



**MEETING AGENDA
JULY 6, 2015**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF MAY 26, 2015
3. REPORT OF EXECUTIVE DIRECTOR
4. RULEMAKING
 - A. FOR ADOPTION: SGC-19-15-00017-P: PERMITS COUPLED ENTRIES WITH THOROUGHBRED SUPERFECTA WAGERING
 - B. FOR ADOPTION: SGC-20-15-00003-P: AMENDMENTS TO COUPLED ENTRIES IN THOROUGHBRED WAGERING
 - C. PROPOSAL: COMMERCIAL GAMING DEFINITIONS
 - D. PROPOSAL: COMMERCIAL GAMING ENTITY LICENSING
 - E. PROPOSAL: COMMERCIAL GAMING EMPLOYEE AND VENDOR LICENSING
 - F. PROPOSAL: LOTTERY POWERBALL
 - G. PROPOSAL: LOTTERY VIDEO LOTTERY TERMINAL CAPITAL AWARD DIVESTITURE
5. ADJUDICATIONS
 - A. IN THE MATTER OF JOHN CORRIERI
 - B. IN THE MATTER OF SAMUEL WILLIAMS
6. OLD BUSINESS/NEW BUSINESS
7. SCHEDULING OF NEXT MEETING
8. ADJOURNMENT

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**NEW YORK STATE
GAMING COMMISSION MEETING**

MINUTES

MEETING of MAY 26, 2015

NEW YORK, NEW YORK

A meeting of the N.Y.S. Gaming Commission was conducted in Brooklyn, New York.

1. Call to Order

The meeting was called to order at 12:31 p.m. by Executive Director Robert Williams. 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.

In the absence of Chairman Mark Gearan, Commissioner Crotty was unanimously elected presiding officer.

2. Consideration of the Minutes from April 27, 2015

The Commission considered previously circulated draft minutes of the meeting conducted on April 27, 2015. The minutes were accepted as circulated.

3. Report of Executive Director

Executive Director Robert Williams provided an update on the past and upcoming problem gambling forums; the Belmont Stakes Racing Festival; a forthcoming retired racehorse event; and the status of gaming regulations.

4. Rulemaking

a. SCG-28-14-00006-E, Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)

The Commission considered re-adoption of emergency rules prescribing both forms for the Request for Applications to Develop and Operate a Gaming Facility and several forms necessary to consider and process Applications for Gaming Facility Licenses.

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

b. Proposed Rulemaking for New Numbers and Win-4 Lottery Games Wagers (9 NYCRR §§ 5009.2 and 5010.2)

The Commission considered a draft regulation allowing for the introduction of specifications for the Lottery Division's existing Numbers and Win-4 draw games to allow what is to be called the "Close Enough" wager. Commissioner Snyder noted a discrepancy between the cover memorandum and the proposed rule and inquired what material was under consideration. Commission Counsel Edmund Burns advised that only the text of the proposed rule was being considered for vote.

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

5. Adjudication

- a. In the Matter of Graham Lewis. 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, on a 5-0 vote, to reject Mr. Lewis' request to reopen his adjudicatory proceeding to consider new information.
- b. In the Matter of First Choice Food Market #046847. 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, on a 5-0 vote, to accept the Hearing Officer's report and recommendation that the agent's license suspension be upheld until license revocation is finalized.

6. Racing Fan Advisory Council Presentation. The Racing Fan Advisory Council presented its Annual Report. The Council's Chairman, Patrick M. Connors and members Michael Amo, Allan Carter, Michael Mills and Kelly Young all participated in discussing their findings and recommendations which included topics such as steward transparency, the lessons of the 2014 Belmont Stakes and Council participation in racing facility physical plant changes.

Following the presentation, Presiding Officer Crotty request a status update on a previously discussed steward reporting initiative. Commission Racing Division Acting Director Ronald Ochrym outlined the initiative, wherein the Commission will weekly publish information on claims, rulings, inquiries,

objections, injuries, number of starters, pari-mutuel handle, and types of racing. Mr. Ochrym advised that while commencing only with NYRA racetracks, the initiative will gradually expand to all racetracks in the state, both standardbred and thoroughbred. He further announced that the inaugural material would be immediately made available.

7. New Business/Old Business

No new or old business was presented.

8. Scheduling of Next Meeting

Following discussion, it was determined that next scheduled meeting date, June 22th, was likely problematic to many. Presiding Officer Crotty requested each commissioner work through Ms. Buckley to determine an appropriate next meeting date.

9. Adjournment

The meeting was adjourned at 1:09 p.m.

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Gaming Commission

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www.gaming.ny.gov

Mark D. Gearan, Chair
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: June 30, 2015

Re: Adoption of Rules for Superfecta Wagering in Thoroughbred Racing (9 NYCRR § 4011.22)

For Commission consideration is the adoption of the proposed rule in regard to thoroughbred racing superfecta* wagering. This proposal would set forth a complete Commission superfecta rule, incorporating the wish to allow superfecta wagering in races with coupled entries. The proposal is modeled on the existing Commission's existing trifecta rule, Rule 4011.22. It is anticipated that allowing coupled entries in superfecta races will make the wager more competitive and attractive to the betting public. This rule would replace the current superfecta rule that is incorporated (without permitting coupled entries) from a model rule of the Association of Racing Commissioners International, with Commission approval. Some conforming stylistic changes would be made to the trifecta rule as well.

The proposed rule was published in the May 13, 2105 edition of the *State Register*. The text of the proposed rule as published is attached. The public comment period ended on June 27, 2015. One public comment has been received, which was a comment from NYRA in support of the adoption.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

* The superfecta is a type of pari-mutuel wager in which the bettor, in order to win, must select correctly the first four finishers of a race in the correct sequence.

working with a group of anglers and recreational fishing industry members. These options included the manipulation of minimum sizes, possession limits, and fishing seasons to achieve the required reduction. These options were narrowed down to 8 by the working group and presented to New York’s Marine Resource Advisory Council (MRAC). MRAC members provided input during a regularly scheduled meeting on March 10, 2015. A voting quorum was not present, nonetheless, MRAC members did indicate a preference for 2 out of the 8 options. The Division has chosen to propose the option that increases the minimum size limit by one inch to achieve the required reduction. This option represents the least disruption to last year’s regulations and preserves the targeted nature of the fishery for the period when most anglers have access.

5. Self-employment opportunities:

The party and charter boat businesses, the bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by the owner. The recreational fishing industry is mostly self-employed. This rule will likely have a negative effect upon opportunities for businesses related to the recreational harvest of black sea bass.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA section 207.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Permits Coupled Entries with Thoroughbred Superfecta Wagering

I.D. No. SGC-19-15-00017-P

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

Proposed Action: Renumbering and amendment of section 4011.22 to section 4011.21; addition of new section 4011.22 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutual Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Permits coupled entries with thoroughbred superfecta wagering.

Purpose: To improve wagering opportunities in thoroughbred horse racing.

Text of proposed rule: Section 4011.22 of 9 NYCRR would be renumbered and amended to read as follows:

THE TRIFECTA
§ [4011.22] 4011.21. Trifecta.

(a) The object of the trifecta is to select in order, the first-, second- and third-place horses in a designated trifecta race. The trifecta pool shall be held entirely separate from all other pools and has no relation to any other pool.

(b) Races in which trifecta betting shall be conducted shall be approved by the commission and be clearly designated in the program.

(c) If a horse is scratched or excused from racing or betting no further tickets shall be sold designating such horse and all tickets previously sold designating such horse shall be refunded and the money deducted from the pool.

(d)(1) If no ticket is sold designating, in order, the first three horses or only two horses finish, the net pool shall be distributed equally among holders of tickets designating the first two horses in order[;].

(2) [if] If no ticket is sold designating, in order, the first two horses or only one horse finishes, the net pool shall be distributed equally among holders of tickets designating the [first] horse to win.

[(e)] (3) If no ticket is sold designating the winner to win, the trifecta shall be declared off and the gross pool refunded. An announcement of such possibility shall be made as soon as the pool closes.

[(f)] (e) Dead heat. In the event of a dead heat, all tickets designating the correct order of finish, crediting each horse in a dead heat as finishing in [either position] any of the dead-heat positions, shall be winning tickets[and distribution]. Distribution shall be in accordance with established pari-mutuel practice relative to dead heats, i.e., separate price calculations for different combinations.

[(g)] (f) Coupled entries and fields are permitted in trifecta races. In

such races no wagers may be accepted or issued (including “wheel” or “box” type bets) that couple the same coupled entry or the same field in the same combination.

[(h)] (g) The numbers of the first three horses as made official shall constitute the winning combination, except that where two or more such horses are part of the same coupled entry or field only the best finishing position attained by such coupled entry or field horses shall be considered for pay-off purposes and the next best finishing horses not part of such coupled entry or field shall be selected to determine the winning trifecta combination.

[(i)] (h) No trifecta wagering shall be conducted on any race having fewer than five betting entries. If fewer than five betting entries start, the trifecta shall be declared off and the gross pool refunded. The commission’s steward may, in the exercise of discretion to protect the wagering public, require that there be at least six betting entries for the conduct of trifecta wagering.

A new section 4011.22 would be added to 9 NYCRR to read as follows:
THE SUPERFECTA

§ 4011.22. Superfecta.

(a) The object of the superfecta is to select in order, the first-, second-, third- and fourth-place horses in a designated superfecta race. The superfecta pool shall be held entirely separate from all other pools and has no relation to any other pool.

(b) Races in which superfecta betting shall be conducted shall be approved by the commission and be clearly designated in the program.

(c) If a horse is scratched or excused from racing or betting no further tickets shall be sold designating such horse and all tickets previously sold designating such horse shall be refunded and the money deducted from the pool.

(d)(1) If no ticket is sold designating, in order, the first four horses or only three horses finish, the net pool shall be distributed equally among holders of tickets designating the first three horses in order.

(2) If no ticket is sold designating, in order, the first three horses or only two horses finish, the net pool shall be distributed equally among holders of tickets designating the first two horses in order.

(3) If no ticket is sold designating, in order, the first two horses or only one horse finishes, the net pool shall be distributed equally among holders of tickets designating the horse to win.

(4) If no ticket is sold designating the winner to win, the superfecta shall be declared off and the gross pool refunded. An announcement of such possibility shall be made as soon as the pool closes.

(f) Dead heat. In the event of a dead heat, all tickets designating the correct order of finish, crediting each horse in a dead heat as finishing in any of the dead-heat positions, shall be winning tickets. Distribution shall be in accordance with established pari-mutuel practice relative to dead heats, i.e., separate price calculations for different combinations.

(g) Coupled entries and fields are permitted in superfecta races. In such races no wagers may be accepted or issued (including “wheel” or “box” type bets) that couple the same coupled entry or the same field in the same combination.

(h) The numbers of the first four horses as made official shall constitute the winning combination, except that where two or more such horses are part of the same coupled entry or field only the best finishing position attained by such coupled entry or field horses shall be considered for pay-off purposes and the next best finishing horses not part of such coupled entry or field shall be selected to determine the winning superfecta combination.

(i) No superfecta wagering shall be conducted on any race having fewer than five betting entries. If fewer than five betting entries start, the superfecta shall be declared off and the gross pool refunded. The commission’s steward may, in the exercise of discretion to protect the wagering public, require that there be at least six betting entries for the conduct of superfecta wagering.

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, PO Box 7500, Schenectady, New York 12305-7500, (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: The New York State Gaming Commission (“Commission”) is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1), 104(19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in

such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative Objectives: To improve wagering opportunities in thoroughbred pari-mutuel racing.

3. Needs and Benefits: This rulemaking will add an explicit superfecta wagering rule for thoroughbred racing to Part 4011 of 9 NYCRR. The new rule will be numbered Section 4011.22 and an existing Section 4011.22 will be renumbered as Section 4011.21.

Under this proposal, the Commission would permit a racetrack operator to offer superfecta wagering without special permission of the Commission and modernize the type of superfecta wagering that may be offered to expand the wagering opportunities.

When the Commission authorized superfecta wagers in March 1998, it did so with a rule, 9 NYCRR 4011.28, that allowed a racetrack operator to offer wagers not fully described in the Commission rules, provided that permission was granted by the Commission and such additional type of wager was defined in the model rules of the Association of Racing Commissioners International, Inc. ("ARCI"). In particular, the Commission incorporated by reference the December 1996 version of the ARCI model rules that permitted superfecta wagering. Since then, superfecta wagering has become widely accepted and ARCI has modified its superfecta wagering model rule.

The proposal would allow a racetrack operator to offer superfecta wagering without requesting special permission for this wager. This type of wager would be fully described in the Commission rules, instead, and the description would reflect the current ARCI model rule which, for example, now permits coupled entries in a superfecta race.

This proposal will streamline the process of offering wagering opportunities for New York racetrack operators. It will allow more superfecta wagering opportunities by permitting this wager, in which the first four horses must be selected in the correct order of finish, when the field includes coupled entries. A coupled entry is the combining of the wager on one horse with other horses that have common ownership or training, such that a single wager is attributed to all linked horses. The proposal provides if a bettor selects a coupled entry in a superfecta wager, then only the best finishing of the coupled horses is included in determining the order of finish of the horses for such wager. This allows the racetrack operator to offer superfecta wagering when there are coupled entries, in conformance with the modern ARCI model rule.

As a result, this proposal would provide more superfecta wagering opportunities for thoroughbred pari-mutuel racing bettors and generate more handle and revenue for the racetrack operator and for local and state government.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation.

5. Local Government Mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: The Commission will lessen the paperwork faced by thoroughbred racetrack operators by eliminating the requirement of special permission to offer superfecta wagers.

7. Duplication: None.

8. Alternatives: The Commission considered not proposing this rule. The outdated ARCI superfecta wagering rule does permit superfecta wagering, but not as much because of its archaic requirement that coupled entries are not permitted. Other racetrack operators in other jurisdictions successfully offer the modern ARCI version of this rule, however, and the Commission concluded that New York thoroughbred racetrack operators and those who prefer to wager on New York racing should have the enhanced opportunities to offer or wager on New York superfecta races.

9. Federal Standards: None.

10. Compliance Schedule: The proposed rule does not create any additional requirements with which regulated persons must comply.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not

required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal only authorizes the thoroughbred racetrack operators in New York to offer superfecta wagering when the field includes coupled entries, the combination of more than one horse as a single wagering selection when the horses are owned or trained in common. The proposal will allow superfecta wagering with coupled entries by counting only the best finishing of the coupled horses for such wagers. No regulated party will need a period to cure a pending matter because there is no penalty enhancement.

Such regulation will serve the best interests of thoroughbred racing by increasing the wagering opportunities that racetrack operators may offer to the wagering public. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Division of Homeland Security and Emergency Services

EMERGENCY RULE MAKING

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

I.D. No. HES-19-15-00001-E

Filing No. 328

Filing Date: 2015-04-22

Effective Date: 2015-04-22

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

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Executive Law section 156-h requires that the Office of Fire Prevention and Control promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. Registration is required prior to the legal sale of such sparkling devices. This rule includes the registration processes, fees and reporting requirements. Accordingly, this rule must be adopted on an emergency basis in order to ensure that such procedures are in effect to assure the public's safety and general welfare.

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

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

Substance of emergency rule: PART 225

SPARKLING DEVICES

Section 225.1 Definitions

Establishes definitions of sparkling devices according to new statutory language. Establishes that "Sparkling Devices" are consumer fireworks for the purpose of the Uniform Fire Prevention and Building Code and National Fire Protection Association standard 1124 (2006).

Section 225.2 Registration

Requires every manufacturer, distributor, wholesaler, specialty retailer, or permanent retailer of sparkling devices to annually register with the Office of Fire Prevention and Control. Requires temporary (seasonal) retailers to register with the Office of Fire Prevention and Control each selling season. Establishes the registration process and related documentation required as part of the registration package.

Section 225.3 Fees

Establishes application fees; the revenue of which goes to the Office of Fire Prevention and Control to be used for firefighter safety and training programs as well as for the registration process, consistent with Executive Law § 156-h. A manufacturer, distributor, wholesaler must pay an annual registration fee of \$5,000; a specialty retailer must pay an annual registration fee of \$2,500; a permanent retailer must pay an annual registration fee of \$200 for each location; and a temporary seasonal retailer must pay a registration fee of \$250 per season for each location.



Gaming Commission

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Mark D. Gearan, Chair
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: June 30, 2015

Re: Adoption of Rulemaking for Uncoupled Entries for Certain Thoroughbred Stakes Races (9 NYCRR § 4025.10)

For Commission consideration is the adoption of a proposed amendment to the thoroughbred racing wagering rules to remove, in stakes races with purses of \$50,000 or more, the requirement that horses be coupled* as a single betting interest. The current Commission rule, § 4025.10(g), allows de-coupling of horses that otherwise would have been required to be coupled only in races with purses of \$1 million or more. The proposed de-coupling amendment is not absolute. The Commission steward would maintain authority, pursuant to Rule 4025.10(e), to require horses be coupled prior to the commencement of wagering on any particular race upon a finding that doing so is necessary in the public interest.

The proposed rule was published in the May 20, 2105 edition of the *State Register*. The text of the proposed rule as published is attached. The public comment period will end on July 4, 2015. To date, one public comment has been received, which was a comment from NYRA in support of the adoption.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

* Horses are coupled as a single betting interest in a race when they have common ownership or a common trainer, though two horses with a common trainer and no common ownership are permitted to race uncoupled. See Rule 4025.15(d).

The proposed text of the amendment is as follows:

§ 4025.10. Limitation on entries.

* * *

(b) All horses in common ownership as defined in subdivision (e) of section [4026.2(e)] 4026.2 of this [Title] article (*i.e.*, having any common managing owner) or subdivision (c) of section [4026.3(c)] 4026.3 (*i.e.*, in which there is a 25 percent commonality among nonmanaging owners) must be coupled and run as an entry.

* * *

(d) A maximum of two horses trained by the same trainer may race uncoupled in any race provided the entries do not have common ownership as set forth in subdivision (b) of this section.

(e) The commission steward may require any horses entered in a race to be coupled for betting purposes prior to the commencement of wagering on-track and off-track, if such steward finds it necessary in the public interest.

* * *

(g) Notwithstanding the provisions of subdivisions (b) and (d) of this section, no entry shall be coupled by reason of common ownership or training in any stakes race in which the gross purse is [~~\$1,000,000~~] \$50,000 or more, provided however that the provisions of subdivision (e) of this section shall continue to be applicable in any such races. In any race subject to the provisions of this subdivision, the racing secretary shall have the authority to establish a mutual field and coupled entries in any race with more than 14 starters. When this subdivision permits two or more horses to race without being coupled and run as one entry, the racetrack operator shall take such actions as are necessary to inform the public adequately with regard to the common ownership and/or trainer that would otherwise require such horses to be coupled as a single betting interest pursuant to this section.

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

Amendments to Coupled Entries in Thoroughbred Wagering

I.D. No. SGC-20-15-00003-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 4025.10 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutual Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Amendments to coupled entries in thoroughbred wagering.

Purpose: To improve wagering opportunities in thoroughbred horse racing.

Text of proposed rule: Section 4025.10 of 9 NYCRR would be amended to read as follows:

§ 4025.10. Limitation on entries.

(b) All horses in common ownership as defined in *subdivision (e)* of section [4026.2(e)] 4026.2 of this [Title] *article* (i.e., having any common managing owner) or *subdivision (c)* of section [4026.3(c)] 4026.3 of this *article* (i.e., in which there is a 25 percent commonality among nonmanaging owners) must be coupled and run as an entry.

(d) A maximum of two horses trained by the same trainer may race uncoupled in any race provided the entries do not have common ownership as set forth in subdivision (b) of this section.

(e) The commission steward may require any horses entered in a race to be coupled for betting purposes prior to the commencement of wagering on-track and off-track, if such steward finds it necessary in the public interest.

(g) Notwithstanding the provisions of subdivisions (b) and (d) of this section, no entry shall be coupled by reason of common ownership or training in any stakes race in which the gross purse is [\$1,000,000] \$50,000 or more, provided however that the provisions of subdivision (e) of this section shall continue to be applicable in any such races. In any race subject to the provisions of this subdivision, the racing secretary shall have the authority to establish a mutual field and coupled entries in any race with more than 14 starters. *When this subdivision permits two or more horses to race without being coupled and run as one entry, the race-track operator shall take such actions as are necessary to inform the public adequately with regard to the common ownership and/or trainer that would otherwise require such horses to be coupled as a single betting interest pursuant to this section.*

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, PO Box 7500, Schenectady, New York 12305-7500, (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: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1), 104(19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative Objectives: To improve wagering opportunities in thoroughbred pari-mutuel racing.

3. Needs and Benefits: This rulemaking will amend the thoroughbred limitation on entries rule, 9 NYCRR 4025.10, to allow horses with common ownership or trainers to be not coupled as a single betting interest in any stakes race with a purse of \$50,000 or more.

The current rule for coupling entries for betting purposes, when there is a common ownership of more than one horse in a race, or a common trainer of more than two horses in a race, excludes races in which the gross purse is \$1,000,000 or more at Section 4025.10(g).

The proposal would amend this exception to exclude stakes races in which the gross purse is \$50,000 or more. The proposal is consistent with recent amendments of a similar nature in other major racing jurisdictions, such as Kentucky and Texas. The racing stewards can closely monitor each race and have the authority to place any horse in a finishing position that is appropriate, if collusion is observed, and the rule proposal requires further that bettors be informed by the racetrack of any common ownership or trainer among horses in the same race. In addition, the Commission steward has the authority to order that horses be coupled if necessary in the public interest pursuant to 9 NYCRR 4025.10(e).

When horses are not coupled as a single entry, it increases the wagering opportunities, betting interest, and handle for the race. As a result, the proposal would result in increased revenues for thoroughbred racetracks in New York and generate more revenue for state and local government.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation.

5. Local Government Mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: The Commission will lessen the paperwork faced by thoroughbred racetrack operators by eliminating the requirement of coupling entries in more stakes races.

7. Duplication: None. The proposed amendments do not duplicate any existing State or Federal requirements.

8. Alternatives: The Commission considered eliminating the requirement of coupling entries in all races. The Commission concluded that it would be prudent to take an intermediate first step before considering a complete elimination of this rule.

9. Federal Standards: None. There are no federal standards related to the proposed amendments.

10. Compliance Schedule: The proposed rule does not create any additional requirements with which regulated persons must comply.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal only authorizes the thoroughbred racetrack operators in New York not to couple the entries of horses with common ownership or trainers as a single betting interest in pari-mutuel stakes races with a gross purse of \$50,000 or more. The current rule authorizes such de-coupling of entries only if the gross purse is \$1,000,000 or more. The proposal will increase the wagering opportunities for those who are interested in wagering on the race. No regulated party will need a period to cure a pending matter because there is no penalty enhancement.

Such regulation will serve the best interests of thoroughbred racing by increasing the wagering opportunities that racetrack operators may offer to the wagering public. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Office of Mental Health

NOTICE OF ADOPTION

Patients Committee to the Custody of the Commissioner Pursuant to CPL Article 730

I.D. No. OMH-10-15-00002-A

Filing No. 352

Filing Date: 2015-05-04

Effective Date: 2015-05-20

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



Gaming Commission

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

Mark D. Gearan, Chair
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: June 30, 2015

Re: Proposed Rulemaking for Gaming Facility Licensing Definitions (9 NYCRR Part 5300)

For Commission consideration is a rule setting forth definitions for specific terms used in the proposed rulemakings for Gaming Facility Licensing (9 NYCRR Part 5301) and for Licensing and Registration of Employees and Vendors (9 NYCRR Parts 5303 through 5307).

Defined terms include, among others:

- *Gaming Facility* which means the premises approved under a gaming license, which includes a gaming area and any other nongaming structure related to the gaming area and may include, without limitation, hotels, restaurants and other amenities.
- *Passive Investor* which means an investor owning, holding or controlling up to 25 percent of the publicly traded securities issued by a gaming facility licensee or applicant or holding, intermediate or parent company of a licensee in the ordinary course of business for investment purposes only and who does not, nor intends to, exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities.
- *Material change* which means modification to physical or financial aspects in a manner that creates an inconsistency with the application submitted by a licensee or applicant for license. Physical aspects impact the proposed gaming facility or project site through addition, removal or alteration of the quality and nature of gaming and non-gaming amenities. Financial aspects impact the capital and financing structure through addition, removal or alteration of financing source or sources, schedule of financing source or sources and arrangement or agreements of financing plan.

A copy of the full text of the proposed Part 5300 is attached.

Subchapter B of the Division of Gaming Regulations would be titled Casino Gaming.

Staff intends to circulate the proposed text to the three applicants selected by the Gaming Facility Location Board immediately for their review and comment prior to Commission action on authorizing the proposed rulemaking.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
James Nielsen, Acting Director, Division of Gaming
Heather McArn, Associate Counsel

Subchapter B [Casino Gambling] Casino Gaming

* * *

Part 5300

General

Section
5300.1 Definitions

§ 5300.1. Definitions.

Unless the context indicates otherwise, the following definitions and the definitions set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1301 are applicable throughout this Subchapter:

(a) *Ancillary casino vendor* means a vendor providing goods or services to a gaming facility applicant or licensee that are ancillary to gaming activity.

(b) *Casino vendor* means a vendor providing goods or services to a gaming facility applicant or licensee that directly relate to gaming activity.

(c) *Career offender* means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, using such methods as are deemed criminal violations of the public policy of this State.

(d) *Career offender cartel* means any group of persons who operate together as career offenders.

(e) *Commission* means the commissioners, staff and designees of the New York State Gaming Commission.

(f) *Gaming facility* means the premises approved under a gaming license, which includes a gaming area and any other nongaming structure related to the gaming area and may include, without limitation, hotels, restaurants and other amenities.

(g) *Material change* means modification to physical or financial aspects in a manner that creates an inconsistency with the application submitted by a licensee or applicant for license. Physical aspects impact the proposed gaming facility or project site through addition, removal or alteration of the quality and nature of gaming and non-gaming amenities. Financial aspects impact the capital and financing structure through addition, removal or alteration of financing source or sources, schedule of financing source or sources and arrangement or agreements of financing plan.

(h) *Non-gaming employee* means any natural person, not otherwise included in the definition of casino key employee or gaming employee, who is employed by a gaming

facility licensee or an affiliate, intermediary, subsidiary or holding company of a gaming facility licensee.

(i) *Passive investor* means an investor owning, holding or controlling up to 25 percent of the publicly traded securities issued by a gaming facility licensee or applicant or holding, intermediate or parent company of a licensee in the ordinary course of business for investment purposes only and who does not, nor intends to, exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities.

(j) *Qualified institutional investor* means an institutional investor holding up to 15 percent of the publicly traded securities of a gaming facility applicant or licensee, or holding, intermediary or subsidiary company thereof, for investment purposes only and does not, nor intends, to exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities. To qualify as an institutional investor, an investor, other than a state or federal pension plan, must meet the requirements of a qualified institutional buyer as defined in regulations of the United States Securities and Exchange Commission. A qualified institutional investor includes, without limitation, any of the following:

- (1) a bank as defined under Federal securities laws;
- (2) an insurance company as defined under Federal investment company laws;
- (3) an investment company registered under Federal investment company laws;
- (4) an investment advisor registered under Federal investment company laws;
- (5) collective trust funds as defined under Federal investment company laws;
- (6) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act, subject to certain exclusions;
- (7) a state or Federal government pension plan; and
- (8) such other persons as the commission may determine for reasons consistent with policies of the commission.

(k) *Qualifier* means a related party in interest to an applicant, including, without limitation, a close associate or financial resource of such applicant. Qualifiers may include, without limitation:

- (1) if the gaming facility applicant is a corporation:
 - (i) each officer;
 - (ii) each director;

- (iii) each shareholder holding five percent or more of the common stock of such company; and
 - (iv) each lender;
- (2) if the gaming facility applicant is a limited liability corporation:
- (i) each member;
 - (ii) each transferee of a member's interest;
 - (iii) each director;
 - (iv) each manager; and
 - (v) each lender;
- (3) if the gaming facility applicant is a limited partnership:
- (i) each general partner;
 - (ii) each limited partner; and
 - (iii) each lender.
- (4) if the gaming facility applicant is a partnership:
- (i) each partner; and
 - (ii) each lender;
- (5) any gaming facility licensee manager or operator;
- (6) any direct and indirect parent entity of a gaming facility applicant or licensee, including any holding company;
- (7) any entity having a beneficial or proprietary interest of five percent or more in a gaming facility applicant or licensee;
- (8) any other person or entity that has a business association of any kind with the gaming facility applicant or licensee;
- (9) any other person or entity that the commission may designate as a qualifier.
- (l) *Temporary service provider* means a vendor, a vendor's agents, servants and employees engaged by a gaming facility licensee to perform temporary services at a gaming facility for no more than 30 days in any 12-month period.

(m) *Vendor registrant* means any vendor that offers goods and services to a gaming facility applicant or licensee that is not a casino vendor or an ancillary casino vendor.



Gaming Commission

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Todd R. Snyder, Commissioner

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

To: Commissioners

From: Edmund C. Burns

Date: June 30, 2015

Re: Proposed Rulemaking for Gaming Facility Licensing (9 NYCRR Part 5301)

For Commission consideration are proposed rules for gaming facility licensing. The proposed Part addresses the following topics: gaming facility license application requirements; application forms; application fees; form of license; waiver of licensing requirements for certain passive investors; suitability determinations; license determination; award and duration of license; post-licensure conditions required notifications; and monitoring of project construction.

Highlights of the proposal follow:

- Sections 5301.1 through 5301.3 address matters contained within the present emergency rules, which have been codified at Sections 5300.1 through 5300.5. These sections, substantively similar to provisions in the Commission's current emergency rules, concern applications.
- Section 5301.4 provides the Commission discretion to waive licensing requirements for certain specifically described investors, lenders, debtholders and other persons.
- Section 5301.5 cites to the statutory requirements for: suitability; denial of an application on the grounds of lack of suitability, subject to notice and an opportunity for hearing; and denial of an application on the basis of any of the disqualifying criteria.
- Section 5301.6 provides that if the Commission determines that an applicant is suitable for licensure, the Commission would proceed to review such applicant's entire application to confirm the applicant meets the statutory minimum licensing thresholds. Further, the proposal would have the Commission retain discretion to conduct a hearing to determine the award of a license.

- Sections 5301.7 through 5301.9 set forth various post-licensure requirements.
- Section 5301.10 establishes various required notifications and approvals for material changes to commitments and development plans, material debt transactions and certain qualifiers. The section also provides for Commission monitoring of the project's schedule.

A copy of the full text of the proposed Part 5301 is attached.

Staff intends to circulate the proposed text to the three applicants selected by the Gaming Facility Location Board immediately for their review and comment prior to Commission action on authorizing the proposed rulemaking.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
James Nielsen, Acting Director, Division of Gaming
Heather McArn, Associate Counsel

PART 5301

Gaming Facility Licensing

Section

- 5301.1 Application to develop and operate a gaming facility
- 5301.2 Application forms
- 5301.3 Application fees
- 5301.4 Waiver of licensing requirements by commission
- 5301.5 Suitability determination
- 5301.6 License determination
- 5301.7 Form and posting of the license
- 5301.8 Award and duration of license
- 5301.9 Post-licensure conditions
- 5301.10 Required notifications

§ 5301.1. Application to develop and operate a gaming facility.

The form of application to develop and operate a gaming facility shall include, without limitation, the following elements, consistent with Racing, Pari-Mutuel Wagering and Breeding Law sections 1313 and 1315(2):

(a) *Executive summary.* An applicant shall submit a brief executive summary with its application, highlighting the principal terms of the application.

(b) *Applicant information.*

(1) An applicant and, if applicable, the manager, shall provide identifying information including, without limitation:

(i) full name (including trade name or d/b/a) of the applicant. If the applicant is a corporation, the full name shall be listed as it appears on the certificate of incorporation, charter, by-laws or other official document of the applicant;

(ii) name, title, email address, mailing address and telephone number of the individual to be contacted in reference to the application;

(iii) principal business address and telephone number for an applicant and, if applicable, the manager of the proposed gaming facility, including the URL for any website maintained by or for the applicant or manager;

(iv) type of business entity under which the applicant is formed, the state, or other jurisdiction, under the laws of which the applicant is incorporated, organized, formed or registered and the Federal tax identification number and evidence of existence or formation as an entity as of a date no later than 10 days prior to the date of submission of the application;

(v) ownership chart of the applicant and, if applicable, the manager and their respective affiliates, including percentage ownership interests in the applicant and the manager by their respective direct and indirect owners, illustrating the ultimate owners and real parties in interest. For a publicly held company, disclosure of owners may be limited to owners owning five percent or more of the publicly traded company;

(vi) organizational chart of the applicant and, if applicable, the manager, illustrating the organizational structure likely to be used by the applicant or the manager in the event that applicant is awarded a license, including all casino key employees;

(vii) name, address and title of each director, manager or general partner of the applicant and, if applicable, the manager and each officer and casino key employee of the applicant or manager;

(viii) name and business address of each person or entity that has a direct or indirect ownership, or other proprietary interest, either financial, voting or otherwise, in the applicant and, if applicable, the manager and a description of that interest. For a publicly traded company, disclosure of owners may be limited to owners owning five percent or more of the publicly traded company;

(ix) name and business address of all promoters, sponsors, personnel, consultants, sales agents or other entities involved in aiding or assisting the applicant's efforts to obtain a gaming facility license; and

(x) the region and locality in which the gaming facility is proposed to be located along with the name, business address, email address, telephone number and fax number for the applicant's primary contact at each host municipality;

(2) An applicant shall identify all conflicts of interest, including, without limitation, any relationship or affiliation of the applicant, manager or any of their respective affiliates that currently exist with any member, employee, consultant or agent of the Gaming Facility Location Board or the commission that is a conflict of interest, or may be perceived as a conflict of interest, during the application process. Further, if any such conflict should arise during the term of the application process, the applicant shall notify the Gaming Facility Location Board in writing of such conflict.

(3) An applicant shall also identify relationships with public officials, including, without limitation:

(i) any public official or officer or employee of any governmental entity, and immediate family members of such public official, officer or employee, who directly or indirectly owns any financial interest in, has any beneficial interest in, is the creditor of, holds any debt instruments issued by, or holds or has an

interest, direct or indirect, in any contractual or service relationship with the applicant, the manager or their affiliates; and

(ii) any person not identified in subparagraph (i) of this paragraph who has any arrangement, written or oral, to receive any compensation from anyone in connection with the application, the application process or the obtaining of a gaming facility license. The applicant shall describe the nature of the arrangement, the services to be provided and the amount of such compensation, whether actual or contingent.

(4) If the applicant does not identify any direct or indirect conflict of interest, or perceived conflict of interest, the applicant shall state that no direct or indirect conflict of interest, or perceived conflict of interest, exists with respect to its application.

(5) If the applicant identifies a direct or indirect conflict of interest, or potential conflict of interest, the applicant shall disclose such conflict of interest or potential conflict of interest and the steps the applicant will take to resolve such conflict of interest or potential conflict of interest.

(6) The Gaming Facility Location Board shall, after providing the applicant or manager, as applicable, with an opportunity to present comments, make the final determination as to whether any activity constitutes a conflict of interest. The decision of such board with regard to an asserted conflict shall be final.

(7) An applicant shall identify any current or previous contract that the applicant has had with, and any current or previous licenses that the applicant has been issued by or under, any department or agency of the State of New York.

(8) If the gaming facility will be managed by a manager that is different from the applicant, the applicant shall describe the relationship between the manager and the applicant including, without limitation, a summary of the terms of any and all agreements, contracts or understanding between the manager and the applicant.

(9) An applicant shall submit, as applicable, copies of the following documents that apply to the applicant, the applicant's owners, any manager or any of the manager's owners:

(i) certified copy of its certificate of incorporation, articles of incorporation or corporate charter;

(ii) certified by-laws as amended through the date of the application;

(iii) certified copy of its certificate of formation or articles of organization of a limited liability company;

- (iv) certified limited liability company agreement or operating agreement as amended through the date of the application;
- (v) certified copy of its certificate of partnership;
- (vi) certified partnership agreement as amended through the date of the application;
- (vii) certified copy of its certificate of limited partnership;
- (viii) certified limited partnership agreement as amended through the date of the application;
- (ix) other legal instrument of organization;
- (x) joint venture agreement;
- (xi) certified trust agreement or instrument, each as amended through the date of the application;
- (xii) voting trust or similar agreement; and
- (xiii) stockholder, member or similar agreement.

(c) *Finance and capital structure.* An applicant shall:

- (1) describe its finance and capital structure including:
 - (i) minimum capital investment plans;
 - (ii) a study completed by an expert who is neither the applicant nor an affiliate of the applicant, assessing the size of the potential gaming market for the proposed gaming facility;
 - (iii) a detailed financial forecast annually for a period of at least 10 years after opening for gaming on a best-, average- and worst-case basis;
 - (iv) a qualitative five-year business plan for the proposed gaming facility describing, at minimum, the components and projected results of the material revenue lines and expense categories of the proposed gaming facility, the applicant's sources and availability of financing, the principal business and financing risks of the proposed gaming facility and plans to mitigate those risks;
 - (v) a detailed description of how the project will be financed;
 - (vi) a detailed description in regard to each financing source;

- (vii) a schedule of the financing sources' anticipated capital structure after construction and first three years of operation of the proposed gaming facility; and
 - (viii) an analysis of how the financing plans for the application fee, application and suitability investigation expenses, license fee, capital investment deposit, construction and first three years of operation of the proposed gaming facility will affect the applicant's compliance with the financial covenants under its current financing arrangements;
- (2) submit an independent audit report for each of the last five fiscal years in regard to the applicant and each of its parents;
 - (3) submit bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies and business and personal accounting check records and ledgers and copies of securities analyst and credit rating agency reports for the past three years;
 - (4) submit all United States Securities and Exchange Commission filings, if any, for the financing sources, for the three fiscal years ended before the date applications filed pursuant to this section are due and any interim period between the end of the most recent fiscal year and the date applications are due;
 - (5) provide any information relating to legal actions including, without limitation:
 - (i) pending legal actions, whether civil, criminal or administrative in nature, to which the applicant is a party and a brief description of any such actions;
 - (ii) any settled or closed legal actions, whether civil, criminal or administrative in nature, against the applicant over the past 10 years;
 - (iii) any judgments against the applicant within the past 10 years, including the case name, number, court, and what the final ruling or determination was from the court, administrative body or other tribunal;
 - (iv) a statement whether the applicant was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past 10 years; and
 - (v) a statement whether the applicant was the subject of any order, judgment or decree of any court, administrative body or other tribunal of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past 10 years;
 - (6) describe any bankruptcies, voluntary or involuntary, assignments for the benefit of creditors, appointments of a receiver or custodian or similar insolvency

proceedings made, commenced or pending during the past 10 years by or involving any applicant;

(7) describe any contract, loan agreement or commitment that the applicant has breached or defaulted on during the past 10 years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default;

(8) describe any delinquencies in the payment of any fees or tax required under any federal, state or municipal law within the past 10 years by an applicant and describe the circumstances for any payment not made because of a dispute;

(9) describe any gaming-related licenses issued in any jurisdiction, and provide a detailed explanation if the applicant has ever had a gaming-related license denied, suspended, withdrawn or revoked, or if there is a pending proceeding that could lead to any of these conditions; and

(10) describe any disciplinary action brought against the applicant by any gaming licensing authority during the past five years.

(11) describe the applicant's and, if applicable, the manager's experience, training and expertise in developing, constructing and operating gaming facilities and related facilities;

(12) describe any destination casino resort or other gaming projects that the applicant and, if applicable, the manager, has publicly announced that it is in the process of acquiring, developing or proposing to acquire or develop; and

(13) describe all financial commitments and guarantees the applicant or, if applicable, the manager, or its affiliates is prepared to provide to the commission to ensure that the gaming facility is completed, license conditions are fulfilled and sufficient working capital is available to allow continuous operation in the manner described in the applicant's financial forecasts.

(d) *Economics*. An applicant shall provide:

(1) market analysis showing the benefits of the applicant's gaming facility location, including:

(i) the estimated recapture rate of gaming-related spending by New York residents travelling to out-of-state gaming establishments;

(ii) a focus on out-of-state visitors and the anticipated gaming and non-gaming gross revenues the applicant anticipates from out-of-state visitors during each of the first five years of gaming facility's operations on a low-, average- and high-case scenario;

- (iii) how the applicant plans to compete with other nearby gaming facilities in New York and other jurisdictions; and
 - (iv) the applicant's overall perspective and strategy for broadening the appeal of the region and the host municipality in which the gaming facility is located.
- (2) a description of any loyalty, reward or similar frequent player program maintained by the applicant, or, if applicable, by the manager and whether this program maintains a casino customer relationship management system and database that tracks the program members and to whom this program and database will be used to market, promote and advertise the gaming facility.
- (3) economic impact studies completed by an independent expert showing the applicant's proposed gaming facility's:
- (i) overall economic incremental benefit to the region, the State and the host municipality and nearby municipalities;
 - (ii) positive and negative impacts on the local and regional economy, and on the host and nearby municipalities including impacts on incremental job creation, unemployment rates, cultural institutions and small businesses; and
 - (iii) projections for all estimated state, county and local tax revenue for the first five years of operations on a high-, average- and low-case basis.
- (4) a description of the proposed gaming facility's inclusion within, and coordination with, a regional and local economic plan;
- (5) a description of plans and minimum commitments for use of New York-based suppliers and materials in the construction and operational phases of applicant's project;
- (6) a description of the employment opportunities created by the proposed gaming facility, including, among other things, the number of employees to be employed at the proposed gaming facility and the pay rate and benefits for employees;
- (7) a description of the competitive environment in which the applicant anticipates the proposed gaming facility will operate over the 10 years after opening;
- (8) a description of the target market segments of the gaming facility;
- (9) the marketing plans for the proposed gaming facility with specific reference to pre-opening marketing and opening celebrations; and
- (10) a description of strategies to be used by the applicant to deal with the cyclical/seasonal nature of tourism demand.

(e) *Land construction and design of physical plant.* An applicant shall:

- (1) describe the location of the proposed gaming facility, including:
 - (i) the address, maps, book and pages numbers from the appropriate registry of deeds;
 - (ii) the dimensions and total acreage of the land that will be developed for the proposed gaming facility;
 - (iii) the assessed value of the land for the proposed gaming facility and of the existing facilities, improvements and infrastructure thereon, if any, at the time of application, and a schedule of the real estate taxes paid on such property for the past five years;
 - (iv) description of, and aerial and surface photography demonstrating the topographic, geographic, and vegetative characteristics of the land for the proposed gaming facility as well as any significant existing facilities, improvements or infrastructure thereon;
 - (v) description of any geological or structural defects of the proposed gaming facility and any engineering, design and construction plans to remedy the defect; and
 - (v) any phase I or II reports or any other investigations of the site, sub-surface, geotechnical or environmental conditions or hazardous materials that have been completed related to the land for the proposed gaming facility;
- (2) describe the ownership of the land, including:
 - (i) all ownership interests in the land for the past 20 years, including all easements options, encumbrances and other interests in the property;
 - (ii) copies of any lease, deed, option or other documentation and provide an explanation as to the status of the land upon which the gaming facility will be constructed;
 - (iii) the total amount the applicant has spent or proposes to spend to acquire or occupy the land for the proposed gaming facility; and
 - (iv) if the applicant does not currently possess an ownership interest in the land at the proposed location, describe how the applicant intends to acquire the necessary interest in the land;
- (3) provide copies of current local zoning approvals and any rezoning, variances and/or land use approvals and any State or local permits or special use permits required for the gaming facility site, a detailed explanation of the status of any

request for any of the foregoing, together with copies of all filings, including a specific schedule of applications for such approvals and anticipated approval dates;

(4) provide a description of, and schematics illustrating, the applicant's master plan for the land and the gaming facility site showing major activities and functions, and a phasing plan for the proposed components;

(5) provide designs for the proposed gaming facility including among other things, a site plan, floor plans, building elevations and perspectives, cross sections sufficient to illustrate the interrelation of principal building program components, proposed hardscape, landscape and landscape treatments including any off-site improvements required to implement the proposal, exterior lighting design, plans for parking structures, surface parking and traffic circulation plans, color perspective renderings of the exterior (day and night) and interior of the gaming facility; and access plans indicating adjacent properties with all related infrastructure and access to and egress from all major traffic arterials;

(6) describe the proposed gaming area, including square footage, number and types of table games and slot machines, electronic gaming devices, poker tables and any other forms of gaming, number of gaming positions, specific location of the games and machines in the proposed gaming facility, any special purpose rooms, layout of cage area, count room, players club areas, any other gaming related amenities not included in the above, and any phased building plans;

(7) provide a detailed description of the proposed amenities including hotels, meeting and convention facilities, dining facilities, entertainment venues and non-gaming amenities; in addition, provide a statement of how the proposed amenities will compare in quality to other area amenities and those offered in competitive gaming facilities;

(8) provide the applicant's proposed hours of operation for the various components of the proposed gaming facility including the casinos, restaurants, bars and other amenities;

(9) provide a description of the square footage of back house security, kitchen and office facilities to support the remaining building programs;

(10) provide a detailed description of proposed parking and transportation infrastructure including, among other things, parking spaces for employees, patrons and buses; tour bus, taxi and valet drop-off areas; and service vehicle and satellite parking;

(11) provide a description of the planned dock and loading facilities, as well as armored car bay;

(12) provide a description of mechanical systems and other on-site infrastructure plans;

(13) provide the names, addresses and relevant experiences of the architects, engineers, contractors, and designers of the proposed gaming facility and related proposed infrastructure improvements;

(14) provide a detailed construction budget and timeline for construction, including plans for mitigating impacts during and following construction;

(15) provide information concerning the number and quality of construction jobs to be provided during the construction period; and

(16) provide names of all proposed gaming equipment vendors.

(f) *Internal controls and security systems.* An applicant shall:

(1) provide a description of the proposed internal controls, electronic surveillance systems and security systems for the proposed gaming facility and any related facilities; and

(2) provide a table of organization that shows staffing levels and identifies the critical departments for each control/risk management activity, data process, internal audit, compliance, security and surveillance function.

(g) *Assessment of local support and mitigation of local impact.* An applicant shall:

(1) demonstrate local support by submitting to the Gaming Facility Location Board a resolution passed after a date announced by such board by a majority of the membership of the local legislative body of the host community supporting the application;

(2) provide completed studies and reports by independent experts showing the proposed gaming facility's cost to, among other things, each host municipality, nearby municipalities and the State for the proposed gaming facility including, without limitation, the incremental effect on local government services as well as the impact on the traffic infrastructure and the environment;

(3) provide plans for mitigating potential impacts on host municipality and nearby municipalities that might result from the development or operation of the gaming facility; and

(4) provide an assessment of the likely impact on housing stock and school populations in the host municipality and nearby municipalities resulting from new jobs at the gaming facility and the applicant's plans and commitments to remedy or mitigate any negative impacts.

(h) *Regional tourism and attractions.* An applicant shall describe regional tourism and local promotion efforts, including:

- (1) promoting local businesses in host municipality and surrounding municipalities including developing cross-marketing strategies with local restaurants, small businesses, hotels and retail outlets;
- (2) establishing partnerships with live entertainment venues that may be impacted by a gaming facility;
- (3) contracting with local business owners for provision of goods and services to the gaming facility, including developing plans designed to assist businesses in the State of New York in identifying the needs for goods and services to the facility;
- (4) local agreements designed to expand gaming facility draw, including the number of patrons brought to the region; and
- (5) cross-marketing efforts with other attractions.

(i) *Measures to address problem gaming.* An applicant shall describe measures to address problem gaming, including among other things, on-site resources available to those affected by gaming-related problems, description of proposed problem gaming signage on-site, training for facility employees to help identify those who may have gaming-related problems, exclusion policies and the process to notify individuals of the availability of self-exclusion, treatment and prevention programs, and metrics the applicant will use to measure whether the applicant is succeeding in efforts to reduce problem gaming.

(j) *Workforce development.* An applicant shall describe:

- (1) the applicant's workforce development plans including:
 - (i) human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program;
 - (ii) an affirmative action program that identifies specific goals for the use of minorities, women, persons with disabilities and veterans on construction, service and professional jobs;
 - (iii) on-the-job opportunities and training in areas and with respect to demographic groups with high unemployment; and
 - (iv) approach and experience in the last 10 years with hiring in general, and with particular respect to demographic groups evidencing high unemployment.
- (2) whether the applicant and, as applicable, the manager, is subject to, or is negotiating any contract with organized labor, including hospitality services and whether the applicant or, as applicable, the manager has the support of organized labor for its application; and

(3) whether the applicant or, as applicable, the manager has entered into labor peace agreements with labor organizations that are engaged in representing gaming or hospitality industry workers in the State. If the applicant or, as applicable, the manager, has not entered into such agreements, the applicant shall provide a statement that it will enter such labor agreements and maintain such labor peace agreements in place during the term of a license.

(k) *Sustainability, resource management and sourcing.* An applicant shall describe its sustainability and resource management plans with respect to the gaming facility, including its plans to, among other things, mitigate traffic flow, obtain LEED certification, use energy efficient equipment, manage storm water, conserve water, use renewable energy, monitor energy consumption and purchase, whenever possible, domestically manufactured slot machines.

(l) *Duty to update application.*

(1) Upon completion of an application prescribed in this section and prior to the award of a gaming facility license, an applicant has a continuing duty to disclose to the New York Gaming Facility Location Board promptly, in writing (and electronically), any changes or updates to the information submitted in the application or any related materials submitted in connection therewith.

(2) The New York Gaming Facility Location Board may in its sole discretion determine to accept the update as an amendment to an application. The New York Gaming Facility Location Board shall not be required to accept any such information.

(3) An applicant's failure to promptly notify the New York Gaming Facility Location Board of any changes or updates to information previously submitted may be grounds for disqualification of an applicant from consideration by the New York Gaming Facility Location Board.

§ 5301.2. Application forms.

(a) The commission shall investigate the background of any applicant for a gaming facility license, which may include the background of any qualifier, using the following forms:

(1) a gaming facility license application form, as prescribed in subdivision (b) of this section, for each of the applicants, any direct and indirect parent entity of the applicant (including any holding company), any manager, any entity having a beneficial or proprietary interest of five percent or more in an applicant or a manager, and any other entity that may be designated by the Gaming Facility Location Board or the commission;

(2) a multi-jurisdictional personal history disclosure form, as promulgated by the International Association of Gaming Regulators as of the date of the adoption of this section, for each natural person who is a director, manager, general partner or

person holding an equivalent position with the applicant, a manager or any direct or indirect parent entity of the applicant, a casino key employee, a person having beneficial or proprietary interest of five percent or more in an applicant or a manager and any other person that may be designated by the Gaming Facility Location Board or the commission; and

(3) a multi-jurisdictional personal history disclosure supplemental form, as prescribed in subdivision (c) of this section, for those aforementioned parties submitting a multi-jurisdictional personal history disclosure form.

(b) *Gaming facility license application form.* A gaming facility license application form shall require the applicant to provide the following information and such additional information as the commission may in its discretion determine:

(1) the name, title, phone number and email address of a person to be contacted in reference to the application;

(2) the current and former d/b/a or trade names used by the entity;

(3) the principal business address of the entity;

(4) the date and place of formation and information concerning each person forming the entity;

(5) all other names under which the entity has conducted business and the approximate time periods during which such names were used;

(6) all other addresses presently used by the entity and all addresses from which the entity is presently doing business;

(7) all addresses, other than those listed in paragraph (6) of this subdivision, that the entity held, or from which it was conducting business during the last 10-year period, and the approximate time periods during which such addresses were held;

(8) a description of the business conducted and intended to be conducted by the entity and its parent, holding, subsidiary and intermediary entities and the general development of such business during the past five years, or such shorter period as the entity or its parent, holding, subsidiary and intermediary entities may have been engaged in business. The description shall include information on the following:

(i) competitive conditions in the industry or industries involved and the competitive position of the entity, if known;

(ii) the principal products produced and services rendered by the entity and its parent, intermediary and subsidiary entities, the principal markets for said products or services and the methods of distribution;

(iii) the sources and availability of raw materials essential to the business of the entity;

(iv) the importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises and concessions held; and

(v) a description of any material changes in the business entity's mode of conducting the business.

(9) a description of any former business, not listed in response to paragraph (8) of this subdivision, that the entity or any parent, intermediary or subsidiary company engaged in during the last 10-year period and the reasons for the cessation of such business, indicating the approximate time period during which each such business was conducted;

(10) personal information, including but not limited to, the name, home and work addresses and date of birth of each director, trustee, and officer of the entity for the last 10 years. Officers include all persons serving as president, secretary, treasurer, chairman of the board, vice-president, general/corporate counsel or any such other officers as may be prescribed by the entity's governing documents;

(11) the annual compensation of directors, trustees and officers of the entity and whether such compensation is in the form of salary, wages, commissions, fees, stock options, bonuses or otherwise;

(12) the name, business address, date of birth, and position of each person other than a director, trustee or officer, who receives annual compensation from the entity of more than \$250,000 and the length of time employed and the amount of compensation;

(13) a description of all bonus, profit sharing, pension, retirement, deferred compensation and similar plans in existence;

(14) a description of the nature, type, number of authorized and issued shares, terms, conditions, rights and privileges of all classes of voting, non-voting and other stock issued, or to be issued, or other similar indicia of ownership by the entity including the number of shares of each class of stock authorized or to be authorized and the number of shares of each class of stock outstanding, not held by or on behalf of the issuer, or other similar information applicable to other indicia of ownership as of this date;

(15) the name, home address and date of birth of each shareholder of the entity, the class held, number of shares held and the percentage of outstanding voting or non-voting securities or other ownership interest held;

(16) a description of the nature, type, terms, covenants, conditions and priorities of all outstanding debt and security devices utilized by the entity;

(17) a description of each person or entity holding any outstanding debt and security devices the entity uses;

(18) a description of any options existing or to be created with respect to securities issued by the entity in which description shall include, but not be limited to, the title and amount of securities subject to option, the year or years during which the options were or will be granted, the conditions under which the options were or will be granted, the consideration for granting the option and the year or years during which, and the terms under which, optionees became or will become, entitled to exercise the options, and when such options expire;

(19) the following information for each account for the last 10 years held in the name of the entity or its nominee or otherwise under the direct or indirect control of the entity:

- (i) the name and address of the financial institution;
- (ii) the type of account;
- (iii) the account number; and
- (iv) the dates held.

(20) the name and address of all persons with whom the entity has contracts or agreements of \$250,000 in value or more including employment contracts of more than one year duration, or who have supplied goods and services within the last six months and the nature of such contracts or the goods and services performed;

(21) information in regard to any transaction within the last five years involving a change in the beneficial ownership of the entity's equity securities on the part of any current or former director, officer or beneficial owner of more than 10 percent of any class of equity security;

(22) a description of any civil, criminal, administrative and investigatory proceedings in any jurisdiction for the entity and each director, trustee or officer as follows:

- (i) any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
- (ii) any criminal proceeding in which such person has been named a party or an unindicted co-conspirator;
- (iii) any civil litigation that exists or that existed within the previous five years to which the entity, its parent or any subsidiary is, or was, a party, if damages exceeded \$100,000, or are reasonably expected to exceed \$100,000, unless

- such damages involved or involve, claims against the entity that were, or are, fully and completely covered under an insurance policy;
- (iv) any judgment order, consent decree or consent order entered against the entity pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction; and
 - (v) any judgment order, consent decree or consent order pertaining to any state or federal statute, regulation or code that resulted in a fine or penalty of \$50,000 or more within the past 10 years.
- (23) for the entity, parent or any intermediary entity, information in regard to any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the federal bankruptcy code or any state insolvency law; and information in regard to any receiver, fiscal agent, reorganization trustee or similar officer appointed for the property or business of the entity or its parent, holding, intermediary or subsidiaries;
- (24) a description of whether, during the last 10 years, the entity has had any license or certificate issued by any governmental agency denied, suspended or revoked;
- (25) a description of whether, during the last 10 years, the entity, its parent or any subsidiary ever applied in any jurisdiction for a license, permit or other authorization to participate in lawful gambling operations (including casino gaming, horse racing, dog racing, pari-mutuel operation, lottery, sports betting, etc.);
- (26) a description of whether, during the last 10 years, the entity its parent or any subsidiary, director, officer or employee or any third party acting on behalf of the entity made any bribes or kickbacks or made any payments alleged to have been bribes or kickbacks to any employee, company, organization, government official, domestic or foreign, to obtain favorable treatment;
- (27) a description of whether, during the last 10 years, the entity, its parent, any subsidiary or related entity or individual has:
- (i) donated or loaned property or anything of value for the purpose of opposing or supporting any government, political party, candidate, or committee, either foreign or domestic;
 - (ii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of reimbursing such individuals for political contributions, either foreign or domestic; and
 - (iii) maintained a bank account or other account, domestic or foreign, not reflected on the books of the entity, or maintained any account in the name of the nominee of the entity;

(28) the names and addresses of any of the entity's current or former directors, officers, employees or third parties who would have knowledge or information concerning subparagraph (iii) of paragraph (27) of this subdivision;

(29) a copy of the following:

(i) audited financial statements for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;

(ii) all annual financial statements prepared in the last five years, any exceptions taken to such statements by the independent auditor retained by the entity and the management response thereto;

(iii) annual reports to shareholders for the last five years;

(iv) any annual reports prepared within the last five years on Form 10K pursuant to the Securities Exchange Act of 1934;

(v) the last quarterly unaudited financial statements prepared by or for the entity, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed 10Q;

(vi) any current report prepared due to a change in control of the entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the entities certifying accountant, or other material events, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed form 8K;

(vii) each press release issued by the entity for the past five years;

(viii) last definitive proxy or information statement filed pursuant to the section 14 of the Securities Exchange Act of 1934;

(ix) registration statements filed in the last five years pursuant to the Securities Act of 1933; and

(x) all reports and correspondence submitted in the last five years by independent auditors for the entity that pertain to the issuance of financial statements, managerial advisory services, or internal control recommendations.

(30) the name, address, and telephone number of the current outside auditor or auditors;

- (31) a certified copy of the articles of incorporation, charter and by-laws and all amendments proposed thereto or other formation documents, if the entity is not a corporation;
 - (32) a current ownership organizational chart of the entity, its parent entity and each subsidiary of the entity;
 - (33) a functional table of organization for the filing entity, including position descriptions and the names of persons holding such positions;
 - (34) a copy of all Federal Internal Revenue Service tax returns filed by the entity in the last five years;
 - (35) a release authorization (dated and signed by the president or any officer of the entity authorized to affirm and sign the document) directing all courts, probation departments, selective service boards, employers, educational institutions, banks, financial institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the entity as required by the commission and its authorized agents and representatives;
 - (36) a waiver of liability (dated and signed by the president or any officer of the entity authorized to affirm and sign the document) as to the State of New York and its instrumentalities and agents for any damages resulting from any disclosure or publication of any material or information acquired during the licensing or investigation process;
 - (37) a consent (dated and signed by the president or any officer of the entity authorized to affirm and sign the document) to inspections, searches and seizures and the supplying of handwriting exemplars; and
 - (38) a signed, dated and notarized affidavit of truth in a form provided by the commission (dated and signed by the president or any officer of the entity authorized to affirm and sign the document).
- (c) *Multi-jurisdictional personal history disclosure supplemental form.* A multi-jurisdictional personal history disclosure form shall require the applicant to provide the following information and such additional information as the commission may in its discretion require:
- (1) name and nature of position with or interest in a gaming facility license applicant or licensee, a vendor enterprise applicant or licensee, or a holding company, as applicable;
 - (2) current photograph;
 - (3) citizenship, and if applicable, resident alien status, including any certificate of naturalization, United States Citizenship and Immigration Services documentation,

employment authorization with expiration date, country of which the applicant is a citizen, place of birth, proof of entry to the United States and name of address of sponsor upon arrival;

(4) any ownership interest, financial interest or financial investment in any business entity applying to or presently licensed by the commission;

(5) a disclosure of whether, during the last 10 years, any entity in which he or she had been a director, officer or principal employee or a holder of five percent or greater interest has:

(i) made or been charged with, either itself or through third parties acting for it, bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;

(ii) held a foreign bank account or has had authority to control disbursements from a foreign bank account;

(iii) maintained a bank account, or other account, whether domestic or foreign, that is not reflected on the books or records of the business;

(iv) maintained a domestic or foreign numbered bank account or other bank account in a name other than the name of the business;

(v) donated or loaned corporate funds or corporate property for the use or benefit of, or for the purpose of opposing, any government, political party, candidate or committee either domestic or foreign;

(vi) compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposition to any government or political party domestic or foreign; and

(vii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign;

(6) copies of Federal and State tax returns and related information for the last five years, including:

(i) United States Internal Revenue Service forms 1040, 1040X and related schedules;

(ii) an audit narrative or failure to file narrative; and

(iii) foreign tax returns and schedules;

- (7) a signed, dated and notarized release authorization that shall direct all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, Federal, state and local, both foreign and domestic, to release any and all information pertaining to the applicant as requested by the commission, the Gaming Facility Location Board or any employee, agent or representative thereof;
- (8) the name, address, occupation, phone number, email address and years known of persons who can attest to the good character and reputation of the applicant;
- (9) a waiver of liability as to the State of New York and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the licensing process, or during any inquiries, investigations or hearings;
- (10) a consent to inspection, searches and seizures and the supplying of handwriting exemplars;
- (11) a notification and authorization form for employment credit report; and
- (12) a signed, dated and notarized affidavit of truth.

§ 5301.3. Application fees.

An applicant to develop and operate a gaming facility in the State of New York shall pay the application fee, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1316(8), by electronic fund transfer as the commission may direct. An applicant shall submit this fee on a date established by the commission, which date shall be posted on the commission's website as well as included in the schedule provided in the application to develop and operate a gaming facility in the State of New York. The application fee shall be non-refundable, except that the unexpended portion of the fee shall be returned to an applicant, minus any reasonable processing or investigative costs the commission has incurred, including personnel cost, overhead and administrative expense.

§ 5301.4. Waiver of licensing requirements by commission.

(a) The commission may in its discretion waive the licensing requirement for any of the following:

- (1) Qualified institutional investors and passive investors as defined in Part 5300.1 of this Subchapter;
- (2) in the case of gaming facility applicant or licensee corporations and holding, intermediary and subsidiary corporations of said applicant or licensee corporations, those persons holding less than five percent of the voting securities of the company;

(3) a lender to a gaming facility applicant or licensee that is obtaining financing for the construction or operation of the gaming facility shall be required to be licensed unless each of the following applies:

- (i) the lender is in the business of providing debt or equity capital to individuals or entities;
- (ii) the loan is in the ordinary course of the lender's business; and
- (iii) the lender does not have the ability to control or otherwise influence the affairs of the gaming facility applicant or licensee.

(4) a party that acquires a debt instrument issued by a gaming facility applicant or licensee in a public or exempt private offering shall not be required to be licensed if:

- (i) the party does not have a right or ability to control or influence the affairs of the gaming facility applicant or licensee; and
- (ii) the party's acquisition of the debt instrument is in the ordinary course of business and is not part of a plan or scheme to avoid the requirements of this section.

(b) In determining whether to waive qualification requirements, the commission shall consider whether the party seeking the waiver obtained its interest for investment purposes only and does not have any intention to influence or affect the affairs of the applicant or any affiliated companies thereof.

(c) A party may seek a waiver by filing with the commission:

- (1) the applicable waiver certification form available on the commission's website; and
- (2) any additional information deemed necessary by the commission to act on the request for a waiver.

(d) The commission shall investigate each waiver request. A deposit may be required to be paid by the requester of a waiver in advance as a condition precedent to the commission beginning or continuing its investigation. After all investigative fees and costs have been paid by the requester of a waiver, any balance remaining is refunded to the applicant.

(e) If a waiver is granted, the commission shall prepare a letter granting the waiver and setting forth the waiver conditions, including the duration of such waiver.

(f) Any party granted a waiver under this part which subsequently anticipates engaging in any activity that will or could influence or affect the affairs or operations of the gaming facility applicant or licensee or the holding, intermediary or subsidiary company thereof,

shall provide at least 30 days' notice to the commission of such intent and the party shall not exercise any influence or effect on the affairs or operations of the gaming facility applicant or licensee or the holding, intermediary or subsidiary company thereof unless and until the commission issues a determination of suitability under section 5301.5 of this Part.

§ 5301.5. Suitability determination.

(a) In evaluating the suitability of the applicant, the commission shall consider the overall reputation of the applicant as prescribed by Racing, Pari-Mutuel Wagering and Breeding Law section 1317(1).

(b) Subject to notice and a hearing, the commission shall deny a gaming facility application where an applicant has failed to meet the criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1317(2).

(c) Subject to notice and a hearing, the commission shall deny a license to a gaming facility applicant that the commission determines is disqualified based on the criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1318.

§ 5301.6. License determination.

(a) Upon determination that a gaming facility applicant is suitable for licensure, the commission shall proceed to review such applicant's entire application to confirm that the applicant has met, or has stated in its application that it shall meet, the minimum license thresholds set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1316.

(b) The commission may, in its discretion, conduct a hearing to determine the award of a license and:

(1) grant the application for a gaming facility license with appropriate conditions, restrictions, limitations or covenants as the commission, in its discretion, deems necessary;

(2) deny the application for a gaming facility license;

(3) extend the period for issuing a decision in order to obtain any additional information deemed necessary by the commission for a complete evaluation of the application; or

(4) issue a decision on the application for a gaming facility license that provides that a license shall be awarded effective as of a date to be determined by the commission.

(c) If the commission is prepared to deny a gaming facility application, the commission shall first notify such applicant of the grounds for such contemplated action and provide such applicant an opportunity for a hearing.

§ 5301.7. Form and posting of the license.

(a) Following the award of a gaming facility license, the commission shall issue, a license document that shall contain the following information:

(1) a complete identification of the applicant's identity, address and agent for all service of process by agencies and agents involved in regulating the gaming industry in the State of New York;

(2) the duration of the license;

(3) a commission serial number and be printed on security protected paper material;

(4) a statement that all statutory and regulatory conditions are incorporated by reference, included as if completely set forth therein and made a part of the issued form of gaming facility license;

(5) a statement that all additional conditions set forth by the commission shall also be incorporated by reference, included as if completely set forth therein and also made a part of the issued form of the gaming facility license;

(6) a depiction of the coat of arms of the State of New York; and

(7) the signature of the chair or secretary of the commission.

(b) A copy of the gaming facility license shall be available for inspection at such gaming facility at any time the gaming facility is open to the public.

§ 5301.8. Award and duration of license.

(a) The date of award of a gaming facility license shall be deemed to have occurred upon a public determination by the commission to issue a license to an applicant.

(b) A license shall be issued by the commission for an initial 10-year period and shall be renewable thereafter for a period of at least 10 years.

§ 5301.9. Post-licensure conditions.

The award of a license is subject to the gaming facility licensee satisfying or demonstrating satisfaction of the following conditions:

(a) deposit, via cash or bond in a form acceptable to the commission, into an interest-bearing account 10 percent of the total investment proposed in the gaming facility license application; and

(b) within 30 days of the award, payment of the applicable gaming facility license fee set forth in section 600.1 of subtitle R of this Title.

(c) commencement of gaming operations within 24 months following award of license. A gaming facility licensee failing to begin gaming operations within 24 months shall be subject to suspension or revocation of the license and may, after being found by the commission to have acted in bad faith, be assessed a fine as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1315(3).

§ 5301.10. Required notifications.

(a) *Material changes to commitments and development plans.* The applicant or licensee shall notify the commission in writing and in a timely manner of any proposed material changes to commitments and development plans that were presented in such applicant's or licensee's gaming facility application, including, without limitation, in regard to finance and capital structure; land, construction and design of physical plant; workforce development; and sustainability and resource management. The duty to disclose changes in information shall continue throughout any period of licensure granted by the commission. Commission licensees or applicants for gaming facility licenses must maintain current release of information forms as originally submitted to the Gaming Facility Location Board. No material changes to such commitments and development plans are permitted without the approval of the commission in writing.

(b) *Material debt transactions.* No gaming facility applicant or licensee shall consummate a material debt transaction without the prior approval of the commission.

(1) Notwithstanding the foregoing in this subdivision, the following types of transactions shall not require prior commission review and approval with regard to the financial stability standards. An agreement that:

- (i) provides for any borrowing for capital and maintenance expenditures;
- (ii) is for a refinancing of existing debt that includes a borrowing for capital and maintenance expenditures of at least \$50 million;
- (iii) provides for any borrowing that does not result in an increase in annual debt service requirements; or
- (iv) that reflects a gaming facility applicant or licensee's pro rata share of debt maintained at an affiliate, intermediary, or holding company.

(2) In the event that a gaming facility applicant or licensee contemplates consummation of a material debt transaction which does not require prior

commission review and approval pursuant to paragraph (1) of this subdivision the gaming facility applicant or licensee nevertheless shall notify the commission in writing, at least 10 days prior to entering an arrangement, of a transaction subject to one of the above exceptions. The notice shall, at a minimum, include the reasons the debt transaction is an allowable exception and all relevant calculations relating to the debt transaction.

(3) In reviewing any transaction pursuant to paragraphs (1) and (2) of this subdivision, the commission shall consider whether the transaction would deprive the gaming facility applicant or licensee of financial stability, taking into account the financial condition of any affiliates of holding companies thereof, and the potential impact of any default on the licensee.

(4) Any subsequent use of the proceeds of a transaction previously approved by the commission pursuant to paragraphs (1) and (2) of this subdivision, including subsequent drawings under previously approved borrowings, shall not require further commission approval.

(5) The commission may restrict or prohibit the transfer of cash to, or the assumption of liabilities on behalf of, an affiliate if, in the judgment of the commission, such transfer or assumption would deprive the gaming facility applicant or licensee of financial stability.

(6) Any amendments or changes to a material debt transaction previously approved pursuant to paragraphs (1) and (2) of this subdivision must be filed with the commission at least 10 business days prior to executing such amendment or change. A supplemental submission should be filed detailing the impact of each proposed amendment or change and, where applicable, the overall impact of the proposed amendments or changes on debt balances, maturity dates, annual debt service requirements, and debt covenants. If the changes are deemed material, the licensee may not consummate the change or amendment without further commission approval.

(c) *Change of qualifier or financial source.*

(1) Each gaming facility applicant or licensee shall notify the commission, in writing, as soon as such applicant or licensee becomes aware of the appointment, nomination, election, resignation, incapacitation or death of any qualifier. Upon receipt of such notice, the commission shall undertake to notify the new qualifier of the requirement to file an appropriate application and consent to an investigation.

(2) Each gaming facility applicant or licensee shall immediately notify the commission, in writing, as soon as such applicant or licensee becomes aware that it intends to enter into a transaction bearing any relation to its gaming facility project that may result in new persons involved in the financing of the gaming facility. Upon receipt of such notice, the commission shall undertake to notify the new financial

source requiring the filing of an appropriate application and subsequent investigation of that application.

(d) *Monitoring of project construction.* The award of license is subject to the following requirements in regard to the monitoring of the gaming facility project:

(1) Project schedules and reporting.

(i) The commission may create guidelines to aid the commission in its review and monitoring of the project. Such guidelines will be shared with the gaming facility licensee and may be amended as the commission may deem necessary.

(ii) Each gaming facility licensee shall submit to the commission a project schedule for the gaming facility licensee's capital investment in its gaming facility and related infrastructure. Such schedule shall include:

(a) all major stages of design and construction including all permitting and approvals, design deliverables, site preparation, foundation, structure, plumbing, electrical, mechanical, exterior finish and fenestration, long-lead items, insulation, interior finish and furnishings and landscaping, building commissioning and commissioning of gaming equipment and information technology systems;

(b) a timeline for commencement of the final stage of construction; and

(c) a timeline for the stage of construction at which the gaming facility licensee shall be approved to open for business.

(iii) If unforeseen or changed circumstances necessitate a change to a project schedule that will impact the completion date or requires a major change in the method or progress of construction as outlined in the gaming facility application, the gaming facility licensee may submit to the commission for its approval a revised project schedule, with a detailed statement of the unforeseen changed circumstances that justify the revised project schedule. If the commission approves such revised project schedule, it shall substitute and supersede the previously approved project schedule.

(iv) To assist in adherence to the project schedule, a gaming facility licensee shall submit to the commission in a media, format and level of detail acceptable to the commission, a quarterly status report.

(v) The licensee shall have a continuing obligation to provide to the commission in a timely manner an updated permits chart as well as any updates to the approvals process, such that the commission is continuously apprised of all material developments with respect to all permits and approvals required for the gaming facility.

(2) Inspection of construction and related records.

(i) At all times the commission or its representative may physically inspect the progress of construction, subject to reasonable construction site safety rules, to determine a gaming facility licensee's compliance with the approved design, project schedule and the terms and conditions of the license.

(ii) The commission may request or have access to, and the licensee shall provide, at any time, plans, specifications, submittals, contracts, financing documents or other records concerning the construction of the project or related infrastructure.

(iii) Following inspection of the construction site or review of construction records, the commission or its representative may notify a gaming facility licensee of any non-compliance with the terms of the license, including non-compliance with an approved design or project schedule. Upon receipt of such notification, a gaming facility licensee shall present a plan to the commission to address such non-compliance to the satisfaction of the commission.

(3) Certification of final stage of construction.

(i) A gaming facility licensee shall certify to the commission that such licensee has reached the final stage of construction as described in the approved project schedule or approved revised project schedule.

(ii) Upon receipt of such certification, the commission or the commission's representative may inspect the construction and request relevant plans, contracts, financing documents or additional records, in the discretion of the commission, which the licensee shall provide.

(iii) If the commission approves the gaming facility licensee's certification that such licensee has reached the final stage of construction, the commission shall return to the gaming facility licensee the cash deposit or release the deposit bond described in subdivision (a) of section 5301.9 of this Part and permit such gaming facility licensee to apply the deposit to the cost of the final stage of construction.

(iv) If the commission disapproves a gaming facility licensee's certification, the commission shall notify such licensee of the reasons for disapproval, and such licensee shall proceed diligently to cure the reasons for the disapproval.

(4) Determination that gaming facility may open for business. The commission shall not approve a gaming facility licensee to open a gaming facility for business or begin gaming operations until the commission has:

(i) determined that such gaming facility licensee has complied with the conditions in this Part;

- (ii) determined that such gaming facility licensee has completed the permanent gaming area and other ancillary entertainment services and non-gaming amenities;
- (iii) determined that such gaming facility licensee has completed all infrastructure improvements onsite and offsite and around the vicinity of the gaming facility, including projects to account for traffic mitigation or any other condition required by the gaming facility license in connection with the gaming facility;
- (iv) had an adequate opportunity to inspect the completed gaming facility and related infrastructure, as well as relevant plans, contracts or other records to determine that the completed gaming facility and related infrastructure comply with the terms of the license, host and surrounding community agreements, impacted live entertainment venue agreements and certificates of occupancy permits and approvals issued in connection with such gaming facility; and
- (v) issued an operation certificate for the gaming establishment pursuant to this subchapter.



Gaming Commission

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Mark D. Gearan, Chair
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: June 30, 2015

Re: Proposed Rulemaking for Licensing and Registration of Employees and Vendors (9 NYCRR Parts 5303 through 5307)

For Commission consideration are proposed rules for the licensing and registration of gaming facility employees and vendors. The proposed Part address the following topics: general provisions; casino key employee licensing; gaming employee and non-gaming employee registration; and vendor licensing and registration.

Highlights of the proposal follow:

- Sections 5303.1 through 5303.10 set forth general requirements by which gaming facility employees and vendors establish their qualification for licensure and registration, including fingerprinting, minimum age and eligibility to work in the United States. Also included in these sections are requirements for filing, processing, amending and withdrawing a license or registration application.
- Section 5303.11 prescribes the background investigation of license applicants and any affiliate, intermediary, subsidiary or holding company of such applicants.
- Section 5303.12 regulates notification of licensing or registration decisions.
- Section 5303.13 cites to the statutory requirements for denial of a license or registration application.
- Section 5303.14 sets forth the types of fees payable in connection with employee and vendor licenses.

Commissioners
June 30, 2015
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attachment

cc: Robert Williams, Executive Director
James Nielsen, Acting Director, Division of Gaming
Heather McArn, Associate Counsel

Licensing
and Registration of Employees and Vendors

PART 5303

General Provisions regarding Licensing and Registration

Section

- 5303.1 General
- 5303.2 Identification
- 5303.3 Fingerprinting
- 5303.4 Photographing
- 5303.5 Minimum age
- 5303.6 Eligibility to work in the United States
- 5303.7 Filing
- 5303.8 Processing
- 5303.9 Amendment
- 5303.10 Withdrawal
- 5303.11 Investigations
- 5303.12 Issuance of license
- 5303.13 Disqualifying criteria
- 5303.14 Fees
- 5303.15 Application and employment after denial or revocation
- 5303.16 Disciplinary action
- 5303.17 Restrictions on wagering

§ 5303.1. General.

(a) The terms *application*, *applicant*, *license*, *licensee*, *registration* and *registrant*, as used in Parts 5303 through 5307 of this Subchapter, relate to occupational licensing and enterprise and vendor licensing and registration as set forth in Titles 3 and 4 of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(b) It shall be the affirmative responsibility of each applicant, licensee, and registrant to establish by clear and convincing evidence its qualifications for licensure or registration.

(c) All licensees and registrants shall have a duty to inform the commission of any action that they believe would constitute a violation of the Racing, Pari-Mutuel Wagering and Breeding Law. No person who so informs the commission shall be discriminated against by an applicant, licensee or registrant because of the supplying of such information.

§ 5303.2. Identification.

(a) Every natural person applying for a license or registration pursuant to this Part shall establish such person's identity to the satisfaction of the commission pursuant to the

requirements of the license or registration application. For the purposes of this Part, applicants for licenses and registrations shall submit to the commission the information as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1323(2) or section 1324(4), respectively.

(b) Any natural person may request that the commission change the name designated on such person's application, license or registration by establishing appropriate identity information as may be required by the commission, including, without limitation, as the case may be, a certificate of marriage, a certified copy of a divorce decree or other appropriate court order.

§ 5303.3. Fingerprinting.

(a) Each applicant, licensee or registrant, including each gaming facility principal, casino vendor enterprise principal, casino key employee and other employees, shall, at the time of application and upon renewal, be fingerprinted under the supervision of the commission or a duly authorized representative approved by the commission. In the alternative, the commission may permit a person to submit sets of classifiable fingerprints on fingerprint impression cards provided by the commission.

(b) In the event that the commission cannot obtain usable fingerprints for processing after two good-faith attempts, the commission shall undertake a search of a person's background via other means available to the commission.

(c) Nothing in this part shall relieve a person who submits fingerprint sets pursuant to subdivision (a) of this section from the duty to disclose any criminal arrests as required by this part.

(d) Each gaming facility licensee shall remit fingerprinting fees directly to the fingerprinting service provider approved by the commission. However, if the applicant is submitting fingerprints via fingerprint impression cards, the gaming facility licensee shall remit the fee to the commission, payable to the fingerprinting service provider approved by the commission.

§ 5303.4. Photograph.

Each applicant, licensee or registrant who is a natural person shall submit with his or her application a color photograph in the format required by the application. Such photograph is required to have been taken within six months of the date the application is submitted to the commission.

§ 5303.5. Minimum age.

No natural person shall be licensed or registered by the commission unless such person is at least 18 years old.

§ 5303.6. Eligibility to work in the United States.

No natural person shall be employed as an employee of a gaming facility licensee or a vendor unless such person is a citizen of the United States or is otherwise eligible to work in the United States.

§ 5303.7. Filing.

No application for a license shall be deemed filed with the commission pursuant to this part until:

(a) all papers presented conform to all requirements relating to format, signature, oath or affirmation, attorney certification, if applicable, and copies, as the commission may require;

(b) all appropriate application, registration, business disclosure and personal history disclosure forms have been properly completed and submitted;

(c) all required consents, waivers, fingerprint impressions, photographs and handwriting exemplars have been properly submitted;

(d) all other information, documentation, assurances and other materials required or requested at the filing stage pertaining to qualifications have been submitted properly; and

(e) all required fees have been paid properly and all required surety has been properly furnished.

§ 5303.8. Processing.

The commission shall process only complete applications. The processing of any application shall not constitute any agreement or acceptance by the commission that the requirements of the Racing, Pari-Mutuel Wagering and Breeding Law and Parts 5303 through 5307 of this Subchapter have been satisfied.

§ 5303.9. Amendment.

(a) All applicants, licensees and registrants shall have a duty to ensure that information, documentation and assurances submitted to the commission:

(1) remain current; and

(2) are not misleading in light of the circumstances in which such information, documentation and assurances were submitted.

(b) The commission may permit any applicant, licensee or registrant to file an amendment to its application at any time prior to final action thereon by the commission.

(c) The failure of an applicant, licensee or registrant to comply with this part shall be grounds for rejection of the application or for suspension or revocation of a license or registration.

§ 5303.10. Withdrawal.

(a) Prior to a final commission action on any application pursuant to this Part, without regard to whether a temporary license has been issued, an applicant or the associated gaming facility licensee may withdraw a filed application by filing with the commission a written notice of such withdrawal. Upon the receipt of such notice, the commission will cease the processing of such application, but will retain such application and materials in accordance with applicable law and commission policy.

(b) If an applicant has previously withdrawn an application, the commission may refrain from processing any application submitted by such applicant within one year from the date of such withdrawal.

(c) No fee or other payment relating to an application shall become refundable by reason of withdrawal of the application, unless the commission determines otherwise for good cause shown. In no event, however, shall a fee for fingerprinting be refundable.

§ 5303.11. Investigations.

The commission, or its designee, shall make or cause to be made an inquiry or investigation concerning an applicant, licensee or registrant, or any affiliate, intermediary, subsidiary or holding company of an applicant, licensee or registrant, as the commission may deem appropriate, and in accordance with the Racing, Pari-Mutuel Wagering and Breeding Law, either at the time of the initial application or at any time thereafter.

§ 5303.12. Issuance of a license or registration.

(a) The commission shall notify the applicant or the human resource department or other applicable department of the gaming facility licensee in writing or via electronic communications when a license or registration is granted.

(b) Licenses and registrations issued by the commission are nontransferable.

§ 5303.13. Disqualifying criteria.

Subject to notice and an opportunity for hearing, the commission shall deny a license or registration to any applicant who the commission determines is disqualified on the basis of the criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1318.

§ 5303.14. Fees.

All fees payable to the commission pursuant to this section shall be paid by electronic funds transfer and shall be deposited into the commercial gaming revenue fund.

(a) *Application fee.* Upon submission of an application for a license or registration the New York State Police will charge the gaming facility licensee an amount that reflects the anticipated costs of the investigation of such applicant.

(b) *License fee.* Upon approval of an application for a license or registration the commission will charge the gaming facility licensee a license fee as set forth in the applicable license application.

(c) *Renewal application fee.* Upon submission of a renewal application for a license or registration, the New York State Police will charge the gaming facility licensee an amount that reflects the anticipated costs of the investigation of such applicant.

(d) *Renewal license fee.* Upon approval of a renewal application for a license or registration the commission will charge the gaming facility licensee a renewal fee as set forth in the applicable renewal license application.

§ 5303.15. Application and employment after denial or revocation.

(a) Any natural person whose application for a license or registration is denied, or whose license or registration is suspended or revoked by reason of a failure to satisfy the affirmative qualification criteria required by this Part, or due to a finding by the commission that such person is disqualified, or both, may re-apply for such license or registration at any time after the failure or disqualification is cured.

(b) Any natural person whose license or registration application was denied, or whose license or registration was suspended or revoked by the commission on the basis of any of the statutory or regulatory provisions in paragraphs (1) through (4) of this subdivision, may reapply for a license or registration upon satisfaction of the relevant requirements set forth in in this subdivision. If the denial, suspension or revocation is based upon two or more such regulatory provisions, the commission shall permit reapplication only upon compliance with the requirements of this subdivision as to each such provision. Any person seeking to reapply pursuant to this subdivision shall file a certified petition stating with particularity how the specified requirements have been satisfied. The bases that require such certified petition are:

(1) failure to demonstrate financial stability, after which reapplication is permitted only upon achieving financial stability;

(2) failure to satisfy the age requirement, after which reapplication is permitted only upon attaining the requisite age or upon a commission finding that such age will be attained before the processing and approval of such reapplication has been completed;

(3) pending disposition of a charge of any criminal offense, if the commission has determined to deny a license or registration application or suspend or revoke a license or registration while such charge is pending, after which reapplication is permitted only upon disposition of the pending charge; and

(4) any statutory or regulatory provision that is subsequently repealed or modified, after which reapplication is permitted only upon a showing that the subsequent repeal or modification of the statutory or regulatory provision obviates the grounds for denial or revocation and justifies the conclusion that the prior determination should not be a basis for denying a license or registration application.

(c) Except as otherwise set forth in this Part, any person whose application has been denied or whose license or registration has been revoked may reapply after one year. The reapplication must include submission of sufficient evidence demonstrating that the factual circumstances upon which the denial or revocation was based have been cured to the satisfaction of the commission.

§ 5303.16. Disciplinary action.

If the commission determines, after investigation, that any licensee or registrant has violated any provision of the Racing, Pari-Mutuel Wagering and Breeding Law or this Subchapter, the commission is permitted to levy and collect penalties as provided in Racing, Pari-Mutuel Wagering and Breeding Law section 116 and Article 13 and may suspend, limit, restrict or revoke any license or registration.

§ 5303.17. Restrictions on wagering.

Wagering by Casino key employees and Gaming employees is restricted as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1336.

PART 5304

Casino Key Employee Licensing

Section

- 5304.1 Persons required to obtain a casino key employee license
- 5304.2 Standards for issuance of a casino key employee license
- 5304.3 Casino key employee license application and disclosure forms
- 5304.4 Temporary license for casino key employee
- 5304.5 Duration of license

§ 5304.1. Persons required to obtain a casino key employee license.

A person, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1301(8), is required to obtain a casino key employee license prior to being involved in any gaming licensed activities, unless the commission has granted such casino key employee applicant a temporary license pursuant to 5304.4 of this Part.

§ 5304.2. Standards for issuance of a casino key employee license.

(a) Each applicant for a casino key employee license shall produce such information, documentation and assurances as requested by the commission concerning the

qualification criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law sections 1323(2)(a) through (c).

(b) The commission shall provide an applicant for a casino key employee license with a copy of criminal history information as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1323(4).

§ 5304.3. Casino key employee license application and disclosure forms.

A casino key employee license applicant shall be required to file a casino key employee application form and other disclosure forms as determined by the commission.

§ 5304.4. Temporary license for casino key employee.

The commission may issue a temporary license to an applicant for a casino key employee license in accordance with Racing, Pari-Mutuel Wagering and Breeding Law sections 1323(5) and (6).

§ 5304.5. Duration of license.

(a) Casino key employee licenses shall remain valid as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1325(6).

(b) Each casino key employee license shall indicate an expiration date.

PART 5305

Gaming Employee Registration

Section

- 5305.1 Persons required to register as a gaming employee
- 5305.2 Standards for issuance of a gaming employee registration
- 5305.3 Gaming employee registration forms
- 5305.4 Duration of registration

§ 5305.1. Persons required to register as a gaming employee.

(a) A person, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1301(22), is required to obtain a gaming employee registration prior to being involved in any gaming licensed activities, unless such person holds a current and valid casino key employee license.

§ 5305.2. Standards for issuance of a gaming employee registration.

(a) Each applicant for a gaming employee registration shall produce such information, documentation and assurances as requested by the commission concerning the qualification criteria set forth in parts 5303.1 through 5303.6 of this Subchapter.

(b) The commission shall provide an applicant for a gaming employee registration with a copy of criminal history information as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1324(5).

(c) Subsequent to the registration of a gaming employee, the executive director of the commission may revoke, suspend, limit or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1318. Notwithstanding, a Gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction provided that the registrant has affirmatively demonstrated registrant's rehabilitation, pursuant to Article 23-A of the Correction Law.

§ 5305.3. Gaming Employee Registration form.

A gaming employee registrant shall file a gaming employee registration form the commission supplies and may amend from time to time.

§ 5305.4. Duration of registration.

(a) Gaming employee registrations shall remain valid as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1325(6).

(b) Each gaming employee registration shall indicate an expiration date.

PART 5306

Non-Gaming Employee Registration

Section

- 5306.1 Persons required to register as a non-gaming employee
- 5306.2 Standards for issuance of a non-gaming employee registration
- 5306.3 Non-gaming employee registration forms
- 5306.4 Duration of registration

5306.1. Persons required to register as a non-gaming employee.

(a) A person, as defined in section 5300.1 of this Subchapter, is required to obtain a non-gaming employee registration prior to being involved in any non-gaming activities at a gaming facility.

§ 5306.2. Standards for issuance of a non-gaming employee registration.

(a) Each applicant for a non-gaming employee registration shall produce such information, documentation and assurances as requested by the commission concerning the qualification criteria set forth in Parts 5303.1 through 5303.6 of this Subchapter.

(b) Subsequent to the registration of a non-gaming employee, the executive director of the commission may revoke, suspend, limit or otherwise restrict the registration upon a

finding that the registrant is disqualified on the basis of the criteria contained in Racing, Pari-Mutuel Wagering and Breeding Law section 1318. Notwithstanding, a Non-gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction provided that the registrant has affirmatively demonstrated registrant's rehabilitation, pursuant to Article 23-A of the Correction Law.

§ 5306.3. Non-gaming employee registration forms.

A non-gaming employee registration applicant shall be required to file a non-gaming employee registration form the commission supplies and may amend from time to time.

§ 5306.4. Duration of registration.

(a) Non-gaming registrations shall remain valid as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1325(6).

(b) Each non-gaming registrations shall indicate an expiration date on the registration.

PART 5307

Vendor Licensing and Registration

Section

- 5307.1 Persons required to obtain a casino vendor license
- 5307.2 Persons required to obtain an ancillary casino vendor license
- 5307.3 Registration of other vendors
- 5307.4 Standards for issuance of a casino vendor license and an Ancillary casino vendor license
- 5307.5 Vendor application and disclosure forms
- 5307.6 Temporary service providers; badges
- 5307.7 Duration of license and registration

§ 5307.1. Persons required to obtain a casino vendor license.

(a) Any vendor offering goods or services that directly relate to casino or gaming activity, as described in Racing, Pari-Mutuel Wagering and Breeding Law sections 1326(1) and (2), shall be required to be licensed as a casino vendor. In addition, the executive director of the commission may permit an applicant for a casino vendor license to conduct business transactions with the gaming facility applicant or licensee prior to the licensure of such casino vendor applicant, effective only for the transaction for which such permission is requested

(b) In addition to any vendor required to be licensed by this part, the commission may require a license for any person if the issuance of such license would be consistent with this part and consistent with the protection of commercial gaming in the State of New York.

§ 5307.2. Persons required to obtain an ancillary casino vendor license.

Any vendor offering goods and services ancillary to gaming activity shall be required to be licensed as an ancillary casino vendor, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1326(3). Goods and services ancillary to gaming activity include, without limitation, licensors of games, non-casino alcoholic beverage operators, lessors of casino property not required to hold a casino license, trash haulers, limousine operators and food suppliers.

§ 5307.3. Registration of other vendors.

Any vendor offering goods and services to a gaming facility applicant or licensee that is not a casino vendor or an ancillary casino vendor shall be required to be registered as a vendor registrant, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1326(5).

§ 5307.4. Standards for issuance of vendor licenses.

(a) Each applicant for a casino vendor license, ancillary casino vendor license or Vendor registration shall meet the qualification criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1326.

§ 5307.5. Vendor application and disclosure forms.

(a) Each applicant for a casino vendor license, ancillary casino vendor license, or vendor registration shall file a vendor application and registration form and other disclosure forms as determined by the commission.

(b) Owners, managers, supervisory personnel and employees of a casino vendor licensee or ancillary casino vendor licensee who provide services to the gaming area of a gaming facility are required to fill out a casino key employee application form and comply with the standards for issuance of a casino key employee license as set forth in section 5304.2 of this Subchapter.

§ 5307.6. Temporary service providers; badges.

(a) A gaming facility licensee may authorize any person or business to perform services for a period not greater than one business day, provided such facility issues a temporary service badge to such temporary service provider and such temporary service provider is escorted by a licensed employee at all times. If such temporary service provider requires access to restricted areas, such temporary service provider must be accompanied by a licensed casino key employee, unless otherwise approved by the commission.

(b) Temporary service badges shall:

- (1) remain on the property of the gaming facility at all times;

(2) be distributed to the temporary service provider upon daily arrival at the gaming facility; and

(3) be returned daily by such temporary service provider to the gaming facility at the close of the temporary service provider's work shift.

(c) Any gaming facility licensee needing to contract for or employ isolated services that cannot be completed within one business day shall complete and provide to the commission a temporary service provider form the commission supplies and may amend from time to time, no later than 24 hours prior to the arrival of the temporary service provider at such facility. The Temporary service badge shall be valid for 30 days over a 12-month period. The failure to file such form shall be a violation of the gaming facility's license.

§ 5307.7. Duration of license and registration.

Casino vendor licenses, ancillary casino vendor licenses and vendor registrations shall remain valid as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1327.



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: June 29, 2015

Re: Proposed Rulemaking for Changes to Powerball Game and Draw Games Rules (9 NYCRR §§ 5004.9, 5007.2, 5007.13, 5007.15, 5007.16, 5009.2 and 5010.2)

For Commission consideration is a draft rules change for the Powerball game intended to be effective nationwide with sales effective on October 4, 2015 for the drawing on October 7, 2015. Also for Commission consideration are draft rules changes for the general draw games rules—to clarify a defined term applicable to all lottery draw games, including Powerball—and other draw games, to make consistent the generally applicable definition of quick pick.

Powerball is a multi-state lottery game that New York offers pursuant to an agreement among various state lotteries, as authorized by Tax Law Sections 1617, 1612(a)(3) and 1604(a). Powerball awards prizes to holders of tickets matching specified combinations of numbers randomly selected in regularly scheduled drawings. Players select five numbers from one set and one number from a second set. The rules change is intended to increase the odds of winning any prize, while making it more difficult to win the jackpot prize. This would be accomplished by increasing the size of the first set of numbers from which a player chooses (from 59 to 69), while decreasing the size of the second set of numbers (from 35 to 26). The percentage amount of a prize pool allocated to each prize level would also change. Finally, the set prize amount for the third-level prize would increase from \$10,000 to \$50,000.

The draw games rules change amends a definition applicable to all lottery draw games, including Powerball, to clarify that players have the option to request wagered numbers orally rather than through a play slip. A player may select on a play slip all or a partial subset of the required numbers and have the computer system supply, through random choice, the remaining numbers. This quick-pick procedure applies to all draw games.

Without these rules changes, the Division would need to remove the Powerball game from its portfolio of offerings and aid to education would be negatively affected.

Last fiscal year just over \$300 million in Lottery sales were from the Powerball game. This was the lowest amount in three fiscal years.

Please note that Rule 5007.13(c)(6) allows the addition of a “A Powerball game feature...at the discretion of the commission. A game feature is an alternative or additional method for playing the game within the same basic game design.” Under this authority, the Lottery has long participated in Power Play, a feature that allows a patron to increase a wager in an effort to win a larger cash non-jackpot prize. The multi-state Powerball consortium plans to change the Power Play feature, offering a 10X Power Play feature for jackpots of \$150 million or less. Because the change is a “an alternative or additional method for playing the game within the same basic game design,” no additional rules change is required.

The text of the proposed amendments is attached.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
Gardner Gurney, Acting Director, Division of Lottery

NEW YORK STATE GAMING COMMISSION
AMENDMENT OF SECTIONS 5004.9, 5007.2, 5007.13, 5007.15, 5007.16, 5009.2 and
5010.2 OF
NEW YORK CODES, RULES AND REGULATIONS
TITLE 9, SUBTITLE T, CHAPTER III, SUBCHAPTER A

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law and Sections 1604, 1612(a)(3) and 1617 of the Tax Law, the New York State Gaming Commission hereby proposes the amendment of paragraphs (7) and (9) of subdivision (a) of Section 5004.9, paragraph (15) of subdivision (a) of section 5007.2, subdivisions (a), (b), (c) and (h) of Section 5007.13, paragraph (14) of subdivision (a) of Section 5007.15, paragraph (14) of subdivision (a) of Section 5007.16, subdivision (e) of Section 5009.2 and subdivision (e) of Section 5010.2 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

PART 5004

Draw Games

* * *

§ 5004.9. General definitions, qualifications, restrictions, validations and rules applying to Lottery Draw games.

(a) * * *

(7) [*Random selection option* (commonly referred to as *Quick Pick*, *Easy Pick*, or a similar term) means the option given to players to have the game character(s) to be played randomly selected by computer. The random selection option is initiated by the terminal operator and may be used to select all the game character(s) required for the game or to complete a bet in which fewer than the full complement of game character(s) have been chosen. When the random selection option is used, the bet will be entered by computer in the next scheduled drawing and the numbers to be played will be randomly selected by computer. If a player using the random selection option specifies such player's choice of draw date(s), then only the remaining bet data variables will be selected by computer.] *Quick Pick* means a method in which some or all character selections are determined at random by the computer system at the time of purchase. If a player communicates some character selections orally or by play slip, any remaining character selections may be determined by *Quick Pick*.

* * *

(9) *Draw game ticket* or *bet ticket* means the ticket generated by the computer terminal based on input received from the player's play card, [random selected] *quick pick* option or manual entry. Bet tickets may be purchased only from licensed sales agents as previously defined herein. The bet ticket is the only valid receipt for a bet placed. Players should, while still at the point of purchase, verify the game and number selections on the bet ticket.

PART 5007

Multi-Jurisdictional Lottery Games

* * *

§ 5007.2. Mega Millions definitions.

(a) The following definitions shall apply to Mega Millions.

* * *

(15) *Quick pick* [means a player option in which Mega Millions number selections are determined at random by the computer system at the time of purchase] has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.

* * *

§ 5007.13. Powerball.

(a) *Purpose.*

(1) The purpose of the Powerball Game (also referred to as *Powerball*) is the generation of revenue for education in New York State through the operation of a specially-designed multi-state lottery game that will award prizes to holders of tickets matching specified combinations of numbers randomly selected in regularly scheduled drawings.

(2) During each Powerball drawing, six Powerball winning numbers will be selected from two fields of numbers in the following manner: five winning numbers from a field of one through [59] 69, and one winning number from a field of one through [35] 26.

(b) *Definitions.* The following definitions apply to Powerball:

* * *

(2) *Quick Pick* [means a player option in which Powerball number selections are determined at random by the computer system at the time of purchase] has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.

(3) *Powerball Play Area* means the area of the play slip, also known as a *panel* that contains two sets of numbered spaces to be marked by a player, the first set containing [59] 69 spaces, numbered one through [59] 69 and the second set containing [35] 26 spaces, numbered one through [35] 26.

* * *

(5) *Powerball Winning numbers* means the six numbers, the first five from a field of [59] 69 numbers and the last one from a field of [35] 26 numbers, randomly selected at each drawing, which shall be used to determine winning plays shown on a game ticket.

* * *

(c) *Game Description.*

(1) Powerball is a five out of [59] 69 plus one out of [35] 26 computerized lottery game that pays the jackpot prize, at the election of the player made in accordance with this section or by a default election made in accordance with this section, either on an annuitized pari-mutuel basis or as a lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a fixed lump sum basis. To play Powerball, a player may select five different numbers, from one through [59] 69 and one additional number from one through [35] 26. The additional number may be the same as one of the first five numbers selected by a player. A player may select a set of five numbers and one additional number by communicating the six numbers to a lottery sales agent, or by marking six numbered spaces in any one panel on a play slip and submitting the play slip to an agent or by requesting quick pick from an agent. An agent will then issue a ticket containing the selected set or sets of numbers, each of which constitutes a game play.

* * *

(h) *Prize Pool, Prize Structure and Probability of Winning.*

* * *

(3) Expected Prize Payout Percentages. The Jackpot Prize shall be determined on a pari-mutuel basis. Except as provided in this section, all other prizes shall be paid as fixed lump sum prizes with the following expected prize payout percentages:

Prize Pool Percentage

<i>Number of Matches Per Play</i>	<i>Prize Payment</i>	<i>Allocated to Prize</i>
All five of first set plus one of second set.	Jackpot prize	[63.9511] <u>68.0131%</u>
All five of first set and none of second set.	\$1,000,000	[19.4038] <u>8.5558%</u>
[Any four of first set plus one of second set.]	[\$10,000]	[1.5409%]
<u>Any four of first set plus one of second set.</u>	<u>\$50,000</u>	<u>5.4757%</u>
Any four of first set and none of second set.	\$100	[0.5239] <u>0.2738%</u>
Any three of first set plus one of second set.	\$100	[0.8167] <u>0.6899%</u>
Any three of first set and none of second set.	\$7	[1.9437] <u>1.2074%</u>
Any two of first set plus one of second set.	\$7	[0.9909] <u>0.9981%</u>
Any one of first set plus one of second set.	\$4	[3.6097] <u>0.3489%</u>
None of first set plus one of second set.	\$4	[7.2194] <u>10.4373%</u>

* * *

(6) Probability of Winning. The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category based upon the total number of possible combinations in Powerball.

<i>Number of Matches Per Ticket</i>	<u>Probability Distribution</u>		<i>[Probable/Set] Prize Amount</i>
	<i>Winners</i>	<i>[Probability] Odds 1 in</i>	
All five of first set plus one of second set.	1	[1:175,223,510.0000] <u>292,201,338.0000</u>	Jackpot prize
All five of first set and none of second set.	[38] <u>25</u>	[1:5,153,632.6471] <u>11,688,053.5200</u>	\$1,000,000
Any four of first set plus one of second set.	[270] <u>320</u>	[1:648,975.9630] <u>913,129.1813</u>	[\$10,000] <u>\$50,000</u>
Any four of first set and none of second set.	[9,180] <u>8,000</u>	[1:19,087.5283] <u>36,525.1673</u>	\$100
Any three of first set plus one of second set.	[14,310] <u>20,160</u>	[1:12,244.8295] <u>14,494.1140</u>	\$100
Any three of first set and none of second set.	[486,540] <u>504,000</u>	[1:360.1420] <u>579.7646</u>	\$7
Any two of first set plus one of second set.	[248,040] <u>416,640</u>	[1:706.4325] <u>701.3281</u>	\$7
Any one of first set plus one of second set.	[1,581,255] <u>3,176,880</u>	[1:110.8129] <u>91.9775</u>	\$4
None of first set plus one of second set.	[3,162,510] <u>7,624,512</u>	[1:55.4065] <u>38.3239</u>	[\$3] <u>\$4</u>
Overall	[5,502,140] <u>11,750,538</u>	[1:31.8464] <u>24.8671</u>	

* * *

§ 5007.15. Cash 4 Life.

(a) *Definitions.* The following definitions apply to the Cash 4 Life:

* * *

(14) *Quick pick* [means a player option in which Cash 4 Life number selections are determined at random by the computer system at the time of purchase] has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.

§ 5007.16. Monopoly™ Millionaires' Club™.

(a) *Definitions.* The following definitions apply to the Monopoly Millionaires' Club:

* * *

(14) *Quick pick* [means a method in which some or all Monopoly Millionaires' Club number selections are determined at random by the computer system at the time of purchase] has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter. Quick pick is a player option in the Monopoly Millionaires' Club game for selection of up to five number selections ranging from one through 52, but the number ranging from one through 28, representing a Monopoly property, must be selected by quick pick.

PART 5009

New York's Numbers

* * *

§ 5009.2. Game Description.

New York's Numbers game shall determine winners from tickets by matching a permutation or segment of a three-digit number from 000 to and including 999, randomly drawn at a regularly scheduled daily drawing. Correctly matching the three-digit number or designated permutation thereof shall entitle the ticket holder to one of those prizes as described below:

* * *

(e) To place a bet, a purchaser communicates the desired bet data (day, amount, bet type and bet number selections) to an agent, who will issue a bet ticket. If desired, a purchaser may use the [random number] quick pick option [(commonly referred to as "quick pick," "easy pick," or a similar term)] for deciding bet number selections. When the [random number] quick pick option is used, the bet will be entered by computer in the next scheduled drawing as a straight bet in the amount of 50 cents and the numbers to be played will be randomly selected by computer. A purchaser using the [random number] quick pick option may specify such purchaser's own choice of drawing date (s), bet type or bet amount. The agent enters the bet into a secure computer system via a computer terminal. Upon acceptance of and payment for the ticket issued by the agent, the transaction shall become binding and final.

PART 5010

Win-4

* * *

§ 5010.2. Game description.

Win-4 game shall determine winners from tickets matching a permutation of a four-digit number from 0000 to and including 9999 randomly drawn at a regularly scheduled drawing conducted by the Lottery as described in section 5010.4 of this Part. Correctly matching the winning four-digit number drawn, or a designated permutation thereof shall entitle the ticket holder to one of the prizes described in subdivision (c) of this section.

* * *

(e) To place a bet, a purchaser communicates the desired bet data (day, amount, bet type and bet number selections) to a game agent, who will issue a bet ticket. If desired, a purchaser may use the [random number] quick pick option [(commonly referred to as “Quick Pick,” “Easy Pick,” or a similar term)] for deciding bet number selections. When the [random number] quick pick option is used, the bet will be entered by computer in the next scheduled drawing as a straight bet in the amount of 50 cents and the numbers to be played will be randomly selected by computer. A purchaser using the [random number] quick pick option may specify such purchaser’s own choice of drawing date (s), bet type or bet number. The agent enters the bet into a secure computer system via a computer terminal. Upon acceptance of and payment for the ticket issued by the agent, the transaction shall become binding and final.



Gaming Commission

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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: June 29, 2015

Re: Proposed Rulemaking for Video Lottery Capital Award Divestiture (9 NYCRR § 5100.2 and Part 5122)

For Commission consideration is a draft regulation amending regulations in regard to the capital award program in video lottery gaming. Tax Law Section 1612(b)(1)(ii)(H) establishes the capital awards program, which is funded from video lottery revenue. The law provides that a video lottery agent “choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards.”

Several video lottery agents have requested guidance on the Commission’s interpretation of divestment of a video gaming capital award and how the reimbursement requirement might be applied in various circumstances. The proposed rule would describe what constitutes divestment of a capital asset within the meaning of the statute and would give the Commission discretion to approve in writing an action in regard to a capital asset that otherwise would require reimbursement of a capital award. Under the proposal, if such action is taken with the intent to increase patronage at such video lottery gaming agent’s facility and increase the amount of revenue generated to support State education programs, or occurred in a transfer of assets to an affiliate and remained in service of the video lottery program, reimbursement would not be required. The new Rule 5122.5 would also require notice of when a capital asset is removed from service and permit the Commission to establish a schedule of no more than 90 days for reimbursement, when reimbursement is required.

The proposal would also require the annual submission of a facility’s capital improvement plan, supply a needed definition in the video lottery regulations, eliminate language in Rule 5122.1 that duplicates statute or is obsolete, increase from 15 to 60 days the time within which Commission review of a capital project is required and make several technical changes.

The proposed text of the amendments is attached.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
James Nielsen, Acting Director, Division of Gaming

NEW YORK STATE GAMING COMMISSION
AMENDMENT OF SECTION 5100.2 AND PART 5122 OF
NEW YORK CODES, RULES AND REGULATIONS
TITLE 9, SUBTITLE T, CHAPTER IV, SUBCHAPTER A

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law and Section 1604, clause (H) of subparagraph (ii) of paragraph 1 of subdivision (b) of section 1612 and subdivisions a and c of Section 1617-a of the Tax Law, the New York State Gaming Commission hereby proposes this amendment of subdivision (a) of Section 5001.2 and Sections 5122.1, 5122.3 and 5122.4, and the addition of a new Section 5122.5, of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

PART 5100

General Provisions, Construction and Application of Rules

* * *

§ 5100.2. Definitions.

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

* * *

(2) The *act* means article 34 of the Tax Law, commonly known and cited as the "New York State Lottery for Education Law."

[NOTE: paragraphs (2) through (125) would be renumbered as (3) through (126).]

PART 5122

Collection, Distribution and Authorized Use of Capital Awards

Section

5122.1	Video lottery gaming agent receipt of capital awards
5122.2	Deposit of capital awards
5122.3	Capital improvement plan
5122.4	Capital improvement plan implementation and award reimbursement
<u>5122.5</u>	<u>Reimbursement of capital award to State upon divestiture</u>

§ 5122.1. Video lottery gaming agent receipt of capital awards.

(a) [In accordance with the act, there] A vendor capital award for which a video lottery agent shall be eligible pursuant to clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the Tax Law shall be made available [to each video lottery gaming agent] from the daily video lottery gaming revenue generated at [each] such video lottery gaming agent's facility [a capital award] to be used exclusively for [capital project investments to improve the facilities of the vendor track that promote or encourage increased attendance at the video lottery gaming facility, including, but not limited to, hotels, other lodging facilities, entertainment facilities, retail facilities, dining

facilities, events arenas, parking garages and other improvements that enhance the facility amenities; provided that such capital investments shall be approved by the commission and that such agent demonstrates that such capital expenditures will increase patronage at such agent's facilities and increase the amount of revenue generated to support State education programs] the purposes set forth in such clause of the Tax Law. Such clause of the Tax Law sets forth co-investment requirements of such agents. The amount of any vendor's capital award that is not used during any one-year period may be carried over into subsequent years only as permitted by such clause of the Tax Law.

[(b) Except as provided in the act, each agent shall be required to co-invest an amount of capital expenditure equal to such agent's cumulative vendor's capital awards. The amount of any vendor's capital award that is not used during any one- year period may be carried over into subsequent years ending before April 1, 2013. In the event that a vendor track's capital expenditures, approved by the commission prior to April 1, 2013 and completed prior to April 1, 2015, exceed the vendor track's cumulative capital award during the five year period ending April 1, 2013, the vendor track shall continue to receive the annual capital award after April 1, 2013 until such approved capital expenditures are paid to the vendor track subject to any required co-investment.]

[(c) Any agent that has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement, in accordance with generally accepted accounting principles, shall reimburse the State in amounts equal to the total of any such awards.]

[(d) Any capital award not approved for a capital expenditure at a video lottery gaming facility by April 1, 2013 shall be deposited in the State lottery fund for education aid.]

[(e)] (b) All such capital [improvement] improvements and expenditures shall be subject to the overall supervision of the commission.

* * *

§ 5122.3. Capital improvement plan.

(a) Each agent eligible for capital award funds shall prepare annually a capital improvement plan for the video lottery gaming facility. The capital improvement plan shall provide sufficient detail to describe anticipated capital projects for which the agent will seek reimbursement from the capital award. Such capital improvement plan shall be submitted electronically to the commission for review, and may be amended by the agent from time to time as planned capital projects are modified.

(b) Each capital improvement plan, without limitation, shall briefly describe, in narrative form, the capital improvement projects the video gaming facility plans to commence [during the five-year period ending April 1, 2013, that are to be completed prior to April 1, 2015] over the next five years.

(c) Capital improvements plans shall be due to the commission [on a date prescribed by the commission] no later than July 1 of each year. The failure to submit any capital

improvement plan when due to the commission shall be a violation of the agent's license, the act and these regulations.

§ 5122.4. Capital improvement plan implementation and award reimbursement.

* * *

(b) Payment from capital award funds shall [only] be approved by the commission only for capital project construction or improvements commenced on or after April 1, 2008, or the portion of a project completed after April 1, 2008 for projects, or phases of projects, commenced before April 1, 2008.

(c) Not later than [15] 60 days from receipt of a capital project request for approval, the commission shall review the request and provide the commission's approval or denial of the project. Each project shall qualify as an approved use of the capital award if it meets the following guidelines:

(1) The capital project includes the addition of tangible, permanent assets in the form of land, buildings, or equipment; or the project includes the restoration of such existing assets.

(2) Project assets purchased or restored, are to be used in the operation of video gaming and are expected to have a useful life of two years or more, providing a reasonable benefit throughout the assets useful life.

(3) The capital expenditure is of significant value, consistent with standard accounting policies for the recording of capital assets.

(4) The capital project will increase patronage at the video gaming facility and increase the amount of revenue generated to support education aid.

(5) The capital project will be completed prior to [April 1, 2015] the applicable date set forth in clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the Tax Law.

* * *

[(l)] (l) In the event any [expense reports] reimbursement requests are deemed insufficient at the sole discretion of the commission, the commission may require an agent to provide the following information:

(1) a full and complete reconciliation of the capital improvement expenses and associated costs incurred; and

(2) an accounting for the cash spending related to the capital improvement funds.

* * *

§ 5122.5. Reimbursement of capital award to State upon divestiture.

(a) What constitutes divestiture of a capital improvement. A video lottery gaming agent shall be deemed to have chosen to divest a capital improvement, within the meaning of clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the Tax Law, when such video lottery gaming agent voluntarily

(1) sells, alienates, transfers, relinquishes possession of or otherwise disposes;

(2) destroys or otherwise wastes; or

(3) removes from use for the benefit of video lottery gaming;

a capital improvement that had been purchased or created with funds in whole or in part from a vendor's capital award, unless the commission determines in writing that such action was taken with the prior approval of the commission and with the intent to increase patronage at such video lottery gaming agent's facility and increase the amount of revenue generated to support State education programs.

(b) Sale or transfer to affiliated entity. A video lottery gaming agent transferring a capital improvement to an affiliated entity that will become, in the place of such video lottery gaming agent, the video lottery agent at such location may request in writing that the commission not deem such video lottery agent to have chosen to divest such capital improvement, within the meaning of clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the Tax Law. The commission may grant such a request in its discretion.

(c) Notice of removal from service of a capital asset. A video lottery gaming agent shall notify the commission in writing in each instance that an asset acquired in whole or in part with capital award funds is removed from service for any reason, either temporarily or permanently. Such notice shall be given as soon as practicable, but in no event more than 15 days after such asset has been removed from service.

(d) Time for reimbursement. When a video lottery gaming agent chooses to divest a capital improvement prior to the full depreciation of such capital improvement in accordance with generally accepted accounting principles and such capital improvement had been funded in whole or in part by a vendor's capital award, the reimbursement to the State required by clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the Tax Law shall be made according to such schedule as the commission may determine in its discretion and announce in writing to such video lottery gaming agent. The commission shall schedule such payment to be made no later than 90 days from the date such video lottery gaming agent notifies the commission of the divestiture.