licensee. No person shall assist in the operation of games of chance except a bona fide member of the licensee or a bona fide member of an organization which is an auxiliary or an affiliate of the licensee. [No person under the age of 18 years shall be permitted to assist in the conduct of games of chance or participate in the play of any game or games of chance.] For the purpose of the sale of tickets for the game of raffle, the term *operate* shall not include the sale of such tickets by any person with a blood relationship or affinity with a member of an authorized organization licensed to conduct a raffle. Nonmembers may assist the licensee in any activity other than managing or operating games of chance.

(b) No person under the age of 18 years shall be permitted to assist in the conduct of games of chance or participate in the play of any game or games of chance.

(c) The commission shall penalize a licensee found to have violated subdivision (b) of this section according to the penalties set forth in subdivision (c) of section 4622.2 of this Part.

➤ **For traditional lottery:**

§ 5001.27. Ticket Sales.

* * *

(c) (1) No ticket shall be sold to any person under the age of 18 but this shall not prohibit the purchase of a ticket for the purpose of making a gift by a person 18 years of age or older to a person less than that age.

(2) The commission shall penalize a licensee found to have violated paragraph (1) of this subdivision as follows:

(i) for a first violation, a written warning of such violation;

(ii) for a second violation within one year of a violation, a fine of \$500;

(iii) for a third violation within one year of a violation, a fine of \$1,000; and

(iv) for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to sell lottery tickets.

* * *

§ 5007.5. Play characteristics and restrictions.

(a) (1) Mega Millions tickets may only be sold to persons 18 years of age or older.

(2) The commission shall penalize a licensee found to have violated paragraph (1) of this subdivision according to the provisions of paragraph (2) of subdivision (c) of section 5001.27 of this Chapter.

* * *

§ 5007.13. Powerball.

(f) *Play characteristics and restrictions.*

(1) (i) A Powerball ticket may [only] be sold only to a person 18 years of age or older.

(ii) The commission shall penalize a licensee found to have violated subparagraph (i) of this paragraph according to the provisions of paragraph (2) of subdivision (c) of section 5001.27 of this Chapter.

* * *

§ 5013.3. Ticket Sales.

(a) (1) No person shall sell a Quick Draw ticket to a person under the age of 18 years. No person under the age of 21 years may purchase a Quick Draw ticket on the premises of a licensee who holds a license issued pursuant to the Alcoholic Beverage Control Law to sell alcoholic beverages for consumption on the premises.

(2) The commission shall penalize a licensee found to have violated paragraph (1) of this subdivision according to the provisions of paragraph (2) of this subdivision (c) of section 5001.27 of this Chapter.

➤ **For video lottery gaming:**

§ 5117.1. Underage gaming violations.

(a) No video lottery gaming agent, representative, licensed employee or contractor thereof, shall allow, permit or suffer any person under the age of 18 years (underage person) to:

* * *

(3) [loiter or remain] be present on the gaming floor without the escort of a licensed video lottery facility employee and for longer than [reasonably] necessary [for a legitimate non-gaming purpose or] to reach a destination that is not on the gaming floor.

* * *

(c) Each violation of any of the provisions of subdivision (a) of this section as to a single underage person shall be considered a separate and distinct violation [subject to the penalties that may be imposed by the commission as set forth in these regulations].

(1) The commission shall penalize a licensee found to have violated paragraph (1) of subdivision (a) of this section as follows:

(i) for a first violation, a fine of \$5,000;

(ii) for a second violation within one year of a violation, a fine of \$20,000;

(iii) for a third violation within one year of a violation, a fine of \$25,000; and

(iv) for a fourth violation or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of the occupational license of any key employee found to be responsible for the violation.

(2) The commission shall penalize a licensee found to have violated paragraph (3) of subdivision (a) of this section as follows:

(i) for a first violation, a fine of \$1,000;

(ii) for a second violation within one year of a violation, a fine of \$5,000;

(iii) for a third violation within one year of a violation, a fine of \$10,000; and

(iv) for a fourth violation or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of the occupational license of any key employee found to be responsible for the violation.

Racing Law section 1363 prescribes restrictions intended to prevent gaming facilities from disseminating false, deceptive or misleading advertising.

2. **LEGISLATIVE OBJECTIVES:** The above referenced statutory provisions carry out the legislature's stated goal "to develop programs and resources to combat compulsive and problem gambling" as set forth in Racing Law section 1300(12). These provisions also enable the Commission to carry out the Upstate New York Gaming Economic Development Act of 2013 as embodied in Chapter 174 of the Laws of 2013 including to maintain the public confidence and trust in the credibility and integrity of legalized gaming activities in order to support the continued growth of the gaming industry that will contribute to economic development and job development in the state.

3. **NEEDS AND BENEFITS:** The proposed rules represent best practices in problem gambling awareness and prevention and are the result of input from (i) experts hosted by the Gaming Commission at numerous forums held throughout the state, including the New York Council on Problem Gambling, National Council on Problem Gambling and National Center on Responsible Gaming, among others; (ii) stakeholder and industry working groups; and (iii) other gambling jurisdiction best practices and regulation.

Best practices addressed in the proposed rules include requiring each gaming facility licensee to submit its problem gambling plan for Commission approval; establish an employee problem gambling training program; provide quarterly and annual reports to the Commission in regard to the progress and results of the problem gambling plan. The proposed rules also establish procedures and restrictions on gaming facility advertising and signage, including the content and placement of gambling assistance messages and the process by which an individual can request to be excluded from participation in gaming activities.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: One of the three gaming facility licensees has indicated that the anticipated costs of implementing and complying with the proposed regulations will be approximately \$100,000 per year.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The Commission currently operates problem gambling programs, including self-exclusion, in video lottery and horse racing. Based on that experience the Commission anticipates that the costs associated with the proposed rules would be negligible.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. **LOCAL GOVERNMENT:** There are no local government mandates associated with these rules.

6. **PAPERWORK:** These rules impose paperwork burdens on gaming facility licensees to establish, submit and maintain a problem gambling plan that is aimed to help identify and address problem and compulsive gambling through an employee training program, public and private treatment services and advertising. Gaming facility licensees will submit quarterly and annual reports to the Commission regarding the progress and results of problem gambling plans.

7. **DUPLICATION:** These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** In developing the proposed rules the Commission consulted various experts in the field of problem gambling including the New York Council on Problem Gambling, National Council on Problem Gambling, and National Center on Responsible Gaming, among others. In addition, the Commission consulted stakeholders and industry working groups and reviewed other gambling jurisdiction best practices and regulation. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1307(2)(p) and 1344(1) through (2).

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of casino gambling in New York State. The rules will ensure that licensed gaming facilities develop programs and provide resources to employees and patrons that will combat compulsive and problem gambling. The rules will provide for the establishment of a self-excluded persons list and prohibit licensed gaming facilities from creating and disseminating deceptive advertising.

These rules do not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state and solely apply to licensed gaming facilities.

These rules will have no adverse impact on job opportunities.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Consequences for Commission Licensees, Agents, and Other Regulated Parties Who Violate Prohibition on Underage Wagering

I.D. No. SGC-12-16-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 4003.39, 4122.6, 4404.10, 4602.1, 4622.2, 4622.3, 5001.27, 5007.5, 5007.13, 5013.3 and 5117.1 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104, 108 and 116; Tax Law, sections 1601, 1604, 1610 and 1612; General Municipal Law, sections 195-a and 486

Subject: Consequences for Commission licensees, agents, and other regulated parties who violate prohibition on underage wagering.

Purpose: To further enforce the age restriction laws for gambling by imposing fines, suspensions and/or license revocation.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov): The amendments to these sections will allow the New York State Gaming Commission ("Commission") to ensure that all lawful gaming and horse racing activity conducted in this State is of the highest integrity. In co-operation with the Responsible Play Partnership (a standing collaboration between the Commission, the Office of Alcohol and Substance Abuse Services and the New York Council on Problem Gambling) the amendments address problem gambling issues and awareness in New York State. Amendment of these regulations furthers such purpose by increasing the consequences for non-compliance with the legal gambling age requirements.

The amendments to sections 4003.39 and 4122.6 establish a penalty structure for a thoroughbred track operator and a Standardbred track operator, respectively, found to have allowed betting by minors. A track operator would be penalized by a fine of \$1,000 for a first violation, \$5,000 for a second violation within one year of a violation, \$10,000 for a third violation within one year of a violation and \$25,000 for a fourth or subsequent violation within one year of a violation, in addition to such further action as the commission may deem appropriate, which may include without limitation suspension or revocation of any license or privilege to operate or manage a track in this State.

The amendments to section 4404.10 provide that an off-track betting corporation is responsible for not permitting a person who is actually or apparently under 18 years of age to enter an off-track betting branch office (other than a simulcast theater) or directly or indirectly place a bet at a branch office (including a simulcast theater). The amendments establish a penalty structure for an off-track betting corporation found to have violated such provisions. An off-track betting corporation would be penalized by a fine of \$1,000 for a first violation, \$5,000 for a second violation within one year of a violation, \$10,000 for a third violation within one year of a violation and for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the corporation's plan of operation. A different penalty structure applies to branch offices operated by entities other than an off-track betting corporation (commonly referred to as EZ Bet or Quick Bet locations). Such branch offices would be penalized by a written warning for a first violation, \$500 for a second violation within one year of a violation, \$1,000 for a third violation within one year of a violation and \$25,000 for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the off-track betting corporation's plan of operation with respect to such branch office.

The amendments to 4602.1 establish a penalty structure for a charitable organization authorized to conduct raffles found to have allowed a minor

to play, operate or assist in any raffle. An organization would be penalized by a written warning for a first violation, \$500 for a second violation within one year of a violation, \$1,000 for a third violation within one year of a violation and for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to conduct raffles in this State.

The amendments to sections 4622.2 and 4622.3 establish a penalty structure for a charitable organization authorized to conduct games of chance found to have allowed a minor to participate in the operation, assist in the conduct of or play of any game of chance. An organization would be penalized by a written warning for a first violation, \$500 for a second violation within one year of a violation, \$1,000 for a third violation within one year of a violation and for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to conduct games of chance in this State.

The amendments to sections 5001.27, 5007.5, 5007.13 and 5013.3 establish a penalty structure for a lottery sales agent found to have sold a lottery ticket to a minor. A sales agent licensee would be penalized by a written warning for a first violation, \$500 for a second violation within one year of a violation, \$1,000 for a third violation within one year of a violation and for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to sell lottery tickets.

The amendments to section 5117.1 establish a penalty structure for a video lottery agent found to have permitted a minor to participate as a player or be present on the gaming floor without the escort of a licensed video lottery facility employee or for longer than necessary to reach a destination that is not on the gaming floor. A video lottery licensee found to have permitted a minor to participate as a player would be penalized by a fine of \$5,000 for a first violation, \$20,000 for a second violation within one year of a violation, \$25,000 for a third violation within one year of a violation and for a fourth or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of the occupational license of any key employee found to be responsible for the violation. A video lottery licensee found to have permitted a minor to be present on the gaming floor without the escort of a licensed video lottery facility employee or for longer than necessary to reach a destination that is not on the gaming floor would be penalized by a fine of \$1,000 for a first violation, \$5,000 for a second violation within one year of a violation, \$10,000 for a third violation within one year of a violation and for a fourth or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of the occupational license of any key employee found to be responsible for the violation.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, P.O. Box 7500, Schenectady NY 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law Sections 1601, 1604, 1610 and 1612, Racing, Pari-Mutuel Wagering and Breeding Law Sections 104, 108 and 116 and General Municipal Law Sections 195-a and 486, the following amendments shall take effect upon publication of a Notice of Adoption in the State Register. Section 1601 of the Tax Law states the purpose of Article 34 of the Tax Law is to carry out the constitutional mandate to establish a lottery operated by the State. Section 1604 of the Tax Law provides for the New York State Gaming Commission's (the "Commission") authority to promulgate rules and regulations governing the Lottery. Sections 1610 and 1612 provide the legal age restrictions for purchasing a Lottery ticket. Subdivision 19 of Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Commission to promulgate rules and regulations necessary to carry out its responsibilities. Subdivision 2 of Section 108 of the Racing, Pari-Mutuel Wagering and Breeding Law provides the legal age restriction for wagering upon gaming. Section 116 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Commission to assess civil penalties upon a Commission licensee for any violation of the conditions of a license or the Racing, Pari-Mutuel Wagering and Breeding Law. Sections 195-a and 486 of the General Municipal Law provide the legal age restrictions for participating in charitable gaming.

2. Legislative objectives: The New York State Gaming Commission regulates all aspects of gaming and gambling activity in the state, including horse racing and pari-mutuel wagering, Class III Indian Gaming, the state lottery (including video lottery terminals) and charitable gaming. The Commission's purpose is to ensure that all lawful gaming and horse racing activity conducted in this State is of the highest integrity. In cooperation with the Responsible Play Partnership, (a standing collaboration between the Commission, the Office of Alcohol and Substance Abuse Services and the New York Council on Problem Gambling) the amendments address problem gambling issues and awareness in New York State. Amendment of these regulations forwards such purpose by increasing the consequences for non-compliance with the legal gambling age requirements.

3. Needs and benefits: The New York State Gaming Commission has regulations that govern Commission licensees, agents and other regulated parties who violate prohibitions on underage play. The amendments are necessary to enhance the existing regulations by implementing a graduated penalty structure for infractions. Similar to state enforcement efforts that prevent alcoholic beverage sales to underage buyers, the Responsible Play Partnership plans to help to enforce the age restriction for gaming.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders if they comply with the legal age limits for gambling. A violation by a Commission licensee of the legal age limits for gambling could result in a fine or other disciplinary action against the licensee.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of enforcing the existing rules are expected to be sufficient to support these amendments.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Gaming Commission's experience in regulating wagering activity.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations which duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending the Commission's regulations is to continue the currently effective regulations and not enhance the Commission's oversight of compliance with the legal age limits for gambling.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the Federal government.

10. Compliance schedule: The amendment will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

1. Effect of rule: This rule making will affect the more than 18,000 retail sales agents of traditional lottery tickets in the State, the more than 100 off-track betting remote locations (sometimes known as EZ Bet, Fast Track, Qwik Bet or self-service locations, often at restaurants) and the more than 18,000 organizations conducting charitable gaming. This rule making will not affect local governments.

2. Compliance requirements: The rule making requires no compliance beyond compliance with existing laws prohibiting underage gaming.

3. Professional services: It is not anticipated that any small business or local government would need professional services in order to comply with the proposed rules.

4. Compliance costs: There are no initial capital costs anticipated for a regulated business or industry or local government to comply with the proposed rules, nor are there any anticipated annual costs for continuing compliance with the proposed rules.

5. Economic and technological feasibility: The proposed rules require compliance with existing law. No technology or additional expenditures is required for compliance.

6. Minimizing adverse impact: The proposed rules will have no adverse economic impact to small businesses that comply with existing laws prohibiting underage gaming. There would be economic impact, in the form of fines and other sanctions, on those that do not comply with laws prohibiting underage gaming. This result creates the deterrence effect that the proposed rules are designed to promote. The impact on small businesses is accounted for in the severity of the proposed sanctions for violations. There are less severe sanctions for violations committed by lottery retail sales agents, remote off-track betting locations and organizations that conduct charitable gaming (including written warnings for first violations, in lieu of fines) than there are for larger businesses, such as agents operating video lottery gaming facilities, racetracks, off-track betting corporations, which would be fined more substantially than small

businesses, including fines for first violations. The proposed rules set forth only performance standards. Public health safety and general welfare would not be served by exemptions from coverage by the rule for small businesses, but the circumstances of small businesses and charitable organizations are accounted for by the smaller prescribed sanctions, which include smaller fines and written warnings in lieu of fines for first violations within prescribed time periods.

7. Small business and local government participation: The Gaming Commission will send to affected regulated parties a notice apprising them of the proposed rulemaking and inviting them to comment.

8. For rules that either establish or modify a violation or penalties associated with a violation: The proposed rules contain no cure period because compliance with underage gaming laws is mandatory and there is no opportunity to cure once a violation occurs. The deterrence effect that the proposed rules are designed to promote would not be best served by excusing noncompliance, but the interests of small businesses are accounted for with smaller fines and the availability of a written warning as a sanction for a first violation within a prescribed time period.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal because the proposal will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal amends the rules regulating consequences for Commission licensees, agents and other regulated parties who violate prohibition on underage wagering.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal amends the regulations governing the consequences for Commission licensees, agents and other regulated parties who violate prohibitions on underage wagering.

Division of Homeland Security and Emergency Services

NOTICE OF ADOPTION

Registration of Manufacturers, Distributors, Wholesalers, Various Retailers of Sparkling Devices

I.D. No. HES-32-15-00002-A

Filing No. 265

Filing Date: 2016-03-02

Effective Date: 2016-03-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 225 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 156(20) and 156-h; L. 2014, ch. 477

Subject: Registration of manufacturers, distributors, wholesalers, various retailers of sparkling devices.

Purpose: Establish the registration process, fees and reporting requirements related to sparkling devices.

Text or summary was published in the August 12, 2015 issue of the Register, I.D. No. HES-32-15-00002-EP.

Final rule as compared with last published rule: No changes.

Revised rule making(s) were previously published in the State Register on January 20, 2016.

Text of rule and any required statements and analyses may be obtained from: Elisha S. Tomko, Division of Homeland Security and Emergency Services, 1220 Washington Avenue, State Office Campus, Bldg. 7A, Albany, NY, (518) 474-6746, email: elisha.tomko@dhses.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Use of the Vehicle Electronic Reassignment and Integrated Facility Inventory System

I.D. No. MTV-03-16-00005-A

Filing No. 270

Filing Date: 2016-03-08

Effective Date: 2016-03-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 78.9 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 415

Subject: Use of the Vehicle Electronic Reassignment and Integrated Facility Inventory system.

Purpose: To require dealers to use the Vehicle Electronic Reassignment and Integrated Facility Inventory system.

Text or summary was published in the January 20, 2016 issue of the Register, I.D. No. MTV-03-16-00005-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

Comment: Dealertrack Technologies commented that, "we commend the DMV for advancing this initiative. It is an innovative and thoughtful approach to automate DMV regulatory and compliance functions, increase dealer efficiencies and advance consumer protection. We are aware of no other state that has gone to this level of detailed automation and thoughtful consideration for all stakeholders. As a New York State company, we are happy that this type of innovation is happening in New York."

Response: The Department of Motor Vehicles is appreciative of Dealertrack Technologies' support of the proposed regulation.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Adding Windsurfing, Sailboarding and Paddleboarding to the List of Activities Regulated by OPRHP

I.D. No. PKR-47-15-00001-A

Filing No. 266

Filing Date: 2016-03-03

Effective Date: 2016-03-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 375.1 and 377.1 of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8) and 13.13

Subject: Adding windsurfing, sailboarding and paddleboarding to the list of activities regulated by OPRHP.

Purpose: To authorize the regulated activity by the public of windsurfing, and stand-up paddleboarding.

Text or summary was published in the November 25, 2015 issue of the Register, I.D. No. PKR-47-15-00001-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, Office of Parks, Recreation and Historic Preservation, OPRHP, Albany, NY 12238 (For USPS mailing),



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500

www.gaming.ny.gov

John A. Crotty, Commissioner
Peter J. Moschetti, Jr., Commissioner
John J. Poklemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: May 16, 2016

Re: Proposed Rulemaking for Independent Testing Laboratories (9 NYCRR Part 5318 and §§ 5100.2 and 5118.6)

For Commission consideration are proposed rules that require a gaming facility licensee to test and certify slot machines and other gaming equipment by licensed independent testing laboratories prior to operation. The proposed Part addresses the following topics: the standards for licensing and operating independent testing laboratories, notification and reporting requirements and the recording and reporting of equipment inspection and certification results. The proposed Part also makes the proposed rules applicable to the systems and equipment used in the conduct of video lottery gaming.

Highlights of the proposal follow:

- Section 5318.1 sets forth the requirement that independent testing laboratories test and certify slot machines and other gaming equipment prior to operation.
- Section 5318.2 sets forth the requirement that independent testing laboratories be licensed as casino vendor enterprises pursuant to Racing, Pari-Mutuel Wagering and Breeding law section 1326 and Parts 5303 and 5307. This section also sets forth categories of inspection and certification that a laboratory may be licensed to perform.
- Section 5318.3 sets forth additional standards for issuing a casino vendor enterprise license to an independent testing laboratory.
- Section 5318.4 sets forth laboratory notification and reporting requirements.
- Section 5318.5 sets forth laboratory conduct and operations requirements.

- Section 5318.6 sets forth laboratory reporting requirements for inspection and certification results.
- The proposed Part will amend 9 NYCRR Parts 5100 and 5118 (Video Lottery Gaming) to make the proposed Part applicable to all systems and equipment used in the conduct of video lottery gaming.

A copy of the full text of the proposed Part 5318 is attached.

The proposed text was circulated to three independent testing laboratories for their review and we will advise you of any comments we may receive.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
Chris Palmer, Deputy Director, Division of Gaming
Heather McArn, Associate Counsel

PART 5318

Independent Testing Laboratories

Section	
5318.1	Use of independent testing laboratories
5318.2	Licensing of independent testing laboratories
5318.3	Additional standards for issuance of a casino vendor enterprise license to an independent testing laboratory
5318.4	Required notification and reporting
5318.5	Operation and conduct
5318.6	Testing and certification results

§ 5318.1. Use of independent testing laboratories.

(a) Testing, certification and approval of games and gaming equipment, including gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto, shall comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1335(8).

(b) A licensed manufacturer, a distributor or operator of games or gaming devices or a gaming facility licensee shall be solely responsible for the payment of any fees imposed by the independent testing laboratory for the services of such laboratory.

(c) A licensed manufacturer, distributor or operator of games or gaming devices or gaming facility licensee shall pay any and all costs associated with any review or approval the commission performs of a game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any components thereof or modification thereto, including any costs associated with the commission's review of the licensed independent testing laboratory's testing and certification as described in subdivision (a) of this section.

§ 5318.2. Licensing of independent testing laboratories.

(a) An independent testing laboratory that intends to test and certify games, gaming devices, gaming-associated equipment, cashless-wagering systems, inter-casino linked systems, mobile-gaming systems or interactive-gaming systems or any components thereof or modifications thereto, for use in a licensed gaming facility shall be licensed by the commission as a casino vendor enterprise pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1326 and Parts 5303 and 5307 of this Subchapter.

(b) The commission may require each testing facility at which an independent testing laboratory conducts testing and certification procedures to be licensed as a casino vendor enterprise pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1326 and Parts 5303 and 5307 of this Subchapter.

(c) An independent testing laboratory shall be certified to perform testing for each of the following categories:

- (1) games and game variations;
- (2) gaming devices and gaming device modifications;
- (3) gaming-associated equipment and gaming-associated equipment modifications;
- (4) cashless-wagering systems and cashless-wagering system modifications;
- (5) inter-casino linked systems and inter-casino linked system modifications;
- (6) mobile-gaming systems and mobile-gaming system modifications;
- (7) interactive-gaming systems and interactive-gaming-system modifications; and
- (8) any other category of testing and certification that the commission may deem appropriate.

§ 5318.3. Additional standards for issuance of a casino vendor enterprise license to an independent testing laboratory.

(a) Each applicant for an independent testing laboratory license shall:

- (1) be independent from any licensed manufacturer, distributor or operator of any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto;
- (2) be accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement; and
- (3) demonstrate it is technically competent in testing the category of game, device or system for which a license is sought.

(b) An independent testing laboratory and its owners, managers, supervisory personnel and employees:

- (1) shall not have a financial or other interest, direct or otherwise, in a licensed manufacturer, distributor, or operator of any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto;

(2) shall not participate, consult or otherwise be involved in the design, development, programming or manufacture of any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto;

(3) shall not have any other interest in or involvement with a licensed manufacturer, distributor or operator of games or gaming devices that could cause the independent testing laboratory to act in a manner that is not impartial; and

The restrictions set forth in paragraphs (1) and (2) of this subdivision do not limit an independent testing laboratory or its owners, managers, supervisory personnel and employees from providing consulting services to a licensed manufacturer, distributor or operator of games or gaming devices, provided that such services do not directly or indirectly indicate, suggest or imply how to design, develop, program or manufacture a game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any components thereof or modification thereto.

(c) Each applicant for an independent testing laboratory license and its owners, managers, supervisory personnel and employees shall produce such information, documentation and assurances as the commission may request concerning the criteria set forth in this section.

(d) The commission shall maintain a list of licensed independent testing laboratories on the commission's website, along with the categories of testing each is certified to perform.

§ 5318.4. Notification and reporting requirements.

(a) A licensed independent testing laboratory shall notify the commission immediately if a licensed manufacturer, distributor or operator of games or gaming devices:

(1) attempts, directly or indirectly, to influence improperly a licensed independent testing laboratory or its owners, managers, supervisory personnel and employees, in regard to a game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto, that it, or another person or entity, has submitted for testing or certification for use in a licensed gaming facility; or

(2) engages in any transaction with a licensed independent testing laboratory that such manufacturer, distributor or operator is using, has used or intends to use to inspect or certify a game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto, for use by a

licensed gaming facility, in which the licensed independent testing laboratory is required to participate, consult or otherwise be involved in the design, development, programming or manufacture of such items. This restriction does not limit a licensed manufacturer, distributor or operator of games or gaming devices from engaging such licensed independent testing laboratory to provide consulting services, provided that such services do not directly or indirectly indicate, suggest or imply how to design, develop, program or manufacture such items.

(b) Licensed independent testing laboratories shall maintain copies of the results of any ISO/IEC 17025 audits or reviews and shall notify the commission in writing of the availability of such results within 15 days of when such results become available to the licensed independent testing laboratory. Such copies shall be provided to the commission upon request.

§ 5318.5. Conduct and operation.

(a) In the interest of preserving a competitive gaming industry, a licensed independent testing laboratory shall not implement or maintain any procedure or policy or take any action that would:

(1) inhibit or prevent a licensed manufacturer, distributor or operator of games or gaming devices from submitting a game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system, or any component thereof or modification thereto, for testing and certification for use in a licensed gaming facility; or

(2) call into question or tend to erode the independence of the licensed independent testing laboratory from any clients that use the services of such laboratory.

(b) A licensed independent testing laboratory shall maintain a version-controlled system of testing documentation and methodologies that such laboratory uses to provide certification and such materials shall be made available to the commission upon request. Original testing documentation, methodologies and any revisions to the testing documentation or methodologies must be approved in writing by the commission prior to being used.

(c) All testing shall be conducted in accordance with this Subchapter and all technical standards, control standards, control procedures, policies and industry notices that the commission may implement or issue.

(d) All testing shall be performed by a licensed or registered employee of the licensed independent testing laboratory. The commission may permit a licensed independent testing laboratory to use the services of a third party other than a licensed or registered employee of the independent testing laboratory to perform certain specific functions associated with the testing and certification procedures to be performed. Any such

request shall be made in writing subject to the review and approval of the commission in advance of using the services of a third party.

(e) A licensed independent testing laboratory shall not use, rely on or otherwise refer to any testing, results or work product performed by another licensed testing laboratory for any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system, or any component thereof or modification thereto that has not previously been approved in writing by the commission.

(f) A licensed independent testing laboratory shall implement and maintain a system of peer review to monitor the quality of the testing and certification procedures performed by such laboratory.

(g) A licensed independent testing laboratory shall consult with the commission prior to testing, evaluating, analyzing, certifying, verifying or rendering opinions for or on behalf of the commission relating to any new technology or concept.

(h) A licensed independent testing laboratory shall consult the commission on any questions relating to the testing and certification of any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked systems, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto.

(i) A licensed independent testing laboratory shall keep confidential all information and data prepared or obtained as part of the testing and certification process.

(j) A licensed independent testing laboratory shall implement and maintain security and access control systems designed to secure and protect the confidentiality of all equipment, software and other information entrusted to it as part of the testing and certification process.

(k) A licensed independent testing laboratory shall maintain all test equipment in accordance with the manufacturer's specifications and recommendations and shall provide the commission with evidence of such upon demand.

(l) A licensed independent testing laboratory shall retain all submission and testing-related documentation. Such records may be maintained in electronic form. The obligation to maintain such records continues even if the independent testing laboratory ceases to be licensed with the commission or otherwise ceases its business operation. The independent testing laboratory may turn all such records over to the commission in electronic form as an alternative to having to maintain such records after such laboratory is no longer licensed or after such laboratory ceases business operation.

(m) The commission may conduct periodically an onsite evaluation and review of each licensed independent testing laboratory to evaluate certification results and to verify continued compliance with all licensing requirements and protocols.

(n) The commission shall, at all times, have immediate and unfettered access to the licensed independent testing laboratory's place of business.

(o) The commission may establish a system to evaluate the continued quality of the testing and certification performed by a licensed independent testing laboratory.

(p) A licensed independent testing laboratory, its employees, management and owners shall remain independent of any licensed manufacturer, distributor or operator of games or gaming devices.

(q) no independent testing laboratory employee who was employed by, or performed any work for, a licensed manufacturer, distributor or operator of games or gaming devices within one year prior to such person's date of employment with such independent testing laboratory shall be permitted to inspect or certify any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system, or any component thereof or modification thereto for use in a licensed gaming facility, with which such person had any involvement whatsoever while employed by such licensed manufacturer, distributor or operator of games or gaming devices.

(r) Violation of the provisions set forth in this section shall constitute an unsuitable method of operation.

§ 5318.6. Testing and certification results.

(a) Each licensed independent testing laboratory shall provide the commission with the results of the testing and certification process for the commission's approval. The results shall include, at a minimum, the following:

(1) a statement, signed under penalty of perjury, that the certification process was conducted in accordance with this Subchapter and that the product being certified to the best of the licensed independent testing laboratory's knowledge and belief, meets the requirements of this Subchapter and all technical standards, control standards, control procedures, policies and industry notices implemented or issued by the commission;

(2) the name of the licensed independent testing laboratory that performed the testing;

(3) the license number of the licensed independent testing laboratory that performed the testing;

(4) the location or locations of the facility or facilities the licensed independent testing laboratory used to perform the testing;

(5) the date the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-

gaming system or any component thereof or modification thereto was submitted to the licensed independent testing laboratory for certification;

(6) the start and end dates of the testing performed;

(7) an attestation statement that the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto source code was reproduced;

(8) the part and version number or numbers of the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto submitted for certification;

(9) the unseeded HMAC-SHA1 signature of all applicable files, or other method as approved in writing by the commission;

(10) a description of the configuration of the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto as tested;

(11) a description of the scope of testing performed;

(12) identification of the State of New York-approved testing document or documents by name and version number;

(13) a description of any issues found during the testing process and the resolution thereof, made available upon request by the commission;

(14) identification of any modification that was not identified by the manufacturer, made available upon request by the commission;

(15) a complete description of the testing conducted as part of the certification of the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto that was not covered by the requirements of this Subchapter and all technical standards, control standards, control procedures, policies and industry notices that the commission implements or issues;

(16) a list of all jurisdictions in which the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto has been granted or denied licensure, registration, or similar approval; and

(17) any additional information regarding the testing and certification that the licensed independent testing laboratory considers appropriate for the commission to consider as part of the approval process.

(b) The commission shall approve or reject the results as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1335(8)(b).

(c) The commission may add, modify or remove conditions following the initial gaming device approval as necessary to ensure the integrity of the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto and the effective administration of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law.

§ 5100.2. Definitions.

(a) Unless the context indicates otherwise, the following definitions are applicable throughout this subchapter.

* * *

(58) *Independent [gaming] testing laboratory* means a laboratory, [selected] licensed by the commission, that shall be used by vendors of the commission to ensure that the central system, site controllers, terminals and associated equipment used in the conduct of video lottery gaming operate in the manner set forth by these regulations.

* * *

§ 5118.6. Testing and certification of video lottery gaming systems.

The central system, video lottery terminals and associated equipment used in the conduct of video lottery gaming, or a prototype thereof, shall be tested and approved [as the commission shall require] in a manner consistent with Part 5318 of this Chapter as if a video lottery gaming agent were a gaming facility licensee and as if a vendor were a licensed casino vendor enterprise.