



**MEETING AGENDA  
NOVEMBER 8, 2021**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES FOR MEETING OF AUGUST 16, 2021
3. MOBILE SPORTS WAGERING CONSIDERATION OF LICENSE RECOMMENDATION
4. RULEMAKING CONSIDERATION
  - A. ADOPTION: SGC-35-21-00010-P MOBILE SPORTS WAGERING AND SPORTS WAGERING AT GAMING FACILITIES
  - B. ADOPTION: SGC-29-21-00010-P AMENDMENT OF VIDEO LOTTERY GAMING REGULATIONS
  - C. PROPOSED: CHARITABLE GAMING RAFFLE RULE UPDATE
5. CONSIDERATION OF GAMING FACILITY LICENSE AMENDMENT: CAPITAL REGION GAMING, LLC DOING BUSINESS AS RIVER CASINO & RESORT SCHENECTADY
6. NEW & OLD BUSINESS
  - A. DECISION: IN THE MATTER OF THE DENIAL OF ENTRIES OF SEVEN HORSES AT THE SARATOGA RACE COURSE
  - B. VETO MESSAGE 49, 2021
7. ADJOURNMENT

###

**New York State Gaming Commission Minutes  
Meeting of August 16, 2021**

A meeting of the Commission was conducted in New York and Schenectady.

**1. Call to Order and Establishment of Quorum**

Executive Director Robert Williams called the meeting to order at 1:02 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance in Schenectady were Peter Moschetti and John Poklemba. Members Christopher Riano and Jerry Skurnik participated from New York. John Crotty participated by telephone but was not counted for purposes of quorum establishment or voting record. Commissioner Poklemba presided over the meeting.

**2. Consideration of Minutes for Meeting of June 29, 2021**

The Commission considered previously circulated draft minutes of the meeting conducted on June 29, 2021. The minutes were accepted as circulated.

**3. Rulemaking**

**a. Proposed Rulemaking: Mobile Sports Wagering**

For Commission consideration is proposal of regulations to govern mobile sports wagering and related amendments to the regulations governing in-person sports wagering at the four licensed commercial casinos.

ON A MOTION BY: Commissioner Moschetti  
APPROVED: 4-0

**4. New/Old Business**

No new or old business was considered.

**5. Adjournment**

Chairman Sample declared the meeting adjourned at 1:11 p.m.

###



# Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** November 3, 2021

**Re:** Adoption of Proposed Rulemaking for Mobile Sports Wagering and Amendments to Sports Wagering Rules (9 NYCRR Parts 5329 and 5330)

For Commission consideration is the adoption of regulations to govern mobile sports wagering and related amendments to the regulations governing wagering in sports lounges at the four licensed commercial casinos.

Applicants for mobile sports wagering platform providers and skins/mobile sports wagering operators are under review.

The Notice of Proposed Rulemaking was published in the September 1, 2021 edition of the State Register, a copy of which is attached. A copy of the proposed rule text, with additional changes highlighted, none of which constitutes a substantial revision. The public comment period expired on November 1, 2021. Seven comments were received.

Sportradar, a global data distribution business that supports legalized sports wagering, commented on the proposed regulations that would allow a sports wagering licensee to demonstrate the suitability of an alternative data source to an official league source. Sportradar suggests that the data-source approval process would be streamlined if data suppliers, such as Sportradar, are permitted to demonstrate to the Commission the suitability of an alternative data source without relaying such information through the sports wagering licensee. Sportradar suggests that the phrase “or a casino vendor enterprise licensee” be inserted between the words “sports wagering licensee” and “demonstrates to the satisfaction of the commission...” in both sections 5329.8(a)(12) and 5330.8(b)(8) of the rules.

**Staff response:**

[REDACTED]

The New York Racing Association, Inc. (“NYRA”) expressed interest in offering its advance deposit wagering platform NYRA Bets in conjunction with mobile sports wagering licensees, with customers sharing an electronic wallet from which funds could be drawn to place wagers on either the NYRA Bets or the mobile sports wagering platform, and to which payouts could be deposited from winnings from either platform.

Each of New York Thoroughbred Horsemen’s Association, Inc. (“NYTHA”) and New York Thoroughbred Breeders, Inc. (“NYTB”) expressed support for the proposed regulations as published, but stated their understanding that the proposed regulations would support an electronic wallet that could be shared among mobile sports wagering licensees and horse racing advance deposit wagering licensees.

**Staff response:**

[REDACTED]

Bulletproof, an information technology company, submitted comments on several technical regulations. Bulletproof suggests a sentence be added to sections 5329.10(a) and 5330.10(a) to clarify that the Commission may adopt additional technical standards against which an independent testing laboratory must test for compliance, which would allow for flexibility to add additional technical requirements as technology evolves. Bulletproof asserts that this has been done in Colorado, Michigan, Tennessee and Wyoming.

**Staff response:**

[REDACTED]

Bulletproof suggests that the regulations adopt GLI-33 Standards for Event Wagering Systems, which it states has been done by at least 21 states.

**Staff response:**

[REDACTED]

Bulletproof makes several suggestions in regard to geolocation. Bulletproof suggests that requirements for location detection in section 5330.8(f) should be expanded to cover topics such as frequency of checks, location data accuracy and integrity, player and device integrity, reporting and analytics, system maintenance and testing requirements, all as described in GLI-33. Bulletproof suggests that specific areas of the State where mobile sports wagering may not occur should be defined. Bulletproof also suggests that the level of field testing should be set forth in regulation,.

**Staff response:**

[REDACTED]

[REDACTED]

Bulletproof suggests that the requirement of mobile sports wagering internal controls to address how the licensee will seek Commission approval of hardware and software changes and upgrades also be added to the requirements of sports wagering at sports lounges and other location at a casino, which is regulated in Part 5329. Bulletproof also suggests the adoption of a change-management policy covering change-management logs, classification of assets and change processes.

**Staff response:**

[REDACTED]

Bulletproof suggests that section 5329.32 require that independent assessments be performed within 90 days of launch and include specific assessments to be performed. Bulletproof recommends that the Commission require quarterly vulnerability scans be performed by the licensee, or an independent professional, and that those results be provided to the Commission with mitigation plans. Bulletproof also recommends that technical security controls be adopted, against which a system can be audited annually. Bulletproof also recommends that the commission require the licensee to implement, maintain, regularly review and revise, and comply with a comprehensive information security management system, the purpose of which would be to take reasonable steps to protect the confidentiality, integrity and availability of personal identifying information of individuals who place a wager with the licensee.

**Staff response:**

[REDACTED]

DraftKings, Inc. (“DraftKings”) is an applicant for licensure as a mobile sports wagering platform provider and operator, a temporarily permitted interactive fantasy sports operator and a vendor operating the sportsbook at del Lago Casino & Resort. DraftKings commented on several sections of the mobile sports wagering proposal.

DraftKings suggests that employees of a mobile sports wagering licensee be permitted to wager on the platforms of other New York licensees.

**Staff response:**

[REDACTED]

[REDACTED]

DraftKings suggests adding a time period of 10 days in which to make a disclosure to the Commission of a material change described in rule 5330.5(a).

**Staff response:**

[REDACTED]

DraftKings suggests limiting the number of employees who would need to be licensed as key employees, limiting the requirement to those in a supervisory capacity who are empowered to make discretionary decisions that regulate New York sports wagering operations.

**Staff response:**

[REDACTED]

DraftKings suggests clarification of the requirement of employee registration apply explicitly to employees involved in the operation of mobile sports wagering in New York, that the registration requirement apply annually (instead of quarterly) and that the rule omit the submission of “such other identifying information as the commission may require.”

**Staff response:**

[REDACTED]

DraftKings suggests that the requirement to license employees who have access “to servers and other equipment located at a casino” is overbroad, but does not describe any example of what types of functions it believes the proposed rule covers that should not require licensure of an employee.

**Staff response:**

[REDACTED]

DraftKings suggests changes to the proposed rule on official league data. DraftKings suggests limiting this requirement to only “commercially reasonable” league data and to wager types other than the outcome of the sports contest and wagers placed in-game. DraftKings further suggests that once a skin receives authorization to use an alternative data source for a sports wager type, then all skins should be allowed to use that same source to settle wagers.

**Staff response:**

[REDACTED]

DraftKings suggests that the requirement of independent laboratory testing of mobile sports wagering software be limited to “critical” software, to be defined as software that includes wagering, geolocation, identification and rules compliance.

**Staff response:**

[REDACTED]

DraftKings suggests that error reporting requirements be limited “significant” loss of communication with data feeds and that reporting of errors within 48 hours be limited to errors that results in wagers being accepted at incorrect odds.

**Staff response:**

[REDACTED]

DraftKings suggests that the requirement for a link to the customer complaint process be placed on a customer’s account page (instead of the skin’s main page).

**Staff response:**

[REDACTED]

DraftKings suggests that remittance of mobile sports wagering taxes be monthly (instead of weekly), noting that Racing, Pari-Mutuel Wagering and Breeding Law section 1367(8) requires tax remittance “at least” monthly.

**Staff response:**

[REDACTED]

DraftKings suggests that a platform provider’s gross gaming revenue reports should be required from either accounting or finance department personnel of a platform provider.

**Staff response:**

[REDACTED]

DraftKings suggests that the rule governing withdrawals from bettor accounts include crediting the customer’s e-wallet as a method of withdrawal.

**Staff response:**

[REDACTED]

DraftKings suggests that submission of promotions be limited to new promotions and that a skin should not be required to submit substantially similar promotional mechanisms the Commission has previously approved.

**Staff response:**

[REDACTED]

Penn National Gaming, Inc. and Penn Sports Interactive, LLC (collectively, "Penn National") commented on five of the proposed rules.

Penn National suggests that the rule establishing the presumptive use of official league data to determine wagers be rephrased. Proposed rule 5330.8(b) provides that official league data "shall" be used "unless a skin demonstrates to the satisfaction of the commission that sports wagers for [a particular] sports wager type may be determined reliably, accurately and timely by an alternative data source." Penn National proposes alternative language that official league data "is preferred" for wager determination "unless a skin requests to use an alternative data source, and the commission does not make a finding that such alternative data source harms the integrity of sports wagering."

**Staff response:**

[REDACTED]

Penn National suggests a change to the definition of "mobile sports wagering promotion" in proposed rule 5330.1(b)(7), to remove "odds benefit and "odds boosts" from the definition. Penn National suggests that submission of proposed odds boosts for Commission approval would constrain operator flexibility.

**Staff response:**

[REDACTED]

Penn National suggests changes in the requirements for promotions set forth in proposed rule 5330.38(a). Penn National suggests reducing the submission time from 15 days prior to 48 hours prior and suggests that approval should not be required for promotions that "are structurally similar to those that have received prior approval by the commission."

**Staff response:**

[REDACTED]

Penn National suggests amendments to the proposed rule in regard to controls to review the accuracy and timeliness of data feeds used in a mobile sports wagering system. Penn National

suggests that the responsibility for having controls in place and maintaining error records should be placed on either the skin or the platform provider. Penn National also suggests distinguishing between system outages and data feed errors for purposes of reporting occurrences to the Commission, allowing data feed errors to be made available to the Commission rather than reported to the Commission.

**Staff response:**

[REDACTED]

Penn National suggests amendments to the proposed rule governing a bettor's withdrawal of funds. Penn National suggests removal of the provision requiring notification to a sports bettor of an investigation into suspicious wagering activity as an exception to the rule requiring receipt of requested funds within seven days. Penn National also suggests adding two more exceptions to the prompt-withdrawal general rule: if a skin requests additional documentation to verify the account ownership of the bettor or if a payment processor delays the withdrawal.

**Staff response:**

[REDACTED]

[REDACTED]

cc: Robert Williams, Executive Director  
Thomas Anapolis, Director, Division of Gaming  
Jim Googas, Manager, Sports Operations

attachment

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## PART 5329

### **Sports Wagering at Casino Lounges and Other Public Casino Locations**

Section	
5329.1	[Definitions] <u>Applicability and definitions</u>
5329.2	[Sports pool] <u>Casino sports wagering</u> license [petition] <u>application</u>
5329.3	Term of <u>casino sports wagering</u> license and review
5329.4	Vendor licensing
5329.5	Reporting of changes
5329.6	Licensing of individuals
5329.7	Misconduct and improper associations
5329.8	Internal controls
5329.9	Sports wagering lounge
5329.10	Sports pool system requirements
5329.11	Automated ticket machines
5329.12	House rules
5329.13	[Wager] <u>Sports wager</u> types
5329.14	Parlay card wagers
5329.15	Layoff wagers
5329.16	Information posting
5329.17	Manner of placing wagers
5329.18	[Wagering] <u>Sports wagering</u> tickets
5329.19	[Wagering] <u>Sports wagering</u> restrictions
5329.20	Certain payouts; <u>wagering</u> ticket control
5329.21	Cancellation <u>or rescission</u> of <u>sports wagers</u>
5329.22	Structuring of multiple <u>sports wagers</u>
5329.23	[Patron] <u>Authorized sports bettor</u> complaints
5329.24	[Operator reserve] <u>Reserve</u> requirements
5329.25	Prohibited actions
5329.26	Duties to report
5329.27	Sports pool integrity; confidential information
5329.28	Tax
5329.29	Gross gaming revenue reports and reconciliation
5329.30	Accounting and financial records
5329.31	Duties to give evidence
5329.32	Reporting of compliance
5329.33	Review, examination of records
5329.34	Responsible gaming
5329.35	Other regulations apply
5329.36	Suspension, fines, revocation and other discipline

#### **§ 5329.1. [Definitions] Applicability and definitions.**

(a) Applicability. This Part applies to sports wagering conducted by a casino sports wagering licensee pursuant to Racing Pari-Mutuel Wagering and Breeding Law section 1367. For rules and regulations that apply to mobile sports wagering conducted through servers or other electronic equipment at

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casinos pursuant to Racing, Pari-Mutuel Wagering and Breeding Law sections 1367 and 1367-a, see Part 5330 of this subchapter, some sections of which may refer back to and incorporate certain provisions of this Part.

**(b) Definitions.** Unless the context indicates otherwise, the following definitions and the definitions set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1367 are applicable throughout this Part:

[(a)] (1) Authorized sports bettor means an individual who is physically present in a casino when placing a sports wager and who is not a prohibited sports bettor.

[(a)] (2) Automated ticket machine means an electronic device that, at a minimum, is used for the execution of permitted sports wagers placed by [a patron] an authorized sports bettor directly and permissible redemption of winning sports wagers within a sports wagering lounge or other location within the [gaming facility] casino as approved by the commission.

(3) Casino sports wagering licensee means a casino licensed to operate sports pools pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1367(2)(a), equivalent to the definition of operator set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1367(1)(n).

[(b)] (4) Event number means a set of alphabetic and/or numeric characters that corresponds to a sports event or occurrence within a sports event.

[(c)] Integrity monitoring provider means a vendor approved by the commission to receive reports of unusual betting activity from sports pool operators for the purpose of assisting such operators in identifying suspicious betting activity.

(d) (5) Odds maker means a person licensed as a casino key employee or as an employee of a [casino vendor enterprise licensee] sports pool vendor responsible for the final approval of all odds established on any sports wager made pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1367 and this Part.

[(e)] (6) Operations wagering manager means a person licensed as a casino key employee or as an employee of a [casino] sports pool vendor [enterprise licensee] responsible for the operations of sports wagering at a casino.

[(f)] (7) Parlay card means a physical instrument offering a multi-contest sports wager.

[(g)] (8) Parlay card wager means a transaction on the outcome of a series of three or more sports events with a predetermined fixed payout.

[(h)] (9) Prohibited sports [pool participant] bettor means any person whose participation may undermine the integrity of wagering on a sports event or the conduct of such sports event itself, or any person who is prohibited for other good cause, including, without limitation, the following, as prescribed by Racing, Pari-Mutuel Wagering and Breeding Law section 1367(1) and this paragraph:

[(1)] (i) any individual placing a sports wager as an agent or proxy;

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[(2)] (ii) any athlete whose performance may be used to determine, in whole or in part, the outcome of such wagering;

[(3)] (iii) any person who is an athlete, player, coach, referee or other game official, physician, trainer, sports agent, owner or employee or independent contractor of a team, [employee] player union and umpire union personnel, or [governing body] employee, [in any sports event overseen by such person's sports governing body] official or independent contractor of a sports governing body if the sports wager is based on any sport or athletic event overseen by the individual's sports governing body;

[(4)] (iv) any person with access to material, non-public confidential information about a sports event that is the subject of such wagering;

[(5)] (v) a person identified to the commission by a sports governing body that the commission agrees is a person who should be a prohibited sports [pool participant] bettor; [or]

[(6)] (vi) any person who holds a position of authority or influence sufficient to exert influence over the participants in a sports event that is the subject of a sports wager, if such person is not otherwise described by this subdivision;

(vii) any principal, key employee or casino gaming employee of a casino and its affiliates, except as may be permitted by the commission;

(viii) any non-gaming employee at the casino that employs such person;

(ix) any contractor, subcontractor, or consultant, or officer or employee of a contractor, subcontractor, or consultant, of a casino sports wagering licensee if such person is directly involved in the operation or observation of sports wagering, or the processing of sports wagering claims or payments;

(x) any employee of a mobile sports wagering licensee, as defined in subdivision (b) of section 5330.1 of this subchapter, and its affiliates, except as may be permitted by the commission;

(xi) any contractor, subcontractor, or consultant, or officer or employee of a contractor, subcontractor, or consultant, of a mobile sports wagering licensee, as defined in subdivision (b) of section 5330.1 of this subchapter, if such person is directly involved in the operation or observation of mobile sports wagering, or the processing of mobile sports wagering claims or payments;

(xii) any person subject to a contract with the commission if such contract contains a provision prohibiting such person from participating in sports wagering;

(xiii) any spouse, child, sibling or parent residing in the principal place of abode of any of the foregoing persons at the same casino sports wagering licensee where the foregoing person is prohibited from participating in sports wagering;

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(xiv) any officer or employee of the commission; and

(xv) any minor.

[(i)] (10) *Sports pool vendor* means a licensed casino vendor enterprise, as defined in section 5307.1 of this subchapter, that operates on behalf of a casino or assists a casino in the operation of a sports pool.

[(j)] (11) *Structured wager* means to place knowingly a series of sports wagers in any amount, at one or more facilities, on one or more days, in any manner, to circumvent knowingly the recording and reporting requirements of section 5329.22 of this Part. The sports wager or wagers need not exceed the dollar thresholds in section 5329.22 at any single facility in any single day in order to constitute structuring within the meaning of this definition.

[(k)] *Suspicious betting activity* means wagering activity that might be related to an attempt or effort to fix the outcome of a sports event, or any portion thereof, or occurrence within a sports event.

[(l)] (12) *Suspicious wager* means a sports wager that [an operator] a casino sports wagering licensee knows or has reason to suspect is being attempted or was placed, including, without limitation:

[(1)] (i) in violation of or as part of a plan to violate or evade local, state or Federal law or regulation prohibiting wagering on a type of sports event; or

[(2)] (ii) in violation of or as part of a plan to violate or evade local, state or Federal law or regulation prohibiting wagering by, or on behalf of, a prohibited person, as defined in subdivision (b) of section 5329.19 of this Part; or

[(3)] (iii) by a person who has no business or apparent lawful purpose in placing such wager or is not the sort of wager that a particular [patron] authorized sports bettor would normally be expected to place.

[(m)] *Wager* means a transaction placed by a patron on an authorized sporting event or events or an occurrence or occurrences therein.

[(n)] (13) *Wagering cashier* means an employee of [an operator] casino sports wagering licensee or sports pool vendor who accepts wagers at a sports wagering lounge.

[(o)] (14) *Wagering platform* means the combination of hardware, software and data networks used to manage, administer and control sports wagering.

[(p)] (15) *Wagering ticket* means a physical record issued and maintained by the wagering platform that evidences a sports wager.

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**§ 5329.2. [Sports pool] Casino sports wagering license [petition] application.**

*(a) Eligibility.*

(1) Only licensed casinos in good standing shall be eligible to obtain a [sports pool] casino sports wagering license. As set forth in Racing, Pari-Mutuel Wagering and Breeding Law section [1367(3)(a)] 1367(2)(a), a casino that wishes to operate sports pools shall first obtain a [sports pool] casino sports wagering license from the commission, which shall be in addition to the casino's gaming facility license. Any entity holding a casino operating [license] certificate issued pursuant to [article 13] Racing, Pari-Mutuel Wagering and Breeding Law section 1331 shall be deemed to have the requisite financial stability, integrity and responsibility and good character, honesty and integrity so long as such license is in good standing.

(2) A prohibited sports [pool participant] bettor shall not be permitted to have any ownership interest in, control of or otherwise be employed by [an operator] a casino sports wagering licensee or a sports pool vendor, unless otherwise approved by the commission. This prohibition shall not apply to any person who has less than 10 percent direct or indirect ownership interest in the [operator] casino sports wagering licensee or sports pool vendor.

*(b) Plan of operation.* Each applicant for a [sports pool] casino sports wagering license shall submit a detailed plan of operation that includes such information as the commission deems necessary, including, without limitation, [to] the name of the sports pool vendor, if any, casino key employees responsible for the sports pool operation, specifications of the sports pool lounge, hours of operation, staffing plan and an integrity monitoring plan.

*(c) Evidence of experience in sports pools.* An applicant for a [sports pool] casino sports wagering license shall disclose such applicant's experience, if any, and the experience of any sports pool vendor proposed to be involved in such applicant's sports pool operations, in the operation of sports pools in any jurisdiction, including, without limitation:

(1) a list of each jurisdiction in which such applicant or proposed sports pool vendor has been authorized to operate or assist in the operation of sports pools, including dates of authorized operation;

(2) all regulatory infractions, discipline or other sanctions that have been imposed on such applicant or proposed sports pool vendor relating to any gaming activity, including sports pools, along with a detailed description of the conduct involved and the nature of the sanction or discipline; and

(3) whether the applicant or proposed sports pool vendor has operated gaming activity, including sports pools, in any jurisdiction in an unauthorized manner or been accused or adjudicated to have engaged in illegal gambling or wagering of any kind, including a detailed description of the conduct involved and the nature of the sanction or discipline.

*(d) Internal Controls.* Prior to the issuance of a license, an applicant for a casino sports [pool] wagering license shall submit for commission approval such applicant's proposed internal controls, pursuant to section 5329.8 of this Part.

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(e) *Amendment.*

(1) Each applicant and licensee shall promptly file with the commission an update explaining any new or changed facts or circumstances whenever such occurs with respect to any matter set forth in a casino sports [pool] wagering license application.

(2) All applicants and licensees shall have an obligation to ensure that information, documentation and assurances submitted to the commission are not misleading considering the circumstances in which such were submitted.

(3) The commission may permit any applicant to file an amendment to its application at any time prior to the commission's final action thereon.

(4) The failure of an applicant or licensee to comply with applicable laws and regulations shall be grounds for denial of the application or for suspension or revocation of a casino sports [pool] wagering license.

(f) *Determination of application.* Upon evaluation of each application, the commission shall either:

(1) grant the application for a casino sports [pool] wagering license;

(2) grant the application with conditions the commission deems necessary or advisable;

(3) request additional information or documentation; or

(4) deny the application.

The commission may deny a casino sports [pool] wagering license to an applicant that has failed to establish such applicant's competence to operate a sports pool or provide an adequate plan of operation (including acceptability of a sports pool vendor). An applicant may request a de novo hearing to challenge an application denial or condition imposed. Such hearing shall be held pursuant to procedures the commission may establish.

**§ 5329.3. Term of casino sports wagering license and review.**

(a) *Term.* A casino sports [pool] wagering license shall remain valid for the period of the casino's gaming facility license, unless a condition of such casino sports [pool] wagering license pursuant to paragraph (2) of subdivision (f) of section 5329.2 of this Part establishes a shorter casino sports [pool] wagering license period.

(b) *Review.* No later than three months before each five-year anniversary of the issuance of a casino sports [pool] wagering license, unless a condition of such casino sports [pool] wagering license pursuant to paragraph (2) of subdivision (f) of section 5329.2 of this Part establishes a shorter time period, [an operator] a casino sports wagering licensee shall submit to the commission the following information to enable the executive director of the commission to determine, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section [1367(3)(a)] 1367(2)(a), that such [operator] casino sports

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wagering licensee continues to meet the requirements of article 13 of the Racing Pari-Mutuel Wagering and Breeding Law and this Part:

- (1) a list of each jurisdiction in which such [operator] casino sports wagering licensee or a sports pool vendor with which such [operator] casino sports wagering licensee has contracted, has been authorized within the prior five years to operate or assist in the operation of sports pools, including dates of authorized operation;
- (2) all regulatory infractions, discipline or other sanctions that have been imposed on such [operator] casino sports wagering licensee or a sports pool vendor with which such [operator] casino sports wagering licensee has contracted, within the prior five years relating to gaming activity, including sports pools. The submission shall include a detailed description of the conduct involved and the nature of the sanction or discipline;
- (3) whether the [operator] casino sports wagering licensee or sports pool vendor has operated sports pools in any jurisdiction within the prior five years in an unauthorized manner or been accused or adjudicated to have engaged in illegal gambling or wagering of any kind, including a detailed description of the conduct involved and the nature of the sanction or discipline;
- (4) whether the [operator] casino sports wagering licensee or sports pool vendor has committed any misconduct or engaged in any improper associations within the meaning of section 5329.7 of this Part; and
- (5) the annual financial statements audited according to generally accepted accounting principles, of the sports pool vendor, if any, for the prior three years.

#### **§ 5329.4. Vendor licensing.**

(a) *Sports pool vendor.* [An operator] A casino sports wagering licensee may contract with a sports pool vendor to operate or assist in the operation of sports pools on behalf of such [operator] casino sports wagering licensee, as permitted by Racing, Pari-Mutuel Wagering and Breeding Law section [1367(3)(f)] 1367(2)(h). As required by such statute, any such sports pool vendor shall obtain a casino vendor enterprise license pursuant to Part 5307 of this subchapter prior to the execution of any contract to so operate. [An operator] A casino sports wagering licensee always shall remain responsible for compliance with article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this subchapter, even if such licensee has engaged a sports pool vendor to conduct sports pool wagering on behalf of such licensee. The acts, omissions and knowledge of a sports pool vendor with respect to matters addressed in article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this subchapter shall be imputed to and also be the responsibility of the casino sports wagering licensee. A sports pool vendor shall also be independently responsible for compliance with article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this subchapter.

(b) *Equipment and software providers.* All manufacturers, suppliers and service providers of sports [pool] wagering equipment, including, without limitation, wagering platforms, shall be licensed as casino vendor enterprises pursuant to section 5307.1 of this subchapter.

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### **§ 5329.5. Reporting of changes.**

Each [operator] casino sports wagering licensee and sports pool vendor shall have a continuing duty to disclose any material change or changes in such entity's business form or activity, information submitted in support of a review pursuant to section 5329.3 of this Part; information provided to [patrons] authorized sports bettors; information provided to investors; or information provided in an annual report, or statutory duty to provide information, to the commission.

### **§ 5329.6. Licensing of individuals.**

(a) *Persons directly involved.* A person directly involved in the conduct and operation of a sports pool shall be licensed or registered by the commission as a casino key employee or as a casino employee, as determined by the commission pursuant to title 3 of article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and Parts 5303, 5304 and 5305 of this subchapter, as applicable, as required by Racing, Pari-Mutuel Wagering and Breeding Law section [1367(4)(a)] 1367(3)(a).

(b) *Persons not directly involved.* A person employed in a sports wagering lounge but not directly involved in wagering may be required to register with the commission as a casino employee, consistent with the registration standards applicable to persons not directly involved in casino gaming, as set forth in Part 5306 of this subchapter, as required by Racing, Pari-Mutuel Wagering and Breeding Law section [1367(4)(a)] 1367(3)(a).

(c) *Employees of a sports pool vendor.* Employees of a sports pool vendor shall be licensed or registered as section 5307.5 of this subchapter and Racing, Pari-Mutuel Wagering and Breeding Law section [1367(4)(a)] 1367(3)(a) require.

### **§ 5329.7. Misconduct and improper associations.**

The commission may impose penalties or take other appropriate action against [an operator] a casino sports wagering licensee or a sports pool vendor if the commission finds that any such licensee, or any person employed by or associated with such licensee:

(a) is associating, consorting or negotiating with persons who have been convicted of an unauthorized gambling or gambling-related crime;

(b) is guilty of any fraud or has attempted any fraud or misrepresentation in connection with sports pools or otherwise;

(c) has violated any law, rule or regulation with respect to sports pools or sports wagers in any jurisdiction; or

(d) has violated any rule, regulation or order of the commission.

### **§ 5329.8. Internal controls.**

(a) *Submission and requirements.* Each [operator] casino sports wagering licensee shall submit to the commission for approval internal controls for all aspects of sports pool wagering operations prior to

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commencing operations. Such internal controls shall address the following items in regard to the sports pool system, at a minimum:

- (1) user access controls for all sports pool personnel;
- (2) description of segregation of duties;
- (3) automated and manual risk management procedures;
- (4) procedures for identifying and reporting fraud and suspicious conduct;
- (5) procedures to prevent wagering by [patrons] prohibited sports pool bettors [from wagering];
- (6) procedures to ensure no sports wagering shall be based on a prohibited sports event;
- [(6)] (7) description of anti-money laundering compliance standards;
- [(7)] (8) description of all types of sports wagers available to be offered;
- [(8)] (9) description of all integrated third-party systems;

[(9)] (10) procedures for the reconciliation of assets and documents contained in the wagering cashier drawers and automated ticket machines, which shall provide for the reporting of any overage or shortage; [and]

[(10)] (11) in the event of a failure of [the sports pool's] a casino sports wagering licensee's ability immediately to pay winning wagers, the licensee shall have internal controls detailing the method of ultimately paying winning wagers. The licensee also shall file with the commission an incident report for each system failure and document the date, time and reason for the failure along with the date and time the system is restored [with the commission]; ~~and~~

(12) in the event of changes and upgrades to the hardware and software used to execute sports wagering, procedures the casino sports wagering licensee intends to follow in order to receive approval from the commission, including recertification of such sports wagering components; and

(13) all data sources used in sports wager determination. Official data from a sports governing body shall be used to determine all sports wagers, unless a casino sports wagering licensee demonstrates (through its data provider vendor, if applicable) to the satisfaction of the commission that wagers for such wager type may be determined objectively, reliably, accurately and timely by an alternative data source. See Racing, Pari-Mutuel Wagering and Breeding Law section 1367(14).

(b) *Reconciliation.* The internal controls shall detail the reconciliation of assets and documents contained in a sports wagering lounge cashier's drawer.

### **§ 5329.9. Sports wagering lounge.**

(a) *Lounge.* Sports wagering conducted by a casino sports wagering licensee shall occur only in [a sports wagering lounge of an operator, as required by] the locations set forth in Racing, Pari-Mutuel

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Wagering and Breeding Law section [1367(3)(b)] 1367(2)(b). Any [such] sports wagering lounge shall [be] measure no less than 500 square feet and promote optimum security of the facility, which shall include the installation and maintenance of security and surveillance equipment consistent with the requirements of sections 5314.4 and 5314.5 of this Part, including closed-circuit television equipment, according to specifications submitted to and approved by the commission. No wagering ticket shall be sold except at regular ticket windows, properly designated by signs, except that wagering tickets and vouchers may be issued by automated ticket machines within a sports wagering lounge or other location within the [gaming facility] casino as approved by the commission.

(b) *Booth*. Each lounge shall include a booth that:

(1) shall be designed and constructed to provide maximum security for the materials stored and the activities performed therein;

(2) includes one or more cashier windows, each of which shall contain:

(i) a cashier's drawer and terminal through which financial transactions related to sports wagering are conducted;

(ii) a permanently affixed number, which shall be visible to the CCTV surveillance system;

(iii) a physical barrier designed to prevent direct access to the materials stored and activities performed in such booth if a cashier is cashing a winning wagering ticket or voucher of more than \$10,000. Such windows shall be secured physically from any other cashier locations within the booth; and

(iv) manually triggered silent alarm systems, which shall be connected directly to the monitoring rooms of the casino surveillance;

(3) includes manually triggered silent alarm systems, which shall be connected directly to the monitoring rooms of the casino surveillance;

(4) includes closed circuit television cameras capable of accurate visual monitoring and taping of any activities, including the capturing of the patron's facial image when conducting transactions at the counter;

(5) has an alarm for each emergency exit door that is not a component of an access control vestibule; and

(6) includes a secure location for the purpose of storing funds issued by a cage to be used in the operation of a sports pool.

(c) *Required personnel*. Each [operator] casino sports wagering licensee shall have, or otherwise retain through a sports pool vendor, one or more persons to serve as an:

(1) oddsmaker; and

(2) operations wagering manager.

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## **§ 5329.10. Sports pool system requirements.**

(a) *Submission to laboratory.* Prior to operating a sports pool, all equipment and software used in conjunction with its operation shall be submitted to a licensed independent gaming test laboratory for review and [approval] certification for compliance with the standards set forth in this Part and any additional technical requirements the commission establishes.

(b) *Server and wager creation.* The server or other equipment to accept sports wagers [at a sports pool] shall be located within the casino. In creating sports wagers that will be offered to the public, a sports pool operations manager may receive advice and recommendations from any source or entity in other jurisdictions and may take into consideration information in regard to odds and wagers placed on sports events.

(c) *Risk management framework.* A sports pool system submission shall contain a description of the risk management framework, including, without limitation:

- (1) user access controls for all sports pool personnel;
- (2) information in regard to segregation of duties;
- (3) information in regard to automated risk management procedures;
- (4) information in regard to fraud detection;
- (5) controls ensuring regulatory compliance;
- (6) description of anti-money laundering compliance standards;
- (7) description of all software applications that comprise the system;
- (8) description of all types of sports wagers available to be offered by the system;
- (9) description of all integrated third-party systems; and
- (10) description of the method to prevent past posting.

(d) *Data retention.* A sports pool system shall maintain all transactional [betting] sports wagering data for a period of 10 years.

(e) *Information recording.* A sports pool system shall be capable of recording the following information for each sports wager made:

- (1) description of event;
- (2) event number;
- (3) sports wager selection;

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- (4) type of sports wager;
- (5) amount of sports wager;
- (6) date and time of sports wager;
- (7) unique wager identifier; and
- (8) [an indication of] when the sports wagering ticket expires.

(f) *Wagering tickets.* Each sports wagering ticket a cashier or automated ticket machine generates shall include:

- (1) all of the information set forth in subdivision (e) of this section;
- (2) name and address of the party issuing the sports wagering ticket;
- (3) a barcode or similar symbol or marking as approved by the commission, corresponding to the unique sports wager identifier;
- (4) method of redeeming winning sports wagering ticket via mail; and
- (5) identification of the cashier or automated ticket machine generating the sports wagering ticket.

(g) *Vouchers.* Sports pool vouchers issued by a sports pool system shall contain the following information:

- (1) date, time, and location of issuance;
- (2) amount of the voucher;
- (3) unique voucher identifier;
- (4) expiration date of the voucher;
- (5) name of [gaming facility] casino; and
- (6) [an indication] a statement that the voucher can be redeemed only in exchange for a sports wager or cash.

(h) *Voucher redemption.* If a sports pool system issues and redeems a sports pool voucher, the system shall be capable of recording the following information for each voucher:

- (1) amount of voucher;
- (2) date, time, and location of issuance;
- (3) unique voucher identifier;

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(4) expiration date of the voucher; and

(5) date, time, and location of redemption, if applicable.

(i) *Required system functions.* A sports pool system shall be capable of performing the following functions:

(1) creating sports wagers;

(2) settling sports wagers;

(3) voiding sports wagers;

(4) cancelling sports wagers;

(5) processing lost, destroyed or expired sports wagering tickets;

(6) preventing any sports [pool] wager in excess of \$10,000 or making a payout in excess of \$10,000 until authorized by a supervisor; and

(7) maintaining the following:

(i) description of the event;

(ii) event number;

(iii) sports wager selection;

(iv) type of sports wager;

(v) amount of sports wager;

(vi) amount of potential payout;

(vii) date and time of sports wager;

(viii) identity of the cashier accepting the sports wager;

(ix) unique sports wagering ticket or voucher identifier;

(x) expiration date of sports wagering ticket;

(xi) [patron] the authorized sports bettor's name, if known;

(xii) date, time, amount, and description of the settlement;

(xiii) location where the sports wager was made;

(xiv) location of redemption; and

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(xv) identity of cashier settling the sports wager, if applicable.

(j) *Voided and cancelled sports wagers.* When a sports [pool] wager is voided or cancelled, the system shall indicate clearly that the sports wagering ticket is voided or cancelled, render such ticket nonredeemable and make an entry in the system indicating the void or cancellation and identity of the cashier or automated process.

(k) *Past posting and known event outcomes.* A sports pool system shall prevent past posting of sports wagers and the voiding or cancellation of sports wagers after the outcome of an event is known.

(l) *Self-authentication.* A sports pool system shall, at least once every 24 hours, perform a self-authentication process on all software used in the sports pool system to offer, record and process sports wagers to ensure there have been no unauthorized modifications. In the event [of an authentication failure] that an unauthorized modification is identified as a result of this process, at a minimum, the system immediately shall notify the casino operations wagering manager using an automated process. The operations manager shall notify the commission promptly of the authentication failure. The system shall record the results of all self-authentication attempts and [maintained] maintain such record for a period of not less than 90 days.

(m) *Controls.* A sports pool system shall have controls in place to review the accuracy and timeliness of any data feeds used to offer or settle sports wagers. In the event that an incident or error occurs that results in a loss of communication with data feeds used to offer or redeem sports wagers, such error shall be recorded in a log capturing the date and time of the error, the nature of the error and a description of such error's impact on the system's performance. Such information shall be maintained for a period of not less than six months.

(n) *Commission access to data.* Consistent with existing commission authority, the [operator] casino sports wagering licensee and sports pool vendor shall provide access to sports wagering transaction data and related data the commission may deem necessary, in a manner approved by the commission.

(o) *Sports pool system.* A sports pool system shall be capable of preventing any sports [pool] wager in excess of \$10,000 or making a payout in excess of \$10,000 until authorized by a supervisor. A sports pool system shall be capable of maintaining the following:

- (1) description of the event;
- (2) event number;
- (3) sports wager selection;
- (4) type of sports wager;
- (5) amount of sports wager;
- (6) amount of potential payout;
- (7) date and time of sports wager;

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- (8) identity of the cashier accepting the sports wager;
- (9) unique wagering ticket or voucher identifier;
- (10) expiration date of sports wagering ticket;
- (11) [patron] the authorized sports bettor's name, if known;
- (12) date, time, amount, and description of the settlement;
- (13) location where the sports wager was made;
- (14) location of redemption; and
- (15) identity of cashier settling the sports wager, if applicable.

(p) *Redeemed lost wagering tickets.* For all lost sports wagering tickets that are redeemed, a sports pool system shall record and maintain the following information:

- (1) date and time of redemption;
- (2) employee responsible for redeeming the sports wagering ticket;
- (3) name of [patron] the authorized sports bettor redeeming the sports wagering ticket;
- (4) unique sports wagering ticket identifier; and
- (5) location of the redemption.

#### **§ 5329.11 Automated ticket machines.**

(a) *Permitted.* [An operator] A casino sports wagering licensee may use an automated ticket machine or machines for sports wagering transactions in conjunction with an approved sports pool system in a sports wagering lounge or other location within the [gaming facility] casino.

(b) *Restrictions.* An automated ticket machine used in accordance with this section shall not:

- (1) issue or redeem a sports pool wagering ticket or voucher with a value of more than \$3,000;
- (2) issue a sports wagering ticket or voucher with a potential payout of more than \$10,000; and
- (3) redeem a sports wagering ticket or voucher with a value of more than \$3,000.

(c) *Drop.* On a daily basis, [an operator] a casino sports wagering licensee shall remove the bill validator boxes in the automated ticket machines (the *automated ticket machine drop*). Surveillance shall monitor and record the automated ticket machine drop. [An operator] A casino sports wagering licensee shall submit an automated ticket machine drop schedule to the commission, which shall include:

- (1) the time the drop is scheduled to commence; and

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(2) the number and locations of automated ticket machines.

(d) *Keys.* A security department member and a cage department member shall obtain the keys necessary to perform the automated ticket machine drop and/or currency cassette replacement, in accordance with the casino's key sign-out and sign-in procedures.

(e) *Cage department member.* A cage department member with no incompatible functions shall place empty bill validator boxes needed for the automated ticket machine drop into a secured cart and prepare an automated ticket machines bill validator drop form, which shall include the following:

(1) gaming date;

(2) identification number of the secured cart;

(3) number of empty boxes placed into the secured cart; and

(4) signature of the cage department member documenting that the number of empty boxes equals the number of automated ticket machines in use.

(f) *Completion of drop.* In the presence of a security department member, a cage department member shall complete the automated ticket machines drop at each automated ticket machine by:

(1) unlocking the cabinet housing the bill validator boxes;

(2) removing the bill validator boxes and [place] placing the removed bill validator boxes into a secured cart and [insert] inserting the empty bill validator boxes and reject bins;

(3) locking the cabinets housing the bill validator boxes; and

(4) transporting the secured cart to a count room or other location approved by the commission for the count of the automated ticket machine drop.

(g) *Count.* The contents of the bill validator boxes shall be counted by one or more accounting department employees with no incompatible function, who shall:

(1) document the contents, by item and amount, for each box on a balance receipt;

(2) prepare or generate an automated ticket machine drop totals report that summarizes the total currency, sports wagering tickets[,], and sports pool vouchers counted;

(3) verify that the number of bill validator boxes counted equals the number of empty boxes initially recorded on the automated ticket machine bill validator drop form. Any exceptions encountered during the drop and count process shall be documented on this form;

(4) transfer the currency to a main bank cashier with a copy of the automated ticket machine drop totals report;

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(5) transport the sports wagering tickets and vouchers to a secured location approved by the commission for storage until permitted to destroy; and

(6) transport the balance receipts, the automated ticket machine drop totals report and automated ticket machine bill validator drop form to the casino accounting department.

(h) *Replenishment.* On a daily basis or at a greater frequency as needed, [an operator] a casino sports wagering licensee shall replenish the currency cassettes in the automated ticket machines. A cashier with no incompatible functions shall prepare the currency cassettes to replenish the automated ticket machines, which shall be documented on a two-part automated ticket machines cassette fill form. The cashier shall retain one copy of such form and the duplicate shall be used to document the completion of the transaction. The form shall include:

(1) designation of the automated ticket machine to which the fill is to be performed;

(2) for each denomination, the number of bills and total value;

(3) the total value of all currency cassettes;

(4) date and time prepared; and

(5) signature of the cashier.

(i) *Completion of replenishment.* A finance department employee shall place the replacement currency cassettes and empty reject bins into a secured cart. In the presence of a security department member, the accounting department employee shall complete the sports pool currency cassette replenishment at each automated ticket machine by:

(1) unlocking the cabinets housing the currency cassettes and reject bins;

(2) removing all currency cassettes and the reject bin, which shall be placed in a secure cart and generate a credit receipt that, at a minimum, includes:

(i) an identification number of the automated ticket machine;

(ii) the date and time;

(iii) the denomination of each currency cassette; and

(iv) the total value of the total number of bills per denomination remaining in each currency cassette being replenished and the reject bin;

(3) inserting the replacement currency cassettes and currency cassette reject bin; and

(4) entering data into the automated ticket machine that describes the fill and generating a fill receipt that, at a minimum, includes:

(i) an identification number of the automated ticket machine;

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(ii) the date and time the fill was performed;

(iii) the denomination of currency for each currency cassette inserted into the machine; and

(iv) the total value of the total number of bills per denomination, for each currency cassette being inserted into the machine;

(5) locking the cabinet and signing the duplicate copy of the automated ticket machine cassette fill attesting that the fill was completed. The fill receipt and the credit receipt shall be deposited in a locked accounting box; and

(6) returning all removed currency cassettes and reject bins in a secured cart to the count room or other location approved by the commission.

(j) *Count and documentation.* One or more accounting department employees with no incompatible function shall count and document the value of the contents of each removed currency cassette and currency cassette reject bin by:

(1) documenting the count of each currency cassette and reject bin on a balance receipt, by automated ticket machine;

(2) preparing or generating a sports pool currency cassette replenishment totals report that summarizes the total currency counted;

(3) transferring the currency to a main bank cashier with a copy of the currency cassette replenishment totals report; and

(4) transporting the balance receipts and currency cassette replenishment totals report to the casino accounting department.

(k) *Reconciliation.* The casino accounting department shall reconcile the automated ticket machines on a daily basis pursuant to internal controls. Any variance shall be documented by the accounting department and reported in writing to the commission within 72 hours of the end of the gaming day during which the variance was discovered. The report shall indicate the cause of the variance and shall contain any documentation required to support the stated explanation.

#### **§ 5329.12. House rules.**

(a) *Content.* Each [operator] casino sports wagering licensee shall adopt comprehensive house rules, which shall be submitted for written approval by the commission. Such house rules shall include the following, at a minimum:

(1) method for calculation of and [payment of] amounts to be paid on winning sports wagers;

(2) effect of schedule changes for all markets offered;

(3) method of notifying [patrons] authorized sports bettors of odds or proposition changes;

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- (4) acceptance of sports wagers at other than posted terms;
- (5) expiration of any winning sports wagering ticket one year after the date of the event;
- (6) method of contacting the [operator] casino sports wagering licensee for questions and complaints;
- (7) [description] acknowledgment of prohibited sports [pool participants] bettors;
- (8) method of the process for any employee of a sports governing body or member team who is not prohibited from sports wagering to register with the commission prior to placing a sports wager; [and]
- (9) method of funding a sports wager;
- (10) minimum and maximum sports wagers by sports governing body; and
- (11) description of sports wagering rules as it relates to in-play wagers.

(b) *Availability.* [An operator's] A casino sports wagering licensee's house rules, together with any other information the commission deems appropriate, shall be displayed conspicuously in the sports wagering lounge, posted on the [operator's] casino sports wagering licensee's website[,] included in the terms and conditions of the sports pool system and made readily available to [patrons] authorized sports bettors in printed form, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367(5).

### **§ 5329.13. [Wager] Sports wager types.**

(a) *Approval of sports wagering menu.* [An operator] A casino applying for licensure shall submit to the commission the types of sports wagers such [operator] casino would like to offer and the sports leagues, associations or organizations on whose contests the [operator] casino wishes to offer such sports wagers. Each type of sports wager and each sports league, association or organization on whose contests such [operator] casino wishes to offer sports wagering is subject to commission approval and may be subject to such conditions as the commission may determine. After licensing of [an operator] a casino sports wagering licensee, commission approval is required before such [operator] licensee is permitted to offer any type of sports wager not previously offered by such [operator] licensee, or an existing sports wager type for a sport, league, association or organization on whose contests the commission has not previously authorized wagering. To obtain commission approval, [an operator] a casino sports wagering licensee shall specify the underlying sport and sports league, association or organization upon which the proposed type of sports wager is based, provide rules for the sports wager and demonstrate that the new type of sports wager will comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1367 and this Part. Following review of the proposed sports wager type, the commission shall inform all [operators] casino sports wagering licensees whether the proposed sports wager type is approved or denied or whether additional information from such [operator] licensee is required.

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(b) *Limitations on sports wager type.*

(1) No sports wager type shall be approved unless:

- (i) the event on which the sports wager is based is an event whose outcome can be verified;
- (ii) the outcome of the sports wager can be generated by a reliable and independent process;
- (iii) the outcome of the event is not affected by any sports wager placed; and
- (iv) the event is conducted in conformity with all applicable laws, rules and regulations.

(2) [An operator] A casino sports wagering licensee shall not offer sports wagers on:

- (i) any prohibited sports event, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section [1367(1)(f)] 1367(1)(s);
- (ii) any horse race;
- (iii) any amateur or youth sports event, except collegiate sports events approved by the commission;
- (iv) any event that is not a sports event; and
- (v) any sports event on which the commission deems wagering to be contrary to public policy, either on the commission's own initiative or upon commission affirmation of a request by a league or governing body that governs such sports event, so long as such request has been made in writing to the commission at least 60 days in advance of such sports event with an explanation of why wagering on such event should not be permitted as a matter of public policy. The commission shall make available a list on its website of sports events on which wagers are not permitted to be offered and may determine, if it believes such prohibitions should be permanent, amend this section accordingly to enumerate such prohibited events.

(3) The commission may, in considering whether to approve or condition a sports wager type pursuant to this section, consider the views of a league, association or organization as the commission may deem advisable.

(c) *Variations on sports wager types.* [An operator] A casino sports wagering licensee may introduce variations of permissible types of sports wagers by seeking commission approval. [An operator] A casino sports wagering licensee is not required to amend a previously approved submission to describe a variation if approved by the commission.

(d) *Conditions placed on sports wager type.* The commission may approve conditionally a sports wager type or the use of a sports wager type for a particular sport, league, association or organization as the commission may deem advisable, such as establishing a limited trial period for a type of sports wager or imposing limits on a particular sports wager, to protect the wagering public, the integrity of sports wagers, the integrity of the sports event upon which a sports wager is based, in whole or in part, or for

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any other reason consistent with the policies underlying article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or this subchapter.

(e) *Withholding of approval.* The commission may, in the exercise of discretion, withhold approval of any proposed sports wagering type that directly or indirectly violates any requirement for permissible sports wagers or that the commission determines to be contrary to public policy.

(f) *Information to commission.* [An operator] A casino sports wagering licensee shall comply with every commission request for information about any type of sports wager that such [operator] casino sports wagering licensee proposes to offer to the public.

(g) *Wagering tournaments.* No wagering tournament shall be conducted without prior approval of the commission. [An operator] A casino sports wagering licensee shall submit the rules of any proposed wagering tournament for commission approval no later than 30 days prior to the anticipated start date of such wagering tournament.

#### **§ 5329.14. Parlay card wagers.**

This section applies to parlay card wagers and not parlay wagers.

(a) *Requirements for parlay card wagers.* Each [operator] casino sports wagering licensee that offers parlay card wagers shall disclose fully, accurately and unambiguously on all parlay card wagering forms:

- (1) the amounts to be paid to winners, the method by which such amounts are to be determined and aggregate payout amount;
- (2) the minimum and maximum [betting] wagering limits, if any;
- (3) the effect of ties or draws in sports events;
- (4) the effect of a sports event not being played on the date specified and of other occurrences that will cause selections to be invalid;
- (5) the procedure for claiming winnings, including, without limitation, the documentation [a patron] an authorized sports bettor must present to claim winnings;
- (6) the requirement that a parlay card wager must consist of at least three selections that have not become invalid under applicable house rules or the wager will be void and will be refunded;
- (7) the rights, if any, reserved by the [operator] casino sports wagering licensee, including, without limitation, the right to eliminate any selection prior to the acceptance of a wager, or to withhold payouts of specified amounts until the outcome of each proposition offered by the parlay card has been determined;
- (8) the requirement that the point spreads, if any, printed on the parlay card wagering form when the wager is accepted will be used to determine the outcomes of the wagers; and

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(9) that the [operator's] casino sports wagering licensee's house rules apply to parlay cards unless otherwise stated on the parlay card wagering form.

(b) *Payout.*

(1) [An operator] A casino sports wagering licensee may limit, with commission approval, the aggregate amount to be paid to winners on a parlay card. Any such aggregate limit shall not be less than an amount disclosed on the parlay card (the *aggregate limit*).

(2) When [an operator] a casino sports wagering licensee knows or reasonably should know that actual payouts on a parlay card will be limited by an aggregate limit, the [operator] casino sports wagering licensee shall cease accepting wagers on such parlay card and making payouts on such parlay card.

(3) When [an operator] a casino sports wagering licensee ceases accepting wagers and making payouts on a parlay card pursuant to paragraph (2) of this subdivision, if the parlay card, [patron] authorized sports bettor receipts and related documentation are distinguishable from the parlay card, receipts and documentation as to which the [operator] casino sports wagering licensee has ceased accepting wagers, then the [operator] casino sports wagering licensee may accept wagers on only those sports events listed on the parlay card whose outcomes have not been determined, in which case such parlay card shall be considered a different parlay card for purposes of this subdivision.

(4) After the outcome of the final sports event offered on a parlay card has been determined, the [operator] casino sports wagering licensee shall determine the total amount of all winning wagers on such parlay card from all [patrons] authorized sports bettors. If such total amount exceeds the aggregate limit, the [operator] casino sports wagering licensee, unless paragraph (5) of this subdivision applies, may pay each winning wager, instead of the amount that would have been due in the absence of such aggregate limit, an amount equal to the amount of such winning wager multiplied by such aggregate limit and divided by the total amount of all winning wagers (including payouts made prior to the suspension of payouts) that would otherwise have been made without regard to such aggregate limit.

(5) Notwithstanding the aggregate limit, if [an operator] a casino sports wagering licensee pays a winner of a parlay card wager more than 10 percent of the aggregate limit before the outcome of every proposition offered by such parlay card has been determined, such [operator] casino sports wagering licensee shall pay every winner of a wager on such parlay card the proper payout amount stated on such parlay card in full and without regard to any aggregate limit.

(6) In specific cases, the commission, only in writing, may waive the requirements of this subdivision or impose requirements more restrictive than the requirements of this subdivision.

**§ 5329.15. Layoff wagers.**

[An operator] A casino sports wagering licensee may, in its discretion, accept a layoff wager from another New York [State licensed operator] State-licensed casino sports wagering licensee or skin, as skin is defined in section 5330.1 of this subchapter. Any such wager shall be placed in the name of the

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[operator] casino sports wagering licensee itself or skin itself. A layoff wager and, if applicable, a resultant payout shall not be included in the calculation of sports pool gross gaming revenue. Each layoff wager shall be reported to the commission, [in such manner as the commission may direct] if possible, prior to the placement of such wager. If not possible, a casino sports wagering licensee or skin shall submit the details of the layoff wager to the commission's division of gaming within 24 hours of the placement of such wager. Layoff wagers shall not be executed with operators in other jurisdictions unless all Federal law requirements are met.

#### **§ 5329.16. Information posting.**

(a) *Information posting.* [An operator] A casino sports wagering licensee shall make available in written form in conspicuous locations in the sports wagering lounge and on conspicuously accessible electronic screens a general explanation of each type of sports wager offered and the point or money line odds. Any explanation shall not be misleading or unfair to [patrons] authorized sports bettors.

(b) *Display of available sports wagering information.* The available sports wagering information for specific sports events shall be displayed in a manner visible to the public. The display shall include the event number, corresponding odds and a brief description of the event. Such information also shall be available on conspicuously accessible electronic screens. Any display shall not be misleading or unfair to [patrons] authorized sports bettors.

[(c) *Lock times.* An operator shall establish a lock time for a wager after which no further wagering shall be accepted, which may correspond to the happening of an event. Such lock time shall be disclosed conspicuously and shall not be changed unless the official start time of an event has changed. No wager shall be accepted after such disclosed lock time.]

#### **§ 5329.17. Manner of placing wager.**

(a) *Placement of sports wagers.* All sports wagers accepted by a casino sports wagering licensee pursuant to this Part shall be placed within a sports wagering lounge with a sports wagering cashier at a sports wagering counter or at an automated ticket machine located within a sports wagering lounge or other location within the [gaming facility] casino as approved by the commission.

(b) *Forms of payment.* [Wagers] Sports wagers pursuant to this Part shall be made in cash, vouchers, gaming chips or [validated] wagering tickets of value or any other form of payment approved by the commission.

[(c) *Rescission.* An operator shall not rescind any wager made pursuant to this Part unless extraordinary circumstances exist and the prior written approval of the commission has been obtained.]

#### **§ 5329.18. [Wagering] Sports wagering tickets.**

(a) [Wagering] Sports wagering ticket requirements. Upon accepting a sports wager, a sports wagering cashier shall cause the sports wagering platform to generate a sports wagering ticket. The sports wagering ticket shall include, at a minimum, the following:

- (1) [operator's] casino sports wagering licensee's name;

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- (2) event number;
- (3) description of event;
- (4) type of sports wager;
- (5) unique sports wagering ticket identifier;
- (6) a barcode or similar symbol or marking, as approved by the commission, corresponding to the unique sports wagering ticket number;
- (7) date and time of issuance;
- (8) cashier identifier or automated ticket machine identifier;
- (9) location of issuance;
- (10) amount of the sports wager;
- (11) date, or dates, of the sports event or events;
- (12) payout odds;
- (13) amount to be paid on a winning sports wager, unless the sports wager is a pari-mutuel wager;
- (14) the [patron's] authorized sports bettor's player card account number, if any; and
- (15) mail-in redemption instructions;
- (16) the sports wagering ticket's expiration date.

(b) *Expiration date of sports wagering ticket.* Any winning sports wagering ticket shall be deemed lapsed and ineligible for payment one year after the date of the last sports event that forms the basis of such sports wager. Any lapsed sports wagering ticket shall be unclaimed funds and shall be deposited by the commission pursuant to the requirements of Racing, Pari-Mutuel Wagering and Breeding Law section 1354 and subdivision (c) of section 5329.29 of this Part. [The wagering ticket shall display clearly on the wagering ticket, such expiration date.]

**§ 5329.19. [Wagering] Sports wagering restrictions.**

(a) *Age.* No person under 21 years of age may place a sports wager with [an operator] a casino sports wagering licensee, as required by Racing, Pari-Mutuel Wagering and Breeding Law section [1367(3)(d)] 1367(2)(d).

(b) *Prohibited persons.* [An operator] A casino sports wagering licensee shall not knowingly accept any sports wager from any prohibited sports [pool participant] bettor. No prohibited sports [pool participant] bettor is permitted to make such a sports wager [at any operator] with any licensee or collect winnings from any such sports wager, which sports wager shall be deemed void. Any person who is a direct or

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indirect legal or beneficial owner of 10 percent or greater of a sports governing body or any of such body's member teams shall not place or accept sports wagers on a sports event in which any member team of such sports governing body participates.

(c) *Proxy wagering and collection prohibited.* [An operator] A casino sports wagering licensee shall not make payment on a winning sports wager to a person who the [operator] licensee knows or reasonably should know is collecting the payment on behalf of another for monetary consideration or in violation of local, state or Federal law. [An operator] A casino sports wagering licensee shall not make payment on a winning sports wager to a person who the [operator] licensee knows or reasonably should know is engaging in such activity for profit or as a business enterprise. [An operator] A casino sports wagering licensee may withhold payment of a winning sports wager if a customer refuses to supply identification or any other documentation required by this Part or article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(d) *Minimum and maximum [wager] sports wagers.* Minimum and maximum amounts of sports wagers shall be as established by [an operator's] a casino sports wagering licensee's house rules approved by the commission. [An operator] A casino sports wagering licensee shall disclose clearly the [maximum and] minimum and maximum sports wagers applicable to the sports wagers such [operator] licensee offers.

#### **§ 5329.20. Certain payouts; wagering ticket control.**

(a) [Wagers] Sports wagers and payouts greater than \$10,000.

(1) Prior to accepting any sports wager in excess of \$10,000 or making a payout in excess of \$10,000 on a winning sports wagering ticket or voucher, [an operator] casino sports wagering licensee shall:

(i) create [a patron] an authorized sports bettor identification file and identify the [patron] authorized sports bettor;

(ii) obtain and record the [patron's] authorized sports bettor's Social Security number in the patron identification file; and

(iii) record, on a log, the following information, at a minimum:

(a) date of the sports wager or payout;

(b) name of the [patron] authorized sports bettor;

(c) name and signature of the employee authorizing the acceptance of the sports wager; and

(d) name and signature of the cashier identifying the [patron] authorized sports bettor and generating the sports wagering ticket or making the payout.

(2) For the purposes of this section, signatures may be electronic.

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(3) [An operator] A casino sports wagering licensee shall monitor all sports wagering transactions to ensure [patrons] authorized sports bettors are not circumventing the identification requirements of paragraph (1) of this subdivision.

(b) *Redemption.* Winning sports wagering tickets shall be redeemed by a wagering cashier, an automated ticket machine located within a sports wagering lounge or a commission-approved mail-in procedure after verifying the validity of the sports wagering ticket through the sports wagering platform. The sports wagering platform shall redeem electronically and cancel the sports wagering ticket upon redemption. Should [the] a casino's sports wagering lounge be closed, the [casino] casino's cage shall be made available to redeem a winning sports wagering ticket.

(c) *Marking cashed sports wagering tickets.* [An operator] A casino sports wagering licensee shall establish procedures, approved by the commission, ensuring that each cashed or refunded sports wagering ticket shall not have the ability to be cashed or refunded again.

(d) *Storage.* [An operator] A casino sports wagering licensee shall maintain facilities and procedures that ensure the security of cashed sports wagering tickets and the integrity of records of outstanding sports wagering tickets. [An operator] A casino sports wagering licensee shall store, physically or by electronic record, cashed sports wagering tickets for one year and one day following the [sporting] sports event in a secure area consistent with such [operator's] casino sports wagering licensee's internal controls as approved by the commission.

(e) *Access.* [An operator] A casino sports wagering licensee shall prohibit unauthorized individuals from having access to the cashed sports wagering tickets and related storage areas. A list of authorized individuals with access to such storage areas shall be filed with the commission. Any storage area shall comply with surveillance requirements set forth in sections 5314.4 and 5314.5 of the Part.

(f) [*Betting*] Sports wagering data retention. Each [operator] casino sports wagering licensee shall maintain all [betting] sports wagering data for a sports wager for at least 10 years and shall make any such data available to the commission upon request.

#### **§ 5329.21. Cancellation or rescission of sports wagers.**

(a) *Commission void.* The commission may order the voiding of sports wagers, and require refunds, on any event for which wagering, or the continuation of wagering, would be contrary to the public policies of [the state] this State.

(b) [*Patron*] Authorized sports bettor cancellation. A sports wagering ticket may be cancelled by [a patron] an authorized sports bettor at the discretion of the [operator] casino sports wagering licensee, so long as no [sporting] sports event upon which the sports wager was made has commenced.

(c) Rescission. A casino sports wagering licensee shall not rescind any sports wager made pursuant to this Part unless extraordinary circumstances exist and the prior written approval of the commission has been obtained.

[(c)] (d) *Payout adjustments.* House rules shall state clearly circumstances in which the payouts are to be adjusted, including, without limitation:

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- (1) when sports wagers are affected by cancelled events;
- (2) when and for what reason or reasons sports wagers will be cancelled; and
- (3) application of aggregate limits as outlined in subdivision (b) of section 5329.14 of this Part.

**§ 5329.22. Structuring of multiple sports wagers.**

(a) *Prohibition.* [An operator] A casino sports wagering licensee shall not knowingly allow, and shall take reasonable steps to prevent, the circumvention of reporting requirements through [a patron] an authorized sports bettor making a structured sports wager, including multiple sports wagers or a series of sports wagers that are designed to accomplish indirectly that which could not be accomplished directly. A sports wager or wagers need not exceed the dollar thresholds at any single [operator] casino sports wagering licensee in any single day in order to constitute prohibited structuring. No [operator] casino sports wagering licensee shall encourage or instruct the [patron] authorized sports bettor to structure or attempt to structure sports wagers. This section does not prohibit [an operator] a casino sports wagering licensee from informing [a patron] an authorized sports bettor of the regulatory requirements imposed upon the [operator] casino sports wagering licensee, including the definition of structured sports wagers. [An operator] A casino sports wagering licensee shall not knowingly assist [a patron] an authorized sports bettor in structuring or attempting to structure sports wagers.

(b) *Recording requirements.* Each [operator] casino sports wagering licensee shall maintain multiple transaction logs to monitor compliance. Such logs shall record all sports wagers made within any 24-hour period in excess of \$10,000, or in smaller amounts that aggregate in excess of \$10,000, when any single officer, employee or agent of such [operator] licensee has actual knowledge of the sports wagers or would in the ordinary course of business have reason to know of the sports wagers. Each log entry shall be made by the employee accepting or approving the sports wager, immediately after accepting the sports wager, and shall include at a minimum:

- (1) [patron's] authorized sports bettor's name and address;
- (2) window number or other identification of the location where the sports wager occurred;
- (3) time and date of the sports wager;
- (4) dollar amount of the sports wager;
- (5) signature or electronic signature of person accepting or approving the sports wager; and
- (6) [patron's] authorized sports bettor's player card number, if known.

(c) *Aggregating requirement.* Each [operator] casino sports wagering licensee shall aggregate all sports wagers in excess of \$10,000 when any single officer, employee or agent of such [operator] casino sports wagering licensee would in the ordinary course of business have knowledge of the sports wagers.

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(d) *Identification requirement.* If [a patron] an authorized sports bettor places a sports wager that is to be aggregated with previous sports wagers for which a record has been completed pursuant to this section, the [operator] casino sports wagering licensee shall complete the identification, recordation and reporting procedures for any additional sports wager regardless of amount occurring during the 24-hour period.

#### **§ 5329.23. [Patron] Authorized sports bettor complaints.**

[An operator] A casino sports wagering licensee shall investigate diligently all [patron] authorized sports bettor complaints within five calendar days from receipt. Where a complaint is made to commission staff, consistent with existing commission authority, the commission shall have unfettered access to all information related to [patron] authorized sports bettor wagers and application of this Part or house rules as such information relates to assisting in addressing [patron] authorized sports bettor complaints. Any [patron] authorized sports bettor complaint that results in a dispute in excess of \$5,000 shall be brought immediately to the attention of the commission by the casino sports wagering licensee.

#### **§ 5329.24. [Operator reserve] Reserve requirement.**

Each [operator] casino sports wagering licensee must establish a cash reserve in an amount necessary to ensure the ability to cover outstanding sports pool liability, as approved by the commission.

#### **§ 5329.25. Prohibited actions.**

(a) *Dishonest obtaining of a benefit.* No person shall, in relation to an authorized sports wager, obtain a benefit by any dishonest act, practice or scheme or otherwise dishonestly obtain a benefit through the use of any device or item.

(b) *Altering or falsification of information.* Any person who knowingly alters or falsifies information recorded on any record, document or report required under this Part, for any purpose, including, without limitation, for the purpose of concealment, deception or circumvention of minimum internal control procedures, may be subject to penalties and other actions the commission may take pursuant to law (e.g., a fine, penalty or revocation of a [sports pool] license by the commission).

#### **§ 5329.26. Duties to report.**

(a) *Dishonest or unlawful acts.* In the event that [an operator] a casino sports wagering licensee or its employee, sports pool vendor or employee of a sports pool vendor, becomes aware, or reasonably suspects, a person has obtained a personal benefit or a benefit for another person by a dishonest or unlawful act affecting the conduct of a sports wager or a sports event, the results of which formed the basis, in whole or in part, of a sports wager; and/or there has been an unlawful act that has affected a sports wager or a sports event the results of which formed the basis, in whole or in part, of a sports wager, such [operator] casino sports wagering licensee, [operator's] casino sports wagering licensee's employee, sports pool vendor or sports pool vendor's employee shall give promptly the commission a written notice advising the commission of all material facts known about the matter and any documents or other evidence in the possession or control of such entity or person in connection with the matter.

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(b) *Bribes*. If [an operator] a casino sports wagering licensee, [operator's] casino sports wagering licensee's employee, sports pool vendor or sports pool vendor's employee is approached with an offer or promise of a bribe or with a request or a suggestion for a bribe or for any improper, corrupt or fraudulent act or practice in relation to a sports wager or a sports event relating to a sports wager or with a suggestion that any sports wager or sports event relating to a sports wager be conducted otherwise than in accordance with the rules and regulations of the commission, it shall be the duty of such person to report such suggestion, offer, promise or bribe promptly to the commission. Failure to so report shall subject such person or persons and such [operator] casino sports wagering licensee and/or sports pool vendor associated with such person to the penalties and other actions the commission may take.

(c) *Suspicious activity*. [An operator] A casino sports wagering licensee shall report promptly to the commission any other suspicious activity involving such [operator] licensee in the operation of sports pools, whether such acts are committed by such [operator] casino sports wagering licensee, [operator's] casino sports wagering licensee's employee, sports pool vendor or sports pool vendor's employee, or whether such acts are committed against such [operator] casino sports wagering licensee or sports pool vendor, including, without limitation, criminal activity, financial irresponsibility, fraud, misrepresentation, security breaches, breach of confidentiality of [a patron's] an authorized sports bettor's personal information or any violation of article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Part.

(d) *Criminal activity*. Any casino sports wagering licensee and sports pool vendor shall immediately report any suspected criminal activity to the commission.

(e) *Sports event integrity*. In the event [an operator] a casino sports wagering licensee or sports pool vendor becomes aware of or reasonably suspects that the integrity of a sports event or occurrence within a sports event has been affected or compromised by sports wagering activity, such licensee or vendor shall report to the commission promptly all facts and circumstances relating to such awareness or suspicion.

[(e)] (f) *Money laundering*. In the event [an operator] a casino sports wagering licensee or sports pool vendor becomes aware or reasonably suspects that there is a fraudulent or suspicious transaction in the operation of sports pools that may involve money laundering, or an activity similar to money laundering, as set forth in section 5315.17 of this subchapter, the [operator] casino sports wagering licensee or sports pool vendor shall report promptly in writing the suspicious activity to the commission. Nothing in this section shall relieve [the operator] a licensee from any related reporting requirements under any other local, state or Federal laws. Such [operator] licensee shall make available to the commission any documents or access to computer or other data systems that the commission may request in connection with the matter.

[(f)] (g) *Suspicious [betting] sports wagering activity and suspicious sports wagers*. [An operator] A casino sports wagering licensee:

(1) shall file with the commission a report of any suspicious [betting] wagering activity or suspicious sports wager, if such suspicious [betting] wagering activity or suspicious sports wager involves or aggregates to more than \$10,000 in funds or other assets;

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(2) may file a report of any suspicious [betting] wagering activity or suspicious sports wager, without regard to the amount, if the [operator] casino sports wagering licensee believes that such reporting may be relevant to the possible violation of any law or regulation; and

(3) shall file any report pursuant to paragraphs (1) or (2) of this subdivision no later than two calendar days after the initial detection by the [operator] casino sports wagering licensee of facts that may constitute a basis for filing such a report. If no suspect was identified on the date of the detection of the incident requiring the filing, [an operator] a casino sports wagering licensee may delay filing a report for an additional seven calendar days to identify a suspect. In no case shall reporting be delayed more than nine calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, [an operator] a casino sports wagering licensee shall notify commission staff immediately, in addition to timely filing a report.

[(g)] (h) *Retention period.* [An operator] A casino sports wagering licensee shall maintain a copy of any report filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the report.

(i) *Other reporting requirements.* Each casino sports wagering licensee shall report promptly to the commission any of the information and material required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367(12)(e)(i).

(j) *Investigation of reports made to the commission.* The commission shall investigate any report of conduct made pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1367(12)(j) or subdivision (d) of this section. If the commission determines that there has been a violation of law, including, without limitation, commission regulations, the commission shall have the discretion to take appropriate measures, including, without limitation, discipline of licensees and registrants through actions on licenses and registrations and fines. The commission shall make appropriate referrals to other law enforcement agencies when such investigations reveal evidence of a violation of law, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 104(12).

(k) *Interstate integrity monitoring.* The commission may, in the commission's discretion, share information or data in regard to the integrity of sports events with other jurisdictions, or entities or agencies thereof, or with any entity maintaining an interstate database of sports wagering information for the purpose of integrity monitoring, as permitted by Racing, Pari-Mutuel Wagering and Breeding Law section 1367(12)(g) and (h).

#### **§ 5329.27. Sports pool integrity; confidential information.**

(a) *Identification and reporting of unusual [betting] wagering activity.* Each [operator] casino sports wagering licensee shall have controls in place to identify unusual [betting] wagering activity and report such activity to an independent integrity [monitoring provider] monitor, or to the commission if the commission so directs.

(b) *Notification to all [operators] casino sports wagering licensees and reporting of similar activity.* Each independent integrity [monitoring provider] monitor shall share information in regard to any unusual [betting] wagering activity with each other independent integrity [monitoring provider] monitor working with other [operators] casino sports wagering licensees in this State and shall provide a report of such

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unusual [betting] wagering activity to all participating casino sports [pool operators] wagering licensees. Each casino sports [pool operator] wagering licensee shall review each such report and notify the independent integrity [monitoring provider] monitor of whether or not such [operator] licensee has experienced similar activity.

(c) *Suspicious [betting] wagering activity identification and notification.* If an independent integrity [monitoring provider] monitor finds that previously reported unusual [betting] wagering activity rises to the level of suspicious [betting] wagering activity, such independent integrity [monitoring provider] monitor immediately shall notify all other independent integrity [monitoring providers] monitors, each [sports pool operator] casino sports wagering licensee and sports pool vendor, the commission, the appropriate sports governing authority and, if so directed by the commission, other regulatory agencies.

(d) *Suspension of sports wagering.* A casino sports [pool operator] wagering licensee receiving a report of suspicious [betting] wagering activity shall be permitted to suspend sports wagering on events related to such report, but may cancel related sports wagers only upon commission approval to do so.

(e) *Commission access to monitoring system.* Each independent integrity [monitoring provider] monitor shall provide the commission with remote access to the following information of such provider:

(1) all reports of unusual [betting] wagering activity;

(2) whether the unusual [betting] wagering activity was determined to be suspicious [betting] wagering activity; and

(3) the actions taken by the independent integrity [monitoring provider] monitor.

(f) *Information sharing.* The commission and sports governing bodies may share information in regard to the integrity of sports events, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1367(12)(e)(ii).

(g) *Hardware access.* The commission may require a casino sports [pool operator] wagering licensee to provide any hardware necessary to the commission for evaluation of a sports [pool] wagering offering or to conduct further monitoring of data provided by the system of such [operator] licensee.

(h) *Confidentiality.* All information and data received pursuant to this Part by the commission related to unusual or suspicious [betting] wagering activity shall be considered confidential and shall not be revealed in whole or in part, except

(1) upon the lawful order of a court of competent jurisdiction; or

(2) with any law enforcement entity, team, college or university, sports governing body or regulatory agency that the commission deems appropriate.

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### **§ 5329.28. Tax.**

(a) *Tax rate.* Gross gaming revenue from sports pool wagering conducted by a casino sports wagering licensee shall be taxed at the rate [applied to gross gaming revenue from all other sources within the meaning of] set forth in Racing, Pari-Mutuel Wagering and Breeding Law section [1351] 1367(7).

(b) *Payment.* Tax attributable to sports pool wagering conducted by each casino sports wagering licensee, including any applicable interest and penalties, shall be transmitted weekly by electronic funds transfer to the commission. All gross gaming taxes relating to sports wagering conducted by a casino sports wagering licensee are the responsibility of, and shall be paid by, [an operator] such casino sports wagering licensee.

(c) *Reports.* All weekly gross gaming revenue tax reports filed with the commission pursuant to this section shall reflect all gross gaming revenue received by the [operator] casino sports wagering licensee for the period of the return.

(d) *Additional tax or refunds.* When the commission finds that [an operator] a casino sports wagering licensee is required to pay additional taxes or finds that [an operator] a casino sports wagering licensee is entitled to a refund of taxes, the commission shall report to such [operator its] licensee the commission's findings, along with the legal basis upon which such findings are made.

### **§ 5329.29. Gross gaming revenue reports and reconciliation.**

(a) *Gross gaming revenue.* Gross gaming revenue generated pursuant to this Part shall equal the total of all sports wagers received less voided sports wagers, [or] cancelled sports wagers and amounts paid out for winning sports wagers. The amounts of sports wagers placed by [an operator] a casino sports wagering licensee and amounts received by [the operator] a casino sports wagering licensee as payments on layoff wagers made pursuant to section 5329.15 of this Part or section 5330.15 of this subchapter shall not affect the computation of the [operator's] casino sports wagering licensee's gross gaming revenue.

(b) *Daily gross gaming revenue.* For sports wagering operations, [an operator's] a casino sports wagering licensee's accounting department member shall determine the daily gross gaming revenue amount as set forth in such [operator's] casino sports wagering licensee's internal controls.

(c) *Unclaimed funds.* Unclaimed funds, cash and prizes shall be reported to the commission on the gross gaming revenue report during the week in which the funds, cash and prizes expire and shall be remitted to the commission with the gross gaming revenue for that week for deposit pursuant to the requirements of Racing, Pari-Mutuel Wagering and Breeding Law section 1354.

(d) *Forfeiture of winnings.* Forfeiture of winnings as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1345 and gross gaming tax as prescribed in Racing, Pari-Mutuel Wagering and Breeding Law section [1351] 1367(7), including any applicable interest and penalties, shall be transmitted weekly by electronic funds transfer to the commission. Such transmissions are the responsibility of, and shall be made by, the [operator] casino sports wagering licensee.

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(e) Calendar year recap. Each casino sports wagering licensee shall submit a report to the commission on or before February twenty-eighth of each year, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367(6)(a), detailing for such casino:

(1) the total amount of sports wagers received in currency and number of bets placed;

(2) the total amount of sports wagers won by authorized sports bettors in currency and number of bets;

(3) the total amount of gross gaming revenue received by the casino sports wagering licensee;

(4) the total amount wagered on each sports governing body's events;

(5) the number of accounts, if applicable, held by authorized sports bettors;

(6) average account balance, if applicable;

(7) the total number of new accounts, if applicable, established in the previous year, as well as the total number of accounts permanently closed in the previous year; and

(8) the total number of voluntary self-exclusions in the previous year.

[(e)] (f) *Examination by commission.* [The operator] Each casino sports wagering licensee shall permit duly authorized representatives of the commission to examine [the operator's] such licensee's accounts and records for the purpose of certifying gross revenue.

[(f)] (g) *Promotions.* Promotional [gaming credits] spend shall not be [used in a sports wagering lounge] deducted from revenue or added to loss when calculating gross gaming revenue. No promotion related to sports wagering may be offered without the prior approval of the commission.

### **§ 5329.30. Accounting and financial records.**

(a) *Record of transactions.* [An operator] Each casino sports wagering licensee shall maintain complete, accurate and legible records of all transactions pertaining to such licensee's revenues, expenses, assets, liabilities and equity in conformance with generally accepted accounting principles. The failure of [an operator] a casino sports wagering licensee to maintain such records according to such principles shall be a violation of this section.

(b) *Accounting requirements.* The accounting records maintained by [an operator] a casino sports wagering licensee shall be maintained using a double-entry system of accounting with transactions recorded on the accrual basis and supported by detailed subsidiary records. Such subsidiary records shall include, at a minimum, each of the following:

(1) detailed general ledger accounts identifying all revenue, expenses, assets, liabilities and equity for such [operator] licensee;

(2) a record of all investments, advances, loans and accounts receivable balances due to such [operator] casino sports wagering licensee;

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(3) a record of all loans and other accounts payable by such [operator] casino sports wagering licensee;

(4) a record of all accounts receivable written off as uncollectible by such [operator] casino sports wagering licensee;

(5) records that identify total winnings paid out:

(i) on each sports wager; or

(ii) by another accounting period pre-approved in writing by the commission;

(6) records required by such [operator's] casino sports wagering licensee's system of internal controls;

(7) work papers supporting the monthly reconciliation of cash accountability; and

(8) other records that the commission may require, in writing, to be maintained.

(c) *Retention period.* Notwithstanding anything in this section to the contrary, each accounting record shall be kept by [an operator] a casino sports wagering licensee for a period of not less than five years from date of creation of such record.

### **§ 5329.31. Duties to give evidence.**

It shall be the duty of each [operator] casino sports wagering licensee and each employee or other person associated with each such licensee to report promptly when requested or ordered to do so by any official of the commission in furtherance of an investigation or hearing pursuant to this subchapter and to testify under oath concerning any facts within such licensee's or such person's knowledge and to produce any books, records, written matter or other evidence within such licensee's or such person's possession or control relevant to such matter.

### **§ 5329.32. Reporting of compliance.**

Each [operator] casino sports wagering licensee shall, prior to commencing operations, and annually thereafter, perform a system integrity and security assessment conducted by an independent professional selected by [the operator] such licensee, the scope of which assessment shall be subject to the approval of the commission. In addition, the commission, at its discretion, may publish bulletins to specify additional yearly testing requirements. The independent professional's report on the assessment shall be submitted to the commission and shall include:

(a) scope of review;

(b) name and company affiliation of each person who conducted the assessment;

(c) date of the assessment;

(d) findings;

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(e) recommended corrective action, if applicable; and

(f) the [operator's] casino sports wagering licensee's response to the findings and recommended corrective action.

### **§ 5329.33. Review, examination of records.**

The commission or the commission's designee may:

(a) conduct periodic examinations of the accounting and financial records of [operators] casino sports wagering licensees;

(b) review the accounting principles and procedures used by [operators] casino sports wagering licensees;

(c) review and observe methods and procedures used by [operators] casino sports wagering licensees to count and handle sports wagers made with cash, vouchers, gaming chips or wagering tickets of value;

(d) examine accounting and financial records of [an operator] a casino sports wagering licensee or a person controlling, controlled by or under common control with such [operator] casino sports wagering licensee;

(e) obtain copies from the [operator] casino sports wagering licensee of outstanding deposited check instruments, checks returned and held, collection activities taken and settlement of disputed items.

### **§ 5329.34. Responsible gaming.**

Each [operator] casino sports wagering licensee and sports pool vendor [licensee] shall comply with the problem gaming, self-exclusion and excluded person requirements set forth in Parts 5325 and 5327 of this subchapter and Part 5402 of this subtitle.

### **§ 5329.35. Other regulations apply.**

Unless the context of this Part indicates otherwise, the regulations set forth elsewhere in this subchapter are applicable to sports wagering.

### **§ 5329.36. Suspension, fines, revocation and other discipline.**

(a) *Discipline.* Consistent with existing commission authority, and in addition to authority to suspend licenses or registrations of individuals, the commission may suspend or revoke a casino sports [pool] wagering license, sports pool vendor license or a gaming vendor license, or fine or otherwise discipline [an operator or gaming vendor] any such licensee for any reason or combination of reasons set forth in this subdivision:

(1) violations of article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law, this subchapter or any other applicable law [or regulation], including regulation;

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- (2) failure to comply with instructions of the commission concerning a licensed activity;
- (3) conviction of any:
  - (i) felony offense, as such term as defined in Penal Law section 10.00(5), or an equivalent offense committed in another jurisdiction;
  - (ii) a misdemeanor related to gambling, gaming, bribery, fraud or any other offense prejudicial to public confidence;
- (4) failure to file any returns or reports, keep records or to pay any fee or submit revenue as may be required;
- (5) fraud, deceit, misrepresentation or conduct prejudicial to public confidence in gaming;
- (6) whenever the commission finds that the [operator's] experience, character[,] and general fitness of a licensee are such that participation in operating a sports pool is inconsistent with the public interest or convenience; or
- (7) for any other reason within the discretion of the commission.

(b) *Opportunity to be heard.* The commission shall allow [an operator] a casino sports wagering licensee or sports pool vendor an opportunity to be heard before imposing any discipline pursuant to this section. [An operator or sports pool vendor] A licensee that has been disciplined pursuant to this section may request a de novo hearing before a hearing officer, with the matter to be decided by the commission.

**A new Part 5330 would be added, to read as follows:**

**PART 5330**  
**Mobile Sports Wagering**

Section	
5330.1	Applicability and definitions
5330.2	Licensing of platform providers and skins
5330.3	Term of mobile sports wagering license and renewal
5330.4	Vendor licensing
5330.5	Reporting of changes
5330.6	Licensing of individuals
5330.7	Misconduct and improper associations
5330.8	Internal controls for mobile sports wagering
5330.9	[Reserved]
5330.10	System requirements for mobile sports wagering
5330.11	[Reserved]
5330.12	House rules
5330.13	Sports wager types
5330.14	[Reserved]
5330.15	Layoff wagers

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- 5330.16 [Reserved]
- 5330.17 Acceptance of sports wagers
- 5330.18 [Reserved]
- 5330.19 Sports wagering restrictions
- 5330.20 [Reserved]
- 5330.21 Cancellation or rescission of sports wagers
- 5330.22 [Reserved]
- 5330.23 Authorized sports bettor complaints
- 5330.24 Skin reserve requirements
- 5330.25 Prohibited actions
- 5330.26 Duties to report
- 5330.27 Mobile sports wagering integrity; confidential information
- 5330.28 Tax
- 5330.29 Gross gaming revenue reports and reconciliation
- 5330.30 Accounting and financial records
- 5330.31 Duties to give evidence
- 5330.32 Reporting of compliance
- 5330.33 Review, examination of records
- 5330.34 Responsible gaming
- 5330.35 [Reserved]
- 5330.36 Suspension, fines, revocation and other discipline
- 5330.37 Authorized sports bettor account requirements
- 5330.38 Mobile sports wagering promotions
- 5330.39 License fee
- 5330.40 Server and other equipment
- 5330.41 Regulatory costs
- 5330.42 Fee for preparation of statutory report
- 5330.43 Anti-money laundering program
- 5330.44 **Geolocation requirements**

### **§ 5330.1. Applicability and definitions.**

(a) *Applicability.* This Part applies to mobile sports wagering conducted by a mobile sports wagering licensee pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 1367 and 1367-a.

(b) *Definitions.* Unless the context indicates otherwise, the following definitions and the definitions set forth in Racing, Pari-Mutuel Wagering and Breeding Law sections 1367 and 1367-a are applicable throughout this Part:

- (1) *Authorized sports bettor's account or account* means an arrangement between an authorized sports bettor and a skin used to execute a mobile sports wager.
- (2) *Automated clearing house* means a network that coordinates electronic payments and automated money transfers.

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(3) *Biometric data* means anything that relates to the measurement of a person's physical features and characteristics, including, without limitation, to fingerprint, facial recognition, voice recognition and other methods as approved by the commission.

(4) *Geolocation* means a method used to detect the physical location of an authorized sports bettor attempting to place a mobile sports wager.

(5) *KYC or know your customer* means a process of identifying and verifying the identity of a person who is opening an account.

(6) *Mobile sports wagering licensee* has the meaning set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1367(a) and refers to either a platform provider, a skin or both, as the context requires.

(7) *Mobile sports wagering promotion* means a method by which an authorized sports bettor receives a monetary or odds benefit to be applied to a mobile sports wager or wagers, which may include, without limitation, bonuses, odds boosts, risk-free bets and deposit matches.

(8) *Mobile sports wagering vendor* means a licensed vendor offering goods or services that directly relate to mobile sports wagering activity.

(9) *Multi-factor authentication* means a method approved by the commission that effectively provides greater account security for a user to gain access to a technological resource than a username-and-password combination alone.

(10) *Platform provider*, in addition to the meaning set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1367(1), means an entity operating a mobile sports wagering platform system that, among other functionality, performs the acceptance and registration of all sports wagers; generates all electronic sports wagering tickets; computes sports wagering in the pool and payoffs; maintains records of all sports wagering activities; and generates or submits all reports required by the commission.

(11) *Prohibited sports bettor* means any person or entity whose participation may undermine the integrity of mobile sports wagering on a sports event or the conduct of such sports event itself, or any person who, or entity that, is prohibited for other good cause, including, without limitation, the following, as prescribed by Racing, Pari-Mutuel Wagering and Breeding Law section 1367(1) and this paragraph:

(i) any individual placing a mobile sports wager as an agent or proxy;

(ii) any athlete whose performance may be used to determine, in whole or in part, the outcome of such mobile sports wagering;

(iii) any person who is an athlete, player, coach, referee or other game official, physician, trainer, sports agent, owner or employee or independent contractor of a team, player union and umpire union personnel, and employee, referee, coach or official of a sports governing body,

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team employee or governing body employee, in any sports event overseen by such person's sports governing body;

(iv) any person with access to material, non-public confidential information about a sports event that is the subject of such wagering;

(v) a person identified to the commission by a sports governing body that the commission agrees is a person who should be a prohibited sports bettor;

(vi) any person who holds a position of authority or influence sufficient to exert influence over the participants in a sports event that is the subject of a mobile sports wager, if such person is not otherwise described by this subdivision;

(vii) any principal, key employee or casino gaming employee of a casino and its affiliates, except as may be permitted by the commission;

(viii) any non-gaming employee at the casino that hosts the server or other equipment of a mobile sports wagering licensee;

(ix) any contractor, subcontractor, or consultant, or officer or employee of a contractor, subcontractor, or consultant, of a casino sports wagering licensee if such person is directly involved in the operation or observation of sports wagering, or the processing of sports wagering claims or payments;

(x) any employee of a mobile sports wagering licensee and its affiliates, except as may be permitted by the commission;

(xi) any contractor, subcontractor, or consultant, or officer or employee of a contractor, subcontractor, or consultant, of a mobile sports wagering licensee if such person is directly involved in the operation or observation of mobile sports wagering, or the processing of mobile sports wagering claims or payments;

(xii) any person subject to a contract with the commission if such contract contains a provision prohibiting such person from participating in sports wagering;

(xiii) any spouse, child, sibling or parent residing in the principal place of abode of any of the foregoing persons where the foregoing person is prohibited from participating in mobile sports wagering;

(xiv) any officer or employee of the commission; and

(xv) any minor.

(12) *Skin* means a mobile sports wagering operator, as defined in Racing Pari-Mutuel Wagering and Breeding Law section 1367(1), that is a public-facing operator that accepts sports wagers from authorized sports bettors through a platform provider.

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(13) *Wallet* means an instrument maintained by a platform provider or skin that facilitates deposits and withdrawals from an authorized mobile sports wagering bettor and may be used across all skins on a single platform

### **§ 5330.2. Licensing of platform providers and skins.**

(a) *Eligibility.* Only platform providers and associated skins selected by the commission as a result of a competitive request-for-application process conducted by the commission may submit a license application to operate as such.

(b) *Disqualification of applications.* The commission may disqualify any application to become a platform provider and associated skin that:

(1) is not timely;

(2) fails to meet the requirements set forth in the request for applications;

(3) is submitted by an entity that engaged in collusive bidding with another applicant, unless the commission determines that such activity was not made for the purpose of restricting competition or impairing the ability of the commission to make selections that maximize value to the State.

(c) *Selected applicants.* A selected platform provider applicant shall be eligible for licensure by the commission as such. Potential skins associated with selected platform provider applicants shall be eligible for licensure by the commission as skins.

(d) *Commission review of agreements.* Upon execution of an agreement between a skin and its platform provider, the platform provider applicant shall submit such agreement to the commission for review prior to licensure.

(e) *Standards for licensure.* A platform provider, a skin and a mobile sports wagering vendor shall satisfy the standards for licensure equivalent to those set forth for a casino vendor enterprise set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1326 and Parts 5303 and 5307 of this subchapter.

### **§ 5330.3. Term of mobile sports wagering license and renewal.**

(a) *Term.* A license granted to a mobile sports wagering licensee shall remain in effect for up to 10 years. See Racing, Pari-Mutuel Wagering and Breeding Law section 1367-a(2)(b), establishing a maximum license period.

(b) *Renewal.* The commission shall establish the process and requirements for renewal at an appropriate time that coincides with the ending of such term of license established in subdivision (a) of this Part.

(c) *Reporting of changes.* A mobile sports wagering licensee shall report any changes to its application, as set forth in section 5329.5 of this subchapter, which changes are subject to the approval of the commission.

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#### **§ 5330.4. Vendor licensing.**

Entities offering goods and services that directly relate to gaming activity with a mobile sports wagering licensee, including, without limitation, manufacturers, suppliers, software providers and repair companies, shall submit a mobile sports wagering vendor license application. Each mobile sports wagering vendor shall be licensed as such according to the standards equivalent to those set forth for casino vendor enterprises in Racing Pari-Mutuel Wagering and Breeding Law section 1326 and Parts 5303 and 5307 of this subchapter.

#### **§ 5330.5. Reporting of changes.**

Each mobile sports wagering licensee and mobile sports wagering vendor shall have a continuing duty to disclose, as soon as practicable, any material change or changes in such entity's business form or activity; information submitted in support of a review pursuant to section 5330.3 of this Part; information provided to authorized sports bettors; information provided to investors; or information provided in an annual report, or statutory duty to provide information, to the commission.

#### **§ 5330.6. Licensing of individuals.**

(a) *Mobile sports wagering key employees.* A person directly involved in the conduct and operation of mobile sports wagering pursuant to this Part who is determined to be a key employee, whether at a mobile sports wagering licensee or mobile sports wagering vendor, shall be licensed by the commission as a mobile sports wagering key employee according to standards equivalent to those of a casino key employee, as determined by the commission, as guided by the standards set forth in title 3 of article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and Parts 5303 and 5304 of this subchapter.

(b) *Mobile sports wagering employees.* Each mobile sports wagering licensee shall register with the commission employees involved in the operation of mobile sports wagering pursuant to this Part who are not deemed to be a mobile sports wagering key employee pursuant to subdivision (a) of this section. Registration shall consist of the submission to the commission, quarterly, a roster of such employees that shall identify each employee's name, job title, job location and such other identifying information as the commission may require. Any employee information that has changed or been deleted from the previous quarterly report shall be highlighted.

(c) *Persons requiring access to mobile sports wagering server and other equipment.* A person employed by a mobile sports wagering licensee who requires access to servers and other equipment located at a casino shall be licensed as a mobile sports wagering employee according to standards equivalent to those set forth in section 5304 of this subchapter. Such employees shall be granted access to the casino only for duties as they relate to mobile sports wagering.

#### **§ 5330.7. Misconduct and improper associations.**

The provisions of section 5329.7 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee and mobile sports wagering vendor licensee.

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### **§ 5330.8. Internal controls for mobile sports wagering.**

(a) *Submission.* Each mobile sports wagering licensee shall submit to the commission, for approval, internal controls for all aspects of mobile sports wagering operations prior to commencing operations. The submission of internal controls shall be organized to correspond to the subdivisions set forth in this section.

(b) *System requirements.* Internal controls for system requirements shall address:

- (1) user access controls;
- (2) a description of segregation of duties;
- (3) procedures for identifying and reporting fraud and suspicious conduct or activity;
- (4) procedures to prevent sports wagering by patrons prohibited from sports wagering;
- (5) a description of all integrated third-party systems;
- (6) procedures on how to maintain the integrity of sports wagering platforms, authorized sports bettor's data and sports wagering data storage in the case of a system failure;
- (7) description of the secure method to control remote access to the sports wagering platform using firewalls or other protections and maintaining secure logs;
- (8) all data sources used in sports wager determination. Official data from a sports governing body shall be used to determine all sports wagers, unless a skin (through its data provider vendor, if applicable) demonstrates to the satisfaction of the commission that sports wagers for such sports wager type may be determined reliably, accurately and timely by an alternative data source. If the commission determines that an alternative data source for a type of wager is acceptable, then each skin shall be permitted to use such alternative data source to settle such wager types. See Racing, Pari-Mutuel Wagering and Breeding Law section 1367(14);
- (9) the method in which the mobile sports wagering licensee shall implement the statewide voluntary self-exclusion database and other prohibited sports bettors into its system; and
- (10) where the mobile sports wagering licensee plans to list, on a website or mobile application, information concerning assistance for compulsive play in New York State, including a toll-free number directing callers to reputable resources, free of charge to the caller.

(c) *Authorized sports bettor account requirements.* Internal controls for authorized sports bettor account requirements shall address:

- (1) controls in place to limit each authorized sports bettor to one active account per skin, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367-a(4)(a)(i);
- (2) the multi-factor authentication method to be used;

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(3) the mechanism for an authorized sports bettor to establish daily, weekly or monthly deposit limits, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367-a(4)(a)(xii);

(4) controls in place to prohibit anyone under the age of 21 from participating in mobile sports wagering;

(5) the mechanism, if any, the platform provider or skin will use to create a wallet to be used by authorized sports bettors across multiple skins associated with such platform provider;

(6) the systems and procedures in place to maintain the security of authorized sports bettors' accounts, including the encryption of personally identifiable information and biometric data, Social Security number, account personal identification number and/or password and methods of account funding;

(7) how the mobile sports wagering licensee intends to meet all requirements set forth in section 5330.4 of this Part;

(8) procedures for issuing a form W-2G, if such thresholds are met;

(9) procedures for authorized sports bettors to obtain a year-end win-loss statement;

(10) the mechanism for allowing an authorized sports bettor to close an account;

(11) a procedure for when an authorized sports bettor's lifetime deposits reach \$2,500, and every year thereafter, for such bettors to acknowledge the bettor has met the deposit threshold and may elect to establish limits or close such account and that the bettor has received disclosures that include problem gaming resources, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367-a(4)(a)(xiii); and

(12) how a dormant account is defined and what the process is for reconciliation of such accounts.

(d) *Prevention of circumvention of sports wagering amount acknowledgments.* A skin shall provide the acknowledgment set forth in paragraph (11) of subdivision (c) of this section whenever such skin knows or should know that an authorized sports bettor has taken or is attempting to take action designed to circumvent the monetary threshold set forth in such paragraph.

(e) *Operational requirements.* Internal controls for operational requirements shall address:

(1) a description of how the skin intends to segregate sports bettors' funds from operating funds;

(2) procedures to ensure no sports wagering shall be based on a prohibited sports event;

(3) a description of anti-money laundering compliance standards;

(4) a description of the monitoring system that identifies and reports suspected structured sports wagers and unusual or suspicious wagering activity;

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(5) procedures for the skin reconciling gross gaming revenue and remitting such amount to the platform provider for the payment of taxes and fees to the commission; and

(6) in the event of changes and upgrades to the mobile sports wagering server or other hardware and software used to execute mobile sports wagering, procedures the mobile sports wagering licensee intends to follow in order to receive approval from the commission, including recertification of such sports wagering components.

(f) *Geolocation requirement.* ~~Geolocation software used by mobile sports wagering licensees shall be approved by a licensed independent testing laboratory, including applicable field testing, before the software is deployed in this State. Internal controls for geolocation requirements shall address:~~

~~(1) how the licensee shall ensure that authorized sports bettors shall be physically located within the State of New York when engaging in mobile sports wagering;~~

~~(2) which geolocation system will be used to reasonably detect the physical location of an authorized sports bettor attempting to place a sports wager with the skin and block unauthorized attempts to access the licensee's platform throughout the duration of the wagering session;~~

~~(3) how the geolocation system will detect any mechanisms a bettor may use to circumvent the requirement that the bettor be physically located within the State of New York;~~

~~(4) how the geolocation system ensures the integrity of the bettor's account and the bettor's device by blocking sports wagers from devices that indicate tampering;~~

~~(5) how the skin will discover and update the internet protocol address of the bettor if such changes during a session and how physical location would then be detected;~~

~~(6) how the system shall block any attempt to make a sports wager the geolocation software determines is being attempted from a physical location outside of the State of New York; how, in such event, the system shall log any identifying information relating to such attempt; and how such information shall be made available to the commission upon request;~~

~~(7) how the geolocation system shall alert the mobile sports wagering licensee of potential risks and fraudulent activity and grant the licensee and the commission access to real time data feeds of geofencing feeds and potential risks; and~~

~~(8) how the skin shall ensure that a mobile sports wagering vendor license is obtained by any geolocation vendor.~~

(gf) *Amendments to internal controls.* A mobile sports wagering licensee shall submit to the commission any proposed amendment to such licensee's approved internal controls at least 30 days in advance of the date the proposed amendment is intended to take effect. If a proposed amendment is requested to take effect in fewer than 30 days, the mobile wagering licensee shall submit an expedited amendment request to the commission.

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## § 5330.9. [Reserved]

## § 5330.10. System requirements for mobile sports wagering.

(a) *Submission to laboratory.* Prior to conducting mobile sports wagering, all equipment and software used in conjunction with its operation shall be submitted to a licensed independent gaming test laboratory for review and approval certification for compliance with the standards set forth in this Part and any additional technical requirements the commission establishes.

(b) *Server location.* The platform, servers and other equipment to accept sports wagers shall be located within a casino, as the commission shall direct and facilitate. A casino at which such equipment is located shall ensure that access to such equipment is granted to licensed employees of the mobile sports wagering licensee whose equipment is located there.

(c) *Platform provider requirements.* The systems of a platform provider shall be able to provide the following, at a minimum:

- (1) acceptance and registration of all sports wagers;
- (2) generation of all electronic sports wagering tickets;
- (3) computation of sports wagering and payoffs;
- (4) maintenance of records of all sports wagering activities;
- (5) generation of all reports;
- (6) maintenance of the integrity of sports wagering platforms, authorized sports bettors' data and sports wagering data storage in the case of a system failure, using methods outlined in the approved internal controls of the platform provider;
- (7) creation of a secure method to control remote access to the platform using firewalls or other protections and maintenance of secure logs outlined in the approved internal controls of the platform provider;
- (8) maintenance of all transactional sports wagering data for a period of five years, to which each authorized sports bettor shall have ready access with respect to each sports bettor's own data and which shall be capable of being provided to such bettor through a customer service inquiry within 10 days of such request, all at no cost to such bettor; and
- (9) establishment of a wallet that authorized sports bettors may use across all skins in New York State associated with such platform provider, so long as the commission has approved such establishment.

(d) *Skin requirements.* The systems of a skin shall be responsible for the following, at a minimum:

- (1) establishment of public-facing markets and odds for display to an authorized sports bettor holding an account with such skin;

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- (2) guarantee of the payment of winning sports wagers;
- (3) creation of a mechanism for an authorized sports bettor to establish daily, weekly or monthly deposit limits;
- (4) limitation of each authorized sports bettor to one active account per skin;
- (5) prohibition of anyone under the age of 21 from participating in mobile sports wagering;
- (6) employment of systems and procedures to maintain the security of authorized sports bettors' accounts and information from tampering or unauthorized access, using the minimum standard encryption of AES 256 or other NIST standards. Such information to be secured shall include:
  - (i) personally identifiable information, including Social Security number;
  - (ii) biometric data, including account personal identification number and/or password;
  - (iii) methods of account funding, including credit card numbers, bank account numbers or other personal financial information; and
  - (iv) sports wagering data, accounts, reports, significant events or other sensitive information obtained through the operation of mobile sports wagering;
- (7) creation of logs that can be exported in regard to player activity and sports wagering information, as may be required by the commission;
- (8) ensuring that no sports wagering is based on a prohibited sports event;
- (9) implementation of a monitoring system that identifies and reports suspected structured sports wagers and unusual or suspicious wagering activity; and
- (10) establishing procedures for the temporary suspension of an account, at the request of an account holder or on the initiative of the skin.

(e) *Third-party communications.* If a mobile sports wagering licensee communicates with a third-party system, such licensee shall ensure the integrity of such communications through encryption or the use of secure communications protocols.

(f) *Information recording.* A mobile sports wagering system provided by a mobile sports wagering licensee shall be capable of recording the following information for each sports wager made in the system:

- (1) description of event;
- (2) sports wager selection;
- (3) type of sports wager;

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- (4) amount of sports wager;
- (5) date and time of sports wager; and
- (6) unique sports wager identifier.

(g) *Past posting and known-event outcomes.* A skin shall prevent past posting of sports wagers and the voiding or cancellation of sports wagers after the outcome of an event is known.

(h) *Self-authentication.* A skin shall, at least once every 24 hours, perform a self-authentication process on all software used in the mobile sports wagering system to offer, record and process sports wagers to ensure there have been no unauthorized modifications. In the event that an unauthorized modification is identified as a result of this process, a skin shall notify the commission promptly. The mobile sports wagering system shall record the results of all self-authentication attempts and maintain such record for a period of not less than 90 days.

(i) *Controls.* A skin shall have controls in place to review the accuracy and timeliness of any data feeds used in its mobile sports wagering system to offer or settle sports wagers. In the event that an incident or error occurs that results in a loss of communication with data feeds, such error shall be recorded in a log capturing the date and time of the error and the nature of the error. Errors shall be submitted to the commission within 48 hours of occurrence. Such information shall be maintained by the reporting skin for a period of not less than six months.

(j) *Commission access to systems and data.* Consistent with existing commission authority and in a manner approved by the commission, a skin shall provide the commission with access to servers and other software used in creation of sports wagers, sports wagering transactions and related data the commission may deem necessary.

**§ 5330.11. [Reserved]**

**§ 5330.12. House rules.**

The provisions of section 5329.12 of this subchapter are incorporated herein and shall apply also to each skin.

**§ 5330.13. Sports wager types.**

The provisions of section 5329.13 of this subchapter are incorporated herein and shall apply also to each skin.

**§ 5330.14. [Reserved]**

**§ 5330.15. Layoff wagers.**

A skin may, in its discretion, accept a layoff wager from another New York State licensed skin or a casino sports wagering licensee, as casino sports wagering licensee is defined in section 5329.1 of this subchapter. Any such wager shall be placed in the name of the skin or casino sports wagering licensee itself that is placing the layoff wager. A layoff wager and, if applicable, a resultant payout shall not be

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included in the calculation of mobile sports wagering gross gaming revenue. Each layoff wager shall be reported to the commission, if possible, prior to the placement of such wager. If not possible, a skin or casino sports wagering licensee shall submit the details of the layoff wager to the commission's division of gaming within 24 hours of the placement of such wager. Layoff wagers shall not be executed with operators in other jurisdictions unless all Federal law requirements are met as well.

**§ 5330.16. [Reserved]**

**§ 5330.17. Acceptance of sports wagers.**

No mobile sports wager shall be valid until such sports wager is accepted at a server or other electronic equipment located at a casino.

**§ 5330.18. [Reserved]**

**§ 5330.19. Sports wagering restrictions.**

The provisions of section 5329.19 of this subchapter are incorporated herein and shall apply also to each skin.

**§ 5330.20. [Reserved]**

**§ 5330.21. Cancellation or rescission of sports wagers.**

The provisions of section 5329.21 of this subchapter are incorporated herein and shall apply also to each skin.

**§ 5330.22. [Reserved]**

**§ 5330.23. Authorized sports bettor complaints.**

(a) *Incorporation.* The provisions of section 5329.23 of this subchapter are incorporated herein and shall apply also to each skin.

(b) *Additional requirements.* In addition, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367(5):

(1) a skin shall develop procedures, a link to which shall be prominently displayed on the main page of such skin's platform, for the filing of a complaint by an authorized sports bettor against a mobile sports wagering licensee;

(2) a skin shall acknowledge receipt to the complainant within 48 hours of receipt;

(3) a skin shall provide the complainant a complete response within 10 business days; and

(4) a complainant who believes the complaint has not been resolved satisfactorily may file a complaint with the commission, which shall have the discretion to intervene in the resolution of the

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complaint and to take action against a licensee in the event the commission concludes that such licensee violated a law, including regulation.

#### **§ 5330.24. Skin reserve requirements.**

The provisions of section 5329.24 of this subchapter are incorporated herein and shall apply also to each skin.

#### **§ 5330.25. Prohibited actions.**

The provisions of section 5329.25 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee.

#### **§ 5330.26. Duties to report.**

The provisions of section 5329.26 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee and its employees and each mobile sports wagering vendor licensee and its employees.

#### **§ 5330.27. Mobile sports wagering integrity; confidential information.**

The provisions of section 5329.27 of this subchapter, except subdivision (g) thereof (the substance of which is addressed elsewhere in this Part), are incorporated herein and shall apply also to each skin and, as the context requires, platform provider, and its respective employees and each mobile sports wagering vendor licensee and its employees.

#### **§ 5330.28. Tax.**

(a) *Tax rate.* For the privilege of conducting sports wagering in this State, each platform provider shall be taxed pursuant to the rate established pursuant to the process set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1367(7).

(b) *Payment.* Tax attributable to mobile sports wagering, including any applicable interest and penalties, shall be transmitted weekly by electronic funds transfer to the commission at such times and in such manner as the commission may direct. All gross gaming taxes are the responsibility of and shall be submitted by the platform provider.

(c) *Reports.* All weekly mobile sports wagering tax reports filed with the commission pursuant to this section shall reflect mobile sports wagering gross gaming revenue and tax revenue remitted to the State received by the skins associated with a platform provider for the period of the return. Each platform provider shall clearly delineate funds received from each skin.

(d) *Additional tax or refunds.* When the commission finds that a platform provider is required to pay additional taxes or finds that a platform provider is entitled to a refund of taxes, the commission shall report to such platform provider its findings, along with the basis on which such findings are made.

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### **§ 5330.29. Gross gaming revenue reports and reconciliation.**

(a) *Gross gaming revenue.* Gross gaming revenue generated pursuant to this Part shall equal the total of all sports wagers received less voided sports wagers, cancelled sports wagers and amounts paid out for winning sports wagers. The amounts of sports wagers placed by a skin and amounts received by a skin as payments on layoff wagers made pursuant to section 5329.15 of this subchapter or section 5330.15 of this Part shall not affect the computation of gross gaming revenue as reported to the platform provider.

(b) *Daily gross gaming revenue.* A platform provider's accounting **or finance** department member shall determine the daily gross gaming revenue amount as set forth in such platform provider's internal controls. Each skin shall also detail the reporting mechanism to the associated platform provider in such skin's internal controls.

(c) [Reserved]

(d) *Forfeiture of winnings.* Forfeiture of winnings as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1345 and gross gaming tax as prescribed in Racing, Pari-Mutuel Wagering and Breeding Law section 1367(7), including any applicable interest and penalties, shall be transmitted weekly by electronic funds transfer to the commission. Such transmissions are the responsibility of, and shall be made by, the platform provider.

(e) *Calendar year recap.* Each platform provider shall submit a report to the commission on or before February 28<sup>th</sup> of each year, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367(6)(a), detailing for its platform:

- (1) the total amount of sports wagers received in currency and number of bets placed;
- (2) the total amount of sports wagers won by authorized sports bettors in currency and number of bets;
- (3) the total amount of gross gaming revenue won by skins associated with such platform provider;
- (4) the total amount wagered on each sports governing body's events;
- (5) the number of accounts held by authorized sports bettors;
- (6) average account balance;
- (7) the total number of new accounts established in the previous year, as well as the total number of accounts permanently closed in the previous year; and
- (8) the total number of voluntary self-exclusions in the previous year.

(f) *Examination by commission.* Each platform provider shall permit duly authorized representatives of the commission to examine such licensee's accounts and records for the purpose of certifying gross revenue.

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(g) *Promotions*. Promotional spend shall not be deducted from revenue or added to loss when calculating gross gaming revenue.

### **§ 5330.30. Accounting and financial records.**

The provisions of section 5329.30 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee.

### **§ 5330.31. Duties to give evidence.**

The provisions of section 5329.31 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee.

### **§ 5330.32. Reporting of compliance.**

The provisions of section 5329.32 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee.

### **§ 5330.33. Review, examination of records**

The provisions of section 5329.33 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee.

### **§ 5330.34. Responsible gaming.**

(a) *Publicly accessible internet page*. A skin shall maintain a publicly accessible internet page dedicated to responsible play, a link to which must appear on the skin's website and in any mobile application or electronic platform on which an authorized sports bettor may place sports wagers through such skin, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367-a(4)(a)(xiv). The responsible play page shall include:

- (1) a statement of the skin's policy and commitment to responsible gaming;
- (2) information in regard to, or links to information in regard to, the risks associated with gambling and the potential signs of problem gaming;
- (3) the availability of self-imposed responsible gaming limits within each skin's website or mobile application;
- (4) a link to an appropriate problem-gaming webpage maintained by the office of addiction services and supports; and
- (5) such other information as the commission may direct.

(b) *Problem-gaming plan*. A skin shall submit annually on or before September 1<sup>st</sup> to the commission for approval, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1367-a(4)(a)(xv), a problem-gaming plan that includes, at a minimum:

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- (1) the objectives of and timetables for implementing the plan;
- (2) identification of the persons responsible for implementing and maintaining the plan;
- (3) procedures for identifying users with suspected or known problem-gaming behavior;
- (4) procedures for providing information to users concerning problem-gaming identification and resources;
- (5) procedures to prevent gaming by minors and self-excluded persons; and
- (6) such other information as the commission may direct.

(c) *Other regulatory requirements.* Each skin shall comply with the problem gaming, self-exclusion and excluded person requirements, including trainings, set forth in Parts 5325 and 5327 of this subchapter as if such licensee were a gaming facility licensee and with Part 5402 of this subtitle.

#### **§ 5330.35. [Reserved]**

#### **§ 5330.36. Suspension, fines, revocation and other discipline.**

The provisions of section 5329.36 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee, mobile sports wagering key employee, mobile sports wagering employee and person having access to a mobile sports wagering server.

#### **§ 5330.37. Authorized sports bettor account requirements.**

(a) *Opening an account.* Prior to an authorized sports bettor placing a sports wager, the following information, at a minimum, shall be provided by a potential authorized sports bettor and verified through the mobile sports wagering KYC identity-verification software or other remote multi-factor authentication, before status as an authorized sports bettor may be confirmed:

- (1) full name;
- (2) physical residential address;
- (3) date of birth;
- (4) last four digits of Social Security number, unless such authorized sports bettor willingly provides all nine digits, the potential authorized sports bettor's driver license, or an equivalent identification number for a person who has no Social Security number, such as a passport or taxpayer identification number; and
- (5) email address and telephone number.

(b) *Confirmation required.* Upon verification of an individual's identity, the authorized sports bettor shall confirm, at a minimum, the following:

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- (1) the authorized sports bettor is at least 21 years of age;
- (2) the account holder is not a prohibited sports bettor;
- (3) the information provided upon registering for an account is accurate and that only the account holder shall have access to such account;
- (4) the account is the only mobile sports wagering account the authorized sports bettor owns with the particular skin and that the account is not transferable;
- (5) all mobile sports wagers made on the account shall not be made by computerized software or other automated mechanism; and
- (6) the authorized sports bettor accepts the terms and conditions of opening an account.

(c) *Multi-Factor authentication.* Each authorized sports bettor shall be required to use a username and one or more of the following methods of authentication to verify the such person's identity:

- (1) password or other commonly used mobile phone login mechanism;
- (2) answer previously provided security questions;
- (3) biometric data, including fingerprint, facial or voice recognition;
- (4) an authorization code sent by phone call, text message or email to the appropriate contact information provided at the opening of the account; or
- (5) any other authorization types as approved by the commission.

(d) *Funding.* An authorized sports bettor shall have the ability to deposit funds, which shall not be transferable between platforms, into such bettor's account with a skin using the following mechanisms, as permitted and restricted in Racing, Pari-Mutuel Wagering and Breeding Law section 1367-a(5)(b):

- (1) debit card;
- (2) credit card, up to \$2,500 per year in any single account;
- (3) pre-paid card;
- (4) automated clearing house or electronic funds transfer from such authorized sports bettor's personal bank account;
- (5) wire transfer from such authorized sports bettor's personal bank account;
- (6) free bet, promotional credit, bonus credit or complimentary issued by the skin;
- (7) personal check delivered to the skin;

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- (8) in-person cash deposit at a casino or other locations, if the skin, with the approval of the commission, chooses to provide such functionality;
- (9) transfer from an account with another skin that uses the same platform provider;
- (10) gift cards;
- (11) e-wallets; and
- (12) other forms of funding, as may be approved by the commission.

(e) *Withdrawals.*

(1) Unless paragraph (2) of this subdivision applies, an authorized sports bettor requesting a withdrawal shall receive the requested funds within seven days of such request by one of the following mechanisms, as permitted Racing, Pari-Mutuel Wagering and Breeding Law section 1367-a(5)(b):

- (i) crediting the authorized sports bettor's debit card;
- (ii) crediting a pre-paid card, after the skin verifies that such card belongs to the authorized sports bettor;
- (iii) an automated clearing house or electronic funds transfer to the authorized sports bettor's personal bank account;
- (iv) a wire transfer to the authorized sports bettor's personal bank account;
- (v) a check made payable to the authorized sports bettor;
- (vi) in cash at a casino or other locations, if the skin, with the approval of the commission, chooses to provide such functionality; or
- (vii) other forms of withdrawals as may be approved by the commission.

(2) An authorized sports bettor's request for withdrawal of funds may be delayed if any of the following factors occur:

- (i) if a skin believes an authorized sports bettor has engaged in unusual or suspicious wagering activity, or if a skin has informed the authorized sports bettor that an investigation has begun into the unusual or suspicious wagering activity, in which case there may be a delay of up to 14 days, which period may be extended if the skin requests in writing and is granted by the commission additional delay;
- (ii) an ongoing dispute between the authorized sports bettor and the skin, in which case, the skin shall notify the commission;

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(iii) funds are requested to be withdrawn before the chargeback period of the transaction ends;  
or

(iv) the authorized sports bettor requests a check by mail.

(f) *Account closure.* A skin shall place the method for an authorized sports bettor to close an account prominently on a webpage or mobile application page labelled “player’s account,” or a similar label. If funds exist in the account upon account closure, the authorized sports bettor shall be prompted to provide the bettor’s preference for how the funds shall be withdrawn.

### **§ 5330.38. Mobile sports wagering promotions.**

(a) *Requirements for promotions.* A skin shall submit to the commission all mobile sports wagering promotions for approval a minimum of 15 days prior to the intended commencement of such promotion. Any such proposed promotion shall:

- (1) detail the type of promotion, dates the promotion will occur, minimum and maximum awards, the anticipated liability and any other information pertinent to the promotion;
- (2) include terms and conditions that are full, accurate, clear, concise and do not contain misleading information;
- (3) disclose applicable terms if the authorized sports bettor must risk or lose the bettor’s own funds as part of the promotion, or if such promotion has conditions that a bettor’s own funds must be used to qualify for such promotion;
- (4) not be described as risk-free if the authorized sports bettor needs to incur any loss or risk the bettor’s own money to use or withdraw winnings from the risk-free bet;
- (5) not restrict the authorized sports bettor from withdrawing the bettor’s own funds or withdraw winnings from bets placed using the bettor’s own funds; and
- (6) ensure advertisements of such promotions shall conform to the rules set forth in 5325.6 of this subchapter, as if a skin were a gaming facility licensee.

(b) *Relationship of promotions to gross gaming revenue.* See subdivision (g) of section 5330.29 of this Part.

### **§ 5330.39. License fee.**

As a condition of licensure, a platform provider shall pay to the commission the one-time fee set forth in Racing, Pari-Mutuel Wagering and Breeding Law 1367-a(3). Such fee shall be paid no later than 30 days after the commission selects such platform provider for potential licensure, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law 1367-a(3).

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#### **§ 5330.40. Server and other equipment.**

(a) *Installation of server.* The commission shall determine where, including at which casino, a mobile sports wagering licensee's servers and other equipment used in accepting a mobile sports wager shall be located. Such servers and equipment shall be:

(1) in an area limited to sports-wagering-related activities with appropriate access and security measures, as approved by the commission. Access to such area shall be logged electronically and kept for a period of not less than five years; and

(2) accessible to licensed mobile sports wagering licensee employees authorized to access such servers and equipment, the mechanism of such access to be agreed upon by the casino and the mobile sports wagering licensee and set forth in the casino's standard operating procedures, as approved by the commission. Access to servers and equipment shall be limited to specific licensed casino employees authorized by the commission.

(b) *Payment for housing of server and other equipment.*

(1) Each casino shall receive an annual hosting fee in the amount set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1311(3). The aggregate annual hosting fees shall be divided equally among the platform providers, each of which shall then pay its share either to the commission or to casinos, at such times and in such amounts as the commission may direct. If the commission directs that such fees from platform providers are first payable to the commission, the commission shall then distribute to each casino the annual hosting fee to which such casino is entitled by statute.

(2) A casino shall bill, each calendar quarter, the platform provider for the reasonable and actual costs for the prior calendar quarter of housing and securing the server and other equipment as set forth in subdivision (b) of this section, including, without limitation:

(i) modifications, upgrades or improvements to the casino required to physically locate and secure the platform provider's servers and other equipment;

(ii) any ongoing utility and infrastructure costs incurred by the casino that are reasonably attributable to the operations of the platform provider and associated skins at such casino; and

(iii) regulatory costs the casino was assessed pursuant to section 5330.41 of this Part.

(3) The commission shall have the ability to consider whether the costs of housing and securing the server and other equipment are commercially reasonable.

(c) *Exclusive use for mobile sports wagering.* A server or other equipment that a platform provider locates at a casino shall be used exclusively in support of mobile sports wagering.

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### **§ 5330.41. Regulatory costs.**

Any costs of the commission necessary to maintain regulatory control over mobile sports wagering shall be assessed annually on each casino in proportion to the aggregate mobile sports wagering gross revenue in this State of the skins associated with the platform provider whose server is located at such casino compared to the aggregate mobile sports wagering gross revenue in this State for the period billed. Each casino shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the commission. Nothing in this section shall prevent a casino from recouping the cost of such assessments pursuant to paragraph (2) of subdivision (b) of section 5330.40 of this Part.

### **§ 5330.42. Fee for preparation of statutory report.**

The commission, on or before September 1<sup>st</sup> of each year, shall assess platform providers aggregate fees in the amount of the commission's costs to produce the annual report required by Racing, Pari-Mutuel Wagering and Breeding Law 1367-a(6). The fee assessed against each platform provider shall be the commission's cost multiplied by the aggregate gross gaming revenue of such platform provider's associated skins for the period and divided by the aggregate gross gaming revenue of all skins in this State for the same period.

### **§ 5330.43. Anti-money laundering program.**

A skin shall comply with the anti-money laundering requirements set forth in section 5315.17 of this subchapter as if such skin were a gaming facility licensee.

### **§ 5330.44. Geolocation requirements.**

*(a) Independent testing laboratory and requirements.* Geolocation software used by mobile sports wagering licensees shall be approved by a licensed independent testing laboratory, including applicable field testing, before the software is deployed in this State. ~~Internal controls for geolocation~~ Geolocation requirements include ~~shall address:~~

- ~~(1) how the licensee shall ensure~~ ensuring that authorized sports bettors shall be physically located within the State of New York when engaging in mobile sports wagering;
- ~~(2) which geolocation system will be~~ the systems used to reasonably detect the physical location of an authorized sports bettor attempting to place a sports wager with the skin and block unauthorized attempts to access the licensee's platform throughout the duration of the wagering session;
- ~~(3) how the geolocation system will detect~~ detection of any mechanisms a bettor may use to circumvent the requirement that the bettor be physically located within the State of New York;
- ~~(4) how the geolocation system ensures~~ ensuring the integrity of the bettor's account and the bettor's device by blocking sports wagers from devices that indicate tampering;
- ~~(5) how the skin will discover and update~~ discovery and updating of the internet protocol address of the bettor if such changes during a session and how physical location would then be detected;

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~~(6) how the system shall block~~ blocking any attempt to make a sports wager the geolocation software determines is being attempted from a physical location outside of the State of New York,; ~~and how, in such event, the system shall log~~ logging any identifying information relating to such attempt,; ~~and how such information shall be made~~ making such information available to the skin and the commission upon request;

(7) how the geolocation system shall alert the mobile sports wagering licensee of potential risks and fraudulent activity and grant the licensee and the commission access to real-time data feeds of geofencing feeds and potential risks; and

(8) how the skin shall ensure that a mobile sports wagering vendor license is obtained by any geolocation vendor.

(b) Additional requirements by bulletin. The commission, at its discretion, may publish bulletins to specify additional geolocation requirements.

# New York State Gaming Commission

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Mobile Sports Wagering and Sports Wagering at Gaming Facilities

I.D. No. SGC-35-21-00010-P

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

**Proposed Action:** Amendment of Part 5329; addition of Part 5330 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), (24), 1307(1), (2)(g), 1367(1)(aa), (2)(a), (b), (4), (11), (12)(b), (e)(i), (g), (h), (i)(iv), (j), (13), 1367-a(4)(a)(ii), (iii), (xiv), (xv), (h), (5)(a); L. 2021, ch. 59, part Y, section 7

**Subject:** Mobile sports wagering and sports wagering at gaming facilities.

**Purpose:** To regulate and control mobile sports wagering and sports wagering as directed by statute.

**Substance of proposed rule (Full text is posted at the following State website: [www.gaming.ny.gov/proposedrules](http://www.gaming.ny.gov/proposedrules)):** The amendment of Part 5329 and the addition of Part 5330 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe the rules for mobile sports wagering through servers located at casinos and improve sports wagering regulation at casinos given amendments to Racing, Pari-Mutuel Wagering and Breeding Law section 1367 and the addition of section 1367-a.

Amendments to section 5329.1 clarify that Part 5329 applies to existing sports wagering at casinos in sports lounges and other locations accessible to the public and amend definitions applicable to sports wagering to conform to Racing, Pari-Mutuel Wagering and Breeding Law section 1367. The amendments set forth a definition of casino sports wagering licensee to distinguish the casino licensee from operator vendors, and harmonize the definition of a prohibited sports bettor with the mobile sports wagering regulations set forth in Part 5330.

Amendments to sections 5329.2 through 5329.34 and 5329.36 update nomenclature consistent with the definitions and cross-references to statute. Other stylistic changes are made.

An amendment to section 5329.4 sets forth explicitly that the acts, omissions and knowledge of a sports pool vendor shall be imputed to and also shall be the responsibility of the casino sports wagering licensee.

Amendments to section 5329.8 require that internal controls include procedures to ensure no sports wagering shall be based on a prohibited sports event and describe data sources used in wager determinations.

An amendment to section 5329.8 requires official data from a sports wagering governing body be used to determine all sports wagers, unless the licensee demonstrates to the satisfaction of the Commission that wagers for a wager type may be determined objectively, reliably, accurately and timely by an alternative data source.

Amendments to section 5329.12 add further requirements for house rules on wagering.

An amendment to section 5329.13 permits the Commission to consider the views of a league association or organization in considering approval of a wager type.

Amendments to section 5329.15 contemplate layoff wagers relating to mobile sports wagering and address timing of notification to the Commission.

An amendment to section 5329.16 eliminates lock-time provisions, given the prevalence of in-game wagering.

An amendment to section 5329.17 removes a rescission provision, which is now addressed in section 5329.21.

Amendments to section 5329.26 require a licensee or vendor to immediately report any suspected criminal activity to the Commission, add other reporting requirements required by statute and address other statutory requirements.

An amendment to section 5329.29 sets forth a licensee's calendar year recap responsibilities mandated by statute.

Section 5330.1 sets forth the applicability of Part 5330 to mobile sports wagering and sets forth definitions applicable to mobile sports wagering.

Section 5330.2 sets forth licensing provisions for mobile sports wagering platform providers and skins to be selected through the competitive process required by statute.

Section 5330.3 sets forth that the term of a mobile sports wagering license shall be up to 10 years.

Section 5330.4 describes mobile sports wagering vendors and sets forth that the licensing standard for such vendors shall be equivalent to those of a casino vendor enterprise.

Section 5330.5 establishes a continuing duty to report mobile sports wagering licensee and mobile sports wagering vendor changes.

Section 5330.6 describes the occupational licensing requirements of individuals involved in mobile sports wagering.

Section 5330.7 incorporates sports wagering regulations from section 5329.7 that authorize Commission action in the event of misconduct or improper associations.

Section 5330.8 requires internal controls and sets forth minimum requirements for internal controls in mobile sports wagering.

Section 5330.10 sets forth mobile sports wagering system requirements.

Section 5330.12 incorporates sports wagering regulations from section 5329.12 requiring each skin to establish house rules for mobile sports wagering and sets forth minimum requirements for house rules.

Section 5330.13 incorporates sports wagering regulations from section 5329.13 regulating wager types and sets forth that prior Commission approval of a wager type is required.

Section 5330.15 allows layoff wagers as a risk management tool.

Section 5330.17 sets forth a requirement that a mobile sports wager is not valid until accepted at a server or other electronic equipment located at a casino.

Section 5330.19 incorporates sports wagering regulations from section 5329.19 setting forth certain restrictions on wagering, including by minors, prohibited persons and proxies.

Section 5330.21 incorporates sports wagering regulations from section 5329.21 regulating circumstances under which wagers may be cancelled or rescinded.

Section 5330.23 sets forth requirements relating to addressing sports bettor complaints.

Section 5330.24 sets forth skin reserve requirements.

Section 5330.25 incorporates sports wagering regulations from section 5329.25 prohibiting dishonest actions in connection with mobile sports wagering.

Section 5330.26 incorporates sports wagering regulations from section 5329.26 establishing duties to report dishonest or unlawful acts, bribes, suspicious activity and suspected money laundering.

Section 5330.27 incorporates sports wagering regulations from section 5329.27 requiring the establishment of controls to identify unusual betting activity and requiring the retention of an integrity monitoring provider to assist in the identification of suspicious betting activity and cooperation with others in protecting the integrity of underlying sports events.

Section 5330.28 sets forth regulations in regard to the payment and reporting of tax.

Section 5330.29 sets forth procedures to report and reconcile gross gaming revenue.

Section 5330.30 incorporates sports wagering regulations from section 5329.30 setting forth requirements for accounting and financial records.

Section 5330.31 incorporates sports wagering regulations from section 5329.31 establishing a duty to give evidence to the Commission when requested or ordered to do so.

Section 5330.32 incorporates sports wagering regulations from section 5329.32 requiring compliance assessments.

Section 5330.33 incorporates sports wagering regulations from section 5329.33 empowering the Commission to review and examine records.

Section 5330.34 requires compliance with responsible gaming obligations.

Section 5330.36 incorporates sports wagering regulations from section 5329.36 setting forth the Commission's power to suspend or revoke licenses or impose fines, when appropriate.

Section 5330.37 sets forth requirements for authorized sports bettor accounts in mobile sports wagering.

Section 5330.38 sets forth requirements of mobile sports wagering promotions.

Section 5330.39 sets forth timing for the payment of license fees required by statute.

Section 5330.40 sets forth requirements for mobile sports wagering servers and other equipment.

Section 5330.41 sets forth requirements for the assessment of regulatory costs.

Section 5330.42 sets forth requirements for the assessment of costs to produce the annual report required by statute.

Section 5330.43 sets forth a requirement for skins to comply with anti-money laundering requirements applicable to casinos.

Sections 5330.9, 5330.11, 5330.14, 5330.16, 5330.18, 5330.20, 5330.22 and 5330.35 are reserved, because the topics in the parallel provisions of similarly numbered sections in Part 5329 are not applicable to mobile sports wagering.

*Text of proposed rule and any required statements and analyses may be obtained from:* Kristen M. Buckley, Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

*Public comment will be received until:* 60 days after publication of this notice.

*This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.*

#### **Regulatory Impact Statement**

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) section 104(19) grants authority to the Gaming Commission (“Commission”) to promulgate rules and regulations that it deems necessary to carry out its responsibilities.

Racing Law section 104(24) authorizes the Commission to regulate sports wagering.

Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1307(2)(g) authorizes the Commission to define and limit areas of operation, the rules of authorized games, the devices permitted and the method of operation of such games and devices.

Racing Law section 1367(1)(aa) authorizes the Commission to regulate matters concerning unusual sports wagering and mobile sports wagering activity.

Racing Law section 1367(2)(a) authorizes the Commission to promulgate regulations in regard to the operation of sports pools.

Racing Law section 1367(2)(b) authorizes the Commission to regulate the requirements of sports lounges.

Racing Law section 1367(4) authorizes the Commission to regulate the conduct of sports wagering.

Racing Law section 1367(11) authorizes the Commission to regulate restrictions on sports wagering when a sports governing body notifies the Commission of a desire to restrict, limit or exclude wagering on its sporting events.

Racing Law section 1367(12)(b) authorizes the Commission to regulate recordkeeping in sports wagering.

Racing Law subparagraphs 1367(12)(e)(i), (g) and (h) authorize the Commission to regulate matters of integrity monitoring of sporting events.

Racing Law section 1367(12)(i)(iv) authorizes the Commission to regulate matters of prohibited sports bettors.

Racing Law section 1367(12)(j) authorizes the Commission to regulate investigations and resolution of charges.

Racing Law sections 1367(13) and 1367-a(4)(a)(xiv) and (xv) authorize the Commission to regulate matters concerning responsible gaming.

Racing Law section 1367-a(4)(a)(ii) authorizes the Commission to regulate the location of bettors in the State.

Racing Law section 1367-a(4)(a)(iii) authorizes the Commission to prohibit minors from participating in sports wagering.

Racing Law section 1367-a(4)(h) authorizes the Commission to regulate matters concerning servers or other equipment used to accept mobile sports wagers.

Racing Law section 1367-a(5)(a) authorizes the Commission to regulate the funding of authorized bettor accounts in mobile sports wagering.

Section 7 of Part Y of Chapter 59 of the Laws of 2021 authorizes the Commission to promulgate any rules and regulations it deems necessary to regulate mobile sports wagering.

2. **LEGISLATIVE OBJECTIVES:** The above referenced statutory provisions carry out the legislature’s stated goals “to tightly and strictly” regulate casinos “to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state,” as set forth in Racing Law section 1300(10), and ensure that mobile sports wagering that meets safeguards set forth in statute would mitigate revenue lost to other states, as set forth in section 1 of Part Y of Chapter 59 of the Laws of 2021.

3. **NEEDS AND BENEFITS:** The proposed rules are necessary because statutes direct the Commission to implement statutory requirements through rulemaking and develop regulations in regard to aspects of sports wagering at casinos and mobile sports wagering conducted through servers or other equipment at casinos. In particular, Racing Law section 1367(4) directs the Commission to promulgate regulations necessary to carry out the provisions of sections 1367 and 1367-a authorizing both sports wagering at casinos and mobile sports wagering conducted through servers or other equipment at casinos, including, but not limited to, regulations governing the:

(a) amount of cash reserves to be maintained by operators to cover winning wagers;

(b) acceptance of wagers on a series of sports events;

(c) maximum wagers which may be accepted by an operator from any one patron on any one sports event;

(d) type of wagering tickets which may be used;

(e) method of issuing tickets;

(f) method of accounting to be used by operators;

(g) types of records which shall be kept;

(h) use of credit and checks by patrons;

(i) type of system for wagering; and

(j) protections for a person placing a wager.

Adoption of the regulations would allow licensed gaming facilities to continue to conduct sports wagering and allow new licensees to conduct mobile sports wagering, thereby increasing appeal to patrons, gaming facility revenue and tax revenue to the State, within a regulatory environment designed to protect patrons, promote the integrity of wagering, enhance monitoring of the integrity of underlying sports events that are the subject of wagering and promote responsible gaming.

#### **4. COSTS:**

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulations is not yet determined, but would entail an investment in systems, vendors and integrity monitoring providers, among other things.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rule will be negligible given that all such costs are the responsibility of the licensed parties. These rules will not impose any additional costs on local governments.

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

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

6. **PAPERWORK:** The rules are not expected to impose any significant paperwork or reporting requirements on the regulated entities.

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

8. **ALTERNATIVES:** The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulations. Alternatives were discussed and considered with stakeholders and compared to other jurisdiction regulations, such as whether wager types should require Commission approval, what type of suspicious activity should be reported to the Commission, requirements for bettor location and server or other equipment location and other matters. Racing Law section 1367(4) directs the Commission “to regulate sports pools and the conduct of sports wagering...to the same extent that the commission regulates other gaming” and provides, “In developing rules and regulations applicable to sports wagering, the commission shall examine the regulations implemented in other states where sports wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework.”

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

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

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

The proposed rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of mobile sports wagering and sports wagering at casinos in New York State.

The proposed rules do not impact local governments or small businesses as no local government or small business is eligible to hold a mobile sports wagering license or sports pool license and no local government or small business is anticipated to be a mobile sports wagering or sports pool vendor.

The proposed rules impose no adverse impact on rural areas. The rules apply uniformly throughout the state.

The proposed rules will have no adverse impact on job opportunities.

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



# Gaming Commission

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

[www.gaming.ny.gov](http://www.gaming.ny.gov)

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** September 21, 2021

**Re:** Adoption of Consensus Rulemaking to Amend Video Lottery Gaming Marketing and Other Regulations (9 NYCRR §§ 5100.2, 5103.8, 5104.1, 5109.3, 5112.1, 5112.2, 5112.3, 5112.5, 5113.5, 5116.1, 5116.2, 5116.3, 5116.4, 5116.5, 5116.7, 5116.8, 5116.10, 5116.11, 5118.9 and Part 5122)

For Commission consideration is the adoption of a consensus proposal to amend the video lottery gaming regulations to reflect amendments to Tax Law section 1612. For video lottery gaming agents, marketing allowance and capital awards are now included as part of the operator commission. Marketing is now funded out of the vendor's fee and is not kept in a segregated account. For capital awards, the Commission approves projects and the reimbursement process has been eliminated. The proposal also conforms the agency's regulations to the amendments to Tax Law section 1612 and makes other stylistic edits, such as adding titles to subdivisions, improving word choices and using Department of State style conventions.

The Notice of Proposed Rulemaking was published in the July 21, 2021 edition of the State Register, a copy of which is attached. The full text of the proposed rule is also attached. The public comment period expired on September 20, 2021. No comments were received.

[REDACTED]

attachment

cc: Robert Williams, Executive Director  
Thomas Anapolis, Director, Division of Gaming

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**Sections 5100.2, 5103.8, 5104.1, 5109.3, 5112.1, 5112.2, 5112.5, 5113.5, 5116.1, 5116.2, 5116.4, 5116.5, 5116.7, 5116.8, 5116.10, 5116.11, 5118.9 and Part 5122, of Title 9 of the NYCRR would be amended, and section 5112.3 and 5116.3 would be repealed, as follows:**

## **NYCRR Title 9, Executive**

### **Subtitle T**

#### **New York State Gaming Commission**

##### **Chapter IV**

##### **Division of Gaming**

##### **Subchapter A**

##### **Video Lottery Gaming**

#### **Part**

- 5100 General Provisions, Construction and Application of Rules**
- 5101 Information and Filings**
- 5102 General Provisions Regarding Licensing and Registration**
- 5103 Video Lottery Gaming Agents**
- 5104 Financial Stability of Video Lottery Gaming Agents**
- 5105 Video Lottery Gaming Key Employee and Employee Licensing**
- 5106 Video Lottery Gaming Vendor Licensing**
- 5107 Personnel Assigned to the Operation of Video Lottery Gaming Facilities**
- 5108 Internal Controls Governing the Operation of Video Lottery Gaming**
- 5109 Financial Controls for Video Lottery Gaming Agents**
- 5110 Requirements for Doing Business with Construction Contractors**
- 5111 Fees**
- 5112 Video Lottery Gaming Revenues**
- 5113 Suspensions and Revocations**
- 5114 Continuing Obligations of Video Lottery Gaming Agents**
- 5115 Video Lottery Gaming Agent Operation Certificate**
- 5116 [Collection, Distribution and Authorized Use of] Marketing [Allowance] and Promotion Program**
- 5117 Underage Gaming; Alcoholic Beverages; Firearms; Responsible Gaming; Undesirable Persons**
- 5118 Conduct and Operation of Video Lottery Gaming**
- 5119 Video Lottery Terminal Component Standards**
- 5120 Shipment; Possession Limitations**
- 5121 Surveillance and Security**
- 5122 [Collection, Distribution and Authorized Use of] Capital [Awards] Improvements**

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## § 5100.2. Definitions.

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

\* \* \*

(30) *Complimentary service* or *complimentary item* means a service or cash or non-cash item provided directly or indirectly by the video lottery gaming agent pursuant to a marketing plan approved by the commission at no cost or at a reduced price to a player. Complimentary services or items are subject to [the reimbursement rate provided by these regulations] this subchapter and guidance issued by the commission from time to time.

\* \* \*

(70) *Marketing [allowance] expenses or expenditures* means [that percentage of net terminal income permitted by the act to be retained by the video lottery gaming agent to be used for] items related to the marketing, promotion and associated costs of [such] a video lottery gaming agent's video lottery gaming operations, consistent with the customary manner of marketing and promoting comparable operations in the industry, subject to the overall supervision of the commission.

(71) *Marketing [allowance account] and promotion program* means the [account] program established by each video lottery gaming agent [for the deposit by the commission of the applicable marketing allowance] and funded out of the vendor's fee.

\* \* \*

(98) *Subcontractor* means any person who contracts with a licensed entity to provide [good] goods or services in furtherance of video lottery gaming.

\* \* \*

## § 5103.8. Gaming facility insurance requirements.

\* \* \*

(h) Limits. The video gaming agent shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

(1) Commercial general liability [Insurance] insurance with a limit of not less than \$5,000,000 each occurrence. Such insurance shall cover liability arising from premises operations, independent contractors, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and

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underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per location basis.

\* \* \*

### **§ 5104.1. Financial stability criteria.**

(a) Criteria. Each video lottery gaming agent, and each of such agent's principals, shall establish and maintain during the pendency of such video gaming agent license the financial stability of such licensee to the satisfaction of commission. The commission may consider any relevant evidence of financial stability. A video lottery gaming agent shall be considered to be financially stable if such agent establishes by clear and convincing evidence that such agent meets each of the following standards:

\* \* \*

(3) [Video] A video lottery gaming [agents must] agent shall maintain the video lottery gaming [facilities] facility and related amenities in good repair. Each video lottery gaming agent shall submit annually to the commission for review, any changes or updates to the capital [reinvestment] investment plan for the video lottery gaming facility together with the [then effective] then-effective capital [reinvestment] investment plan. The commission shall review such changes and updates to [insure] ensure that each video lottery gaming agent is investing portions of the vendor fee [and marketing allowance] permitted by the act in the [facilities] facility's infrastructure as is necessary to support viable and successful video lottery gaming in this [state] State. Each capital [reinvestment] investment plan submitted shall be in such form as required by the commission and shall discuss the improvements made to the facility since the submission of the last [reinvestment] investment plan. [Video] Each video lottery gaming [agents must] agent shall budget for repair and replacement reserves to maintain the [facilities] facility unless otherwise prohibited by law. The commission reserves the right to require video lottery gaming agents to create and fund replacement reserves at such amounts determined by the commission consistent with the requirements of the act.

\* \* \*

(6) No video lottery gaming agent shall guarantee the debt of any person or business entity, whether by co-signature or otherwise, or assume the debt of any person or business entity; or enter into any agreement to place any encumbrance on of [its'] its video lottery gaming facility to secure the debts of such video gaming agent, any person or business entity, without the prior written approval of the commission.

\* \* \*

### **§ 5109.3. Format and structure of accounting records.**

(a) Maintenance. The video lottery gaming agent shall maintain complete, accurate, legible and permanent records of all transactions pertaining to such agent's revenues, expenses, assets, liabilities, and equity in conformance with generally accepted

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accounting principles. The failure of the video lottery gaming agent to maintain records according to such principles shall be a violation of these regulations.

(b) Specific requirements for records. The accounting records maintained by [the] a video lottery gaming agent shall be maintained using a [double entry] double-entry system of accounting with transactions recorded on the accrual basis and supported by detailed subsidiary records. Such subsidiary records shall include, at a minimum, all of the following:

\* \* \*

(10) records supporting the utilization of any expenses funded by the marketing [allowance] and promotion program;

(c) Retention. Notwithstanding any of [these regulations] this subchapter to the contrary, all accounting records shall be kept for a period of not less than seven years from their respective dates.

\* \* \*

## PART 5112

### Video Lottery Gaming Revenues

#### Section

- 5112.1 Identification of financial institutions
- 5112.2 Deposit of video lottery gaming revenues by agents
- 5112.3 [Deposit of marketing allowance by the commission] [Repealed]
- 5112.4 Duty to notify of accounting discrepancies
- 5112.5 Delinquent accounts

#### § 5112.1. Identification of financial institution.

(a) Establishment of accounts. Prior to the commencement of the operation of any video lottery gaming facility, the video lottery gaming agent shall submit to the commission for approval the name and location of a financial institution authorized to do business in the State together with:

(1) the account number for the account designated by the video lottery gaming agent for the deposit of video lottery gaming revenues;

(2) the account number for the account designated by the video lottery gaming agent for the deposit [by the commission of the daily marketing allowance for such video lottery gaming facility] of the portion of the vendor fee to be used exclusively for capital investments; and

(3) the financial institution's routing information for collection and distribution of video lottery gaming revenue.

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(b) Financial institution. The financial institution shall be a bank or trust company, as defined by the State banking law, that is authorized to do business in the State and that maintains an office for the transaction of business within the State. The video lottery gaming agent shall authorize such bank or trust company to transfer revenue to the commission or the commission's duly authorized representative in a manner consistent with these regulations.

(c) Use of accounts. The accounts designated by the video lottery gaming agent pursuant to this Part shall be used exclusively for either:

- (1) the deposit and distribution of the daily video lottery gaming revenue; or
- (2) the deposit and distribution of [the daily marketing allowance] capital investments.

The video lottery gaming agent shall not commingle other funds into [said] such accounts.

(d) Required notice. Each video lottery gaming agent shall provide the commission 30 days advance notice of any proposed account changes in order to [insure] ensure the uninterrupted distribution of video lottery gaming revenue to the commission.

#### **§ 5112.2. Deposit of video lottery gaming revenues by agents.**

(a) Daily deposit. Each video lottery gaming agent shall be required to deposit daily into the dedicated bank account for video lottery gaming revenue the net proceeds from video lottery gaming for the previous day as determined by the video lottery gaming central system and related reports. Any withholdings for Federal, State, and local income taxes, or public assistance and child support intercepts, shall be included in the daily deposit. The commission shall remit such withholdings when received to the appropriate governmental agencies.

(b) Electronic funds transfer. The net proceeds of video lottery gaming required to be remitted daily to the commission by this Part shall be remitted through an Electronic Funds Transfer ([EFT] EFT) from the dedicated bank account for video lottery gaming revenue provided by the video lottery gaming agent. The commission may utilize the EFT to adjust certain administrative expenses, [video gaming agent marketing allowance,] prize payments or net machine income, as determined by the commission. To the extent that such daily EFT cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day thereafter that such services are available. Failure to comply with this procedure for EFT may result in the immediate suspension of video lottery gaming at the video lottery gaming facility.

(c) Loss or theft. The commission is not responsible for the loss or theft of money prior to the distribution of such money to the commission.

(d) Prize lapse. Any prize that has not been paid out within a time period specified by the commission shall be remitted to the commission.

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**§ 5112.3. [Deposit of marketing allowance by the commission.] [Repealed]**

[The commission, upon receipt of the net proceeds of video lottery gaming pursuant to this Part for any gaming day, shall deposit, or cause the deposit of the applicable marketing allowance for such video lottery gaming facility to the account established for such purpose by each video lottery gaming agent. Withdrawals from such account by the video lottery gaming agent shall be made only in accordance with the provisions of these regulations.]

\* \* \*

**§ 5112.5. Delinquent accounts.**

The commission may charge debt service in the amount of one and one-half percent monthly (18 percent per annum) on any monies due to the commission from video lottery gaming agents whose accounts are delinquent [over] for more than 30 days.

\* \* \*

**§ 5113.5. Penalties imposed by commission prior to reissuance of license.**

The commission may require a person (or business entity) who (or that) is subjected to disciplinary proceedings, or who (or that) formerly held a license pursuant to [these regulations] this subchapter, to meet certain conditions before reissuing a license to that person or business entity, including, [but not limited to] without limitation, one of more of the following:

(a) restitution of money;

(b) restitution of property;

[(c) suspension or revocation of the payment to the video lottery gaming agent of any portion of the video lottery gaming marketing allowance;]

[(d)] (c) making periodic reports to the commission as required; and

[(e)] (d) payment of outstanding fines imposed by the commission.

[Any or all of the conditions imposed by the commission pursuant to this Part may be imposed jointly and/or severally.]

\* \* \*

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## PART 5116

### **[Collection, Distribution and Authorized Use of] Marketing [Allowance] and Promotion Program**

Section	
5116.1	Video lottery gaming agent [receipt of] marketing [allowance] <u>and promotion program</u>
5116.2	Marketing and promotion plan
5116.3	[Establishment of the marketing allowance account] <u>[Repealed]</u>
5116.4	Marketing and promotion plan implementation
5116.5	Permitted marketing and promotion expenses
5116.6	Advertising
5116.7	Complimentary services and items
5116.8	Promotions
5116.9	Player rewards club
5116.10	Non-permitted marketing and promotion expenses
5116.11	Competitive bids

#### **§ 5116.1. Video lottery gaming [agent receipt of] agent's marketing [allowance] and promotion program.**

(a) Requirements for marketing plan. In accordance with the act, [there shall be made available to] each video lottery gaming agent [from the daily video lottery gaming revenue generated at each video lottery gaming facility a marketing allowance] shall dedicate a portion of its vendor fee to fund a marketing and promotion program to be used by [each] such video lottery gaming agent for [the reimbursement of] marketing, promotion and associated costs incurred by the video lottery gaming agent for such agent's video lottery gaming operations and pari-mutuel horse racing operations pursuant to an approved marketing plan pursuant to this Part, [as] so long as such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such agent's video lottery gaming facilities.

[(b)] All such marketing, promotion and associated costs incurred by any video lottery gaming agent shall be:

- (1) consistent with the customary manner of marketing and promoting comparable operations in other states and as described in an approved marketing plan; and
- (2) subject to the overall supervision of the commission.

[(c)] Each video lottery gaming agent shall establish a marketing allowance account for the deposit of the marketing allowance as required by these regulations.]

[(d)] Withdrawals from the marketing allowance account established by each video lottery gaming agent shall be permitted to reimburse the video lottery gaming agent for those expenses identified in a marketing plan approved annually by the commission pursuant to this part.]

[(e)] (b) Violation for unapproved expenses. Any [withdrawal from the] marketing [allowance account] or promotion expense incurred by a video lottery gaming agent that

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is not approved by the commission or identified in a marketing plan approved by the commission shall be a violation of the video lottery gaming agent's license, the act and [these regulations] this Part.

[(f) Nothing in these regulations shall prevent a video lottery gaming agent from incurring marketing, promotional and associated costs in excess of the marketing allowance, provided that this excess is identified in the marketing plan.]

[(g) Marketing allowance funds shall be made available to each video lottery gaming agent via a reduction to the daily remittance proceeds due to the commission. The daily remittance report on the central system shall include such reduction. It shall be the responsibility of the video lottery gaming agent to deposit the marketing allowance daily into an account dedicated and restricted to reimbursement of marketing, promotion, and associated costs of the video lottery gaming facility.]

### **§ 5116.2. Marketing and promotion plan.**

(a) Contents. Each video lottery gaming agent shall prepare annually a marketing and promotion plan (the ["marketing plan"] marketing plan) for the video lottery gaming facility. Each annual marketing plan shall be submitted to the commission for review and approval as described in this Part. An annual marketing plan shall include a summary of projected net machine income[,], and projected marketing [allowance, and projected] expenditures by category, in a standard worksheet format prescribed by the commission. The marketing plan worksheet shall include budgeted marketing expenditures by month and in total for each standard category. [Such worksheet] The commission shall [be reviewed by the commission] review such worksheet as part of the overall plan approval.

(b) Violation. The failure to submit any marketing plan when due to the commission shall be a violation of the video lottery gaming agent's license, the act and [these regulations] this Part.

(c) Requirements. Each annual marketing plan [must] shall:

(1) be prepared in accordance with the format prescribed by the commission; and

(2) fully describe, in a narrative form, subject to the approval of the commission, the marketing and promotional activities that the video lottery gaming agent proposes for [their] the applicable video lottery gaming facility for the subsequent 12-month period commencing on the first day of January of any calendar year. Such description [must] shall include the overall strategy of how the portion of the vendor's fee used to fund the marketing [allowance] and promotion program will be used for marketing, promotional and associated costs consistent with the customary manner of marketing and promoting comparable operations in the video lottery gaming entertainment industry in other states[, and] that are expected to be implemented at such video lottery gaming facility on a monthly, quarterly and annual basis[.]; the target market for such marketing and promotion[, and]; the anticipated effect (return on investment) of the marketing, promotional and associated costs described; any and all media buys advertising the video lottery gaming facility, whether directly or indirectly; and an itemization of the projected budget for all marketing and promotional expenses on a monthly, quarterly and annual basis.

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(d) Time for submission. Each annual marketing plan must be submitted to the commission for review and approval not earlier than 120 days and not later than 90 days prior to January 1 of any calendar year.

(e) Commission review. The commission shall review the annual marketing plan upon receipt and provide objections, questions or comments, if any, to the video lottery gaming agent within 45 days.

(f) Approval and implementation. If the marketing plan is approved by the commission without comment, then the video lottery gaming agent may proceed with the marketing plan's implementation commencing on the first day of January of any calendar year.

(g) Commission objection. In the event the commission objects or comments on the marketing plan, or any portion thereof, such objection, comment or question shall be delivered to the video lottery gaming agent in writing together with a disapproval notice of the submitted marketing plan in whole or in part.

(h) Amended plan after commission objection. Not later than 15 days from the receipt by the video lottery gaming agent of a marketing plan disapproval notice from the commission, or such longer time as the commission and the video lottery gaming agent may agree in writing, the video lottery gaming agent shall address the commission's objections or comments and submit an amended marketing plan to the commission for review. Upon submission of the amended marketing plan to the commission, a new 45-day time period for commission review will commence as described by this Part.

(i) Interim marketing plan. In the event the annual marketing plan is not approved by the commencement date of the marketing plan as agreed to by the commission for any year, the commission may, but shall not be required to, enter into an interim marketing plan agreement with the video lottery gaming agent for a period not to exceed 90 days from such commencement date. Such interim marketing plan shall be in such form as approved by the commission and govern the expenditure from the marketing [allowance account] and promotion program during such 90-day period for marketing, promotion and associated costs approved in such interim marketing plan. In the event the commission does not approve an interim marketing plan, or in the event an interim marketing plan expires, the video lottery gaming agent shall [not be entitled to reimbursement from the marketing allowance account until a marketing plan is approved by the commission] be in violation of this Part and the commission may impose fines.

(j) Adjustments. During any fiscal quarter covered by a marketing plan, the video lottery gaming agent may submit proposed adjustments, including an adjusted marketing plan worksheet and supporting documentation, to the marketing plan to the commission for review and approval. The commission shall have 15 days from the receipt of any proposed adjustment(s) to the marketing plan to review, approve or disapprove such adjustments in writing.

\* \* \*

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**§ 5116.3. [Establishment of the marketing allowance account.] [Repealed]**

[(a) Each video lottery gaming agent shall establish a marketing allowance account with a financial institution in accordance with these regulations. Marketing allowance funds shall be deposited daily to the marketing allowance account but in no event more than five business days after the accrual of such allowance.]

[(b) By establishing the marketing allowance account, each video lottery gaming agent irrevocably pledges, assigns and grants the commission a security interest in and control over the marketing allowance account (as a deposit account) and all funds held or to be held therein, including, without limitation, all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed, and all replacements, substitutions and proceeds of any of the foregoing. To perfect the commission's interest in the marketing allowance account, the commission may file such uniform commercial code financing statements and renewals thereof as necessary in the appropriate filing office(s).]

[(c) The commission is not responsible for the loss or theft of any money in the marketing allowance account.]

[(d) In the event the marketing allowance account contains a balance remaining at the end of any 12-month marketing plan period, and any such balance is not approved to be used for reimbursement of marketing and promotion costs as identified in a marketing plan approved by the commission for the immediately succeeding period, such balance shall be carried forward into the succeeding year and included in the marketing plan for that year.]

[(e) A video lottery gaming agent may submit a request for reimbursement of qualified marketing expenses by updating the marketing plan worksheet and submitting it to the commission for review and approval.]

[(f) The video lottery gaming agent shall arrange for monthly financial institution statements to be provided by the video lottery gaming agent's financial institution directly to the commission.]

**§ 5116.4. Marketing and promotion plan implementation.**

(a) Review of books and records. The commission or the commission's representative may, at the commission's discretion, review the books and records of the video gaming agent, to determine additional needs for assurance regarding utilization [and reimbursement] of the funds from the marketing [allowance] and promotion program. Each video gaming agent shall maintain sufficient documentation and a clear audit trail to support [the reimbursement of] any and all marketing [allowances] expenditures.

[(b) Any reimbursement of a marketing allowance, as determined by audit to be a non-qualified marketing expense, shall be immediately returned to the marketing allowance account by the video gaming agent and interim updates to the marketing plan shall incorporate expenditure of the additional allowance.]

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[(c) After a marketing plan is approved by the commission, the video lottery gaming agent will be permitted to receive reimbursements from the marketing allowance account of such sums equal to the marketing and promotional expenses incurred by such agent in accordance with the approved marketing allowance plan as expenses are accrued in accordance with generally accepted accounting principles. Reimbursements shall be made in accordance with a schedule approved by the commission.]

[(d) The video lottery gaming agent shall cause such agent's financial institution to agree that withdrawals shall be permitted from the marketing allowance account only pursuant to a commission approved disbursement request. Any withdrawal from the marketing allowance account not in accordance with this provision shall be a violation of the video lottery gaming agent's license, the act and these regulations.]

[(e) Each video lottery gaming agent shall submit, or cause to be submitted, monthly a completed marketing plan worksheet documenting or describing the marketing plan implementation by such agent to the commission by electronic methods. Such monthly worksheet shall be in such form and be submitted in accordance with a schedule approved by the commission.]

[(f)] (b) Violation for failure to submit monthly worksheet. The failure of the video lottery gaming agent to submit any monthly worksheet required by this Part shall be a violation of such agent's license, the act and [these regulations] this Part.

[(g) Each monthly worksheet shall contain cross references by date, amount and account codes to the relevant disbursement from the marketing allowance account so that such documentation and or other information can be reconciled with the approved marketing plan.]

[(h)] (c) Reports.

(1) The commission shall review each scheduled or required report submitted by [the] a video lottery gaming agent and audit the same against the approved marketing plan. Exceptions, discrepancies or questionable spending identified by the commission must be explained by the video lottery gaming agent in a timely manner to the satisfaction of the commission, but in no event later than 30 days from the date of the commission's initial inquiry. The failure of the video lottery gaming agent to adequately respond to any inquiry of the commission shall be a violation of [these regulations] this Part and may result in commission actions to include, without limitation, [those described in paragraph (1) of subdivision (j) of this section] the imposition of fines.

(2) [The] A video lottery gaming agent shall prepare each report in a professional manner detailing the marketing expenses [for which it is seeking reimbursement] to ensure that only qualified marketing expenses have been included [in such reimbursement request]. Qualified marketing expenses are defined in section 5116.5 of this Part and in guidance documents as [may be issued by] the commission may issue. Should the commission determine that [the] a video lottery gaming agent has submitted non-qualified expenses, [that do not qualify for reimbursement] appropriate penalties may be applied.

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[(i)] (3) The monthly marketing [allowance] and promotion program expense report shall, without limitation, summarize the expenditure made [from the marketing allowance account] and provide details and supporting documentation as determined by the commission in evidence of the expenditures [from such marketing allowance account].

[(j)] (d) Sanctions. In the event a video lottery gaming agent cannot explain adequately an expenditure or discrepancy [raised by] the commission [cannot be adequately explained by the video lottery gaming agent] raises, or in the event any violation of [these regulations] this Part remains uncured for a period of one through 30 days, the commission, in addition to any other remedy permitted by [these regulations] this Subtitle, may take any or all of the following actions:

(1) [require the video lottery gaming agent to reimburse the marketing allowance account an amount equal to the discrepancy] impose fines; and

(2) reimburse the commission for the cost of the commission's expenses related to researching and investigating such expenditure [or draw against the marketing allowance account].

[(k)] (e) Requirements after insufficient reporting. Within 45 days of the end of each quarter for an applicable marketing plan, in the event the monthly marketing expense reports are deemed insufficient at the sole discretion of the commission, the commission may require a video lottery gaming agent to provide the following information:

(1) a full and complete reconciliation of the previous quarter's marketing, promotion and associated costs incurred; and

(2) an accounting for the cash spending related to the marketing [allowance withdrawn from the marketing allowance account] expenses.

[(l)] (f) Annual report. [Annually each] Each video lottery gaming agent shall provide annually to the commission a report by an independent auditor of the content of the final annual statement of marketing expenses in a type and format prescribed by the commission.

[(m)] (g) Documentation required. Each video lottery gaming agent shall maintain sufficient documentation to support [the reimbursement of] any and all of such agent's marketing [allowance] expenses.

#### **§ 5116.5. Permitted marketing and promotion expenses.**

(a) Permissible expenses. The following qualified marketing expenses incurred by a video lottery gaming agent pursuant to an approved marketing plan [under these regulations] pursuant to this Part shall be permitted [reimbursable from the marketing allowance account]:

(1) advertising;

(2) complimentary services;

(3) promotions;

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- (4) group sales;
- (5) direct mail expenditures;
- (6) player's club expenses, except as otherwise provided in section 5116.9 of this Part;
- (7) entertainment costs;
- (8) personal Service Costs for the number and type of positions authorized by the commission as allowable;
- (9) such other marketing expenses for which advance approval is specifically requested in writing and subsequently approved by the commission or otherwise described in official guidance released by the commission from time to time and subject to audit by the commission.

(b) Caps. Nothing in the act or [these regulations will] this Part shall be construed as preventing the commission to cap allowable marketing, promotion and associated costs in any category of the permitted uses of the funds from the marketing [allowance] and promotion program.

(c) Cease and desist notice. To the extent that the commission believes that marketing [allowance] expenditures are inconsistent with the purpose and intent of the [marketing allowance or] marketing plan, the commission may issue a cease and desist notice to the video lottery gaming agent [in addition to withholding future reimbursements from the marketing allowance account].

[(d)] Upon receipt of any such cease and desist order issued by the commission, the video lottery gaming agent [will] shall immediately cease the identified action.

[(e)] (d) Hearing request following compliance with cease and desist notice. Provided that the video lottery gaming agent has complied with any cease and desist order issued by the commission, [the] a video lottery gaming agent may request a hearing on said action pursuant to [these regulations] this Subtitle.

\* \* \*

#### **§ 5116.7. Complimentary services and items.**

(a) *Distribution of complimentary services.*

(1) Neither [the] a video lottery gaming agent nor any third party affiliate or non-affiliate shall offer or provide any complimentary service, item, cash or other item of value to any person except as set forth in the video lottery gaming agent's marketing plan as approved by the commission and as provided for in [these regulations] this Part.

(2) [The] A video lottery gaming agent shall establish and maintain a system of internal controls, [to be approved by the] subject to commission approval, for the authorization and issuance of all complimentary services and items, including cash and non-cash items. Such system of internal controls shall include, without limitation, the procedures by which [the] a video lottery gaming agent may delegate to such agent's employees the authority to approve the issuance of complimentary services and items, the

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controls in place to ensure complimentary services and items are utilized by those individuals offered such services and items, and the procedures by which conditions or limits placed upon such authority are established and modified, including limits based on relationships between the authorizer and recipient, the relationship between the [video lottery gaming facility,] the video lottery gaming agent or such agent's principals with the recipient, and shall further include effective provisions for audit purposes.

(3) For purposes of determining the level of dollar value of complimentary service to be deemed an acceptable use by the video lottery gaming agent from the marketing [allowance account] and promotion program:

(i) all complimentary services or items, whether or not offered or provided to players in the normal course of the video lottery gaming agent's business, shall be allowable costs under the marketing plan of the video lottery gaming agent at amounts based upon [reimbursement] rates established by the commission;

\* \* \*

#### **§ 5116.8. Promotions.**

(a) Information about promotions. Each video lottery gaming agent shall include in [the] its marketing plan a description of each anticipated promotion, the cost of such promotion, the benefit for holding such promotion, the timing of such promotion, and any other information helpful to the commission in considering the approval of such promotion.

(b) Costs of promotions. The actual and necessary costs of each promotion shall be [reimbursed] funded from the marketing and promotion program [allowance account] as approved by the commission.

(c) Advertising content. The video lottery gaming agent shall submit such boards[,] and proposed images to the commission, as [required] the commission may require, for any advertising material for any promotion [as set forth in guidance documents issued by the commission].

(d) Competitive bidding. The commission may require competitive bidding at particular dollar levels of purchasing for any promotion.

\* \* \*

#### **§ 5116.10. Non-permitted marketing and promotion expenses.**

The following expenses incurred by a video lottery gaming agent shall not be [reimbursable from] included in the marketing [allowance account] and promotion program under any circumstance:

(a) payroll expenses incurred in the ordinary course of operating the video lottery gaming facility that are not marketing related;

(b) general office equipment and services, such as telephone, office supplies, photocopying, subscriptions, travel and other dues that are not marketing related;

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(c) except as otherwise permitted by the Act, the actual cost of any management fee paid by the video lottery gaming agent to any vendor engaged to operate the video lottery gaming facility on a daily basis;

(d) expenses that are [ultimately] borne ultimately by licensed video lottery terminal vendors; or

(e) rebates of cash to any vendor, vendee or other third party.

#### **§ 5116.11. Competitive bids.**

The actual monthly cost of any marketing or promotion expense shall be permitted [to be reimbursed from the marketing allowance account] as set forth in the [approved] commission-approved marketing plan, provided that, if applicable, the video lottery gaming agent shall competitively bid any marketing or promotion expense or program in excess of \$50,000 and demonstrate to the commission's satisfaction that the cost for such vendor is the lowest available proposal that satisfied the technical requirements of the bid or demonstrated to the commission's satisfaction that costs in excess of those of the lowest bidder are outweighed by the benefits of the chosen bidder. Certain sole source and professional services may be excluded from the competitive bid requirements. Any firm or company exempt from competitive bidding must be at arm's length from the facility.

\* \* \*

#### **§ 5118.9. Hours of Operation.**

The hours of operation of video lottery gaming at all licensed video lottery gaming facility locations shall be 20 consecutive hours per day, unless otherwise approved by the commission in writing after a video gaming agent applies for an exception at least 60 days in advance of a proposed change. In no event shall video lottery gaming be conducted past the time set forth in [subdivision b of Section 1617-a of the] Tax Law section 1617-a(e). Public access to the video lottery gaming floor must be restricted at all times video lottery gaming is not in operation. The failure of the video lottery gaming agent to comply with the hours of operation set forth in this section shall be a violation of these regulations.

\* \* \*

### **PART 5122**

#### **[Collection, Distribution and Authorized Use of] Capital [Awards] Improvements**

##### Section

- 5122.1 [Video lottery gaming agent receipt of capital awards] Capital investments accounts
- 5122.2 [Deposit of] Deposits into capital [awards] investments account
- 5122.3 Capital improvement plan
- 5122.4 Capital improvement plan implementation and [award reimbursement] withdrawals from the capital investments account

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**§ 5122.1. [Video lottery gaming agent receipt of capital awards] Capital investments accounts.**

(a) Requirements. In accordance with the act, [there shall be made available to] each video lottery gaming agent [from the daily video lottery gaming revenue generated at each video lottery gaming facility a capital award to] shall maintain a segregated capital investments account. The funds from such account shall be used exclusively for capital project investments to improve the facilities of the [vendor track] video lottery gaming agent that promote or encourage increased attendance at the video lottery gaming facility, including, [but not limited to] without limitation, 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] subject to approval by the commission and that such video lottery gaming 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.

[(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)] (b) Divestment. Any agent that has received a vendor's capital award[, choosing to divest the] or has withdrawn funds from its capital investments account that divests the capital improvement toward which the award or withdrawn funds was applied, prior to the full depreciation of the capital improvement, in accordance with generally accepted accounting principles, or ceases to use such asset for gaming purposes or transfers such asset to a related party, shall [reimburse the State in] deposit into the capital investments account amounts equal to the total of any such awards or withdrawals from the capital investments account or the fair market value of such asset, as Tax Law section 1612(b)(1-a)(iii) may require.

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

**§ 5122.2. [Deposit of] Deposits into capital [awards] investments account.**

(a) Deposits. [The commission shall make available to each video gaming agent, through the daily remittance process, the appropriate capital award.] Each video gaming agent

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shall be responsible to deposit the [capital award daily to] portion of its vendor fee set forth in Tax Law section 1612(b)(1) daily into a segregated capital investments account restricted for the collection and authorized use of such funds.

(b) Account statements. Each agent [receiving capital award funds] shall provide monthly bank statements for the segregated capital [awards] investments account to the commission for independent verification of [capital award] deposits and [reimbursement] withdrawals from the account.

(c) Loss or theft. The commission is not responsible for the loss or theft of any money in any account to which capital [award] investments funds are deposited.

### **§ 5122.3. Capital improvement plan.**

[(a)] Each agent [eligible for capital award funds] shall prepare a capital improvement plan for the video lottery gaming facility. [The] Such capital improvement plan shall provide sufficient detail to describe anticipated capital projects for which the agent will seek [reimbursement from the capital award] permission to withdraw funds from the capital investments account. Such capital improvement plan shall be submitted electronically to the commission for review[,] and may be amended by the video lottery gaming 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.]

[(c)] Capital improvements plans shall be due to the commission on a date prescribed by the commission. 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 withdrawals from the capital investments account [award reimbursement].**

(a) Request for approval. Prior to the commencement of each capital [award] improvement project, the agent shall submit to the commission a request for project approval in a standard format as prescribed by the commission. Such request shall:

(1) describe the overall capital project, including the reasons for implementing the project, the estimated total project cost[,] and the estimated start and completion date for the project; and

(2) describe[,] how the capital project will increase attendance at the video gaming facility and increase the amount of revenue generated in support of education aid[;].

(b) [Payment from capital award funds shall only be approved by the] Time limits to request approval. The commission shall approve withdrawals from the capital investments account only for capital project construction or improvements commenced

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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) Requirements for approval. Not later than 15 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 funds from the capital [award] investments account if [it] such project meets the following guidelines:

(1) [The] 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] 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] the capital expenditure is of significant value, consistent with standard accounting policies for the recording of capital assets[.]; and

(4) [The] 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.]

(d) Approved projects. [Approval] Commission approval of [the] a capital project [by the commission] shall entitle the video lottery gaming agent to [subsequent reimbursement from the capital award of for] withdraw the amount of associated costs [the] of such approved project from such video lottery gaming agent's the capital investments account, for which the video lottery gaming agent obtains substantiation that the costs are reasonable within the industry for the size and scope of the project. Competitive bidding shall be required for all [single component] single-component project costs in excess of \$50,000, provided, however, that certain [sole source] sole-source and professional services, such as architectural and engineering services and construction manager services where the construction manager does not perform construction work [themselves] itself, may be excluded from the competitive bid requirements. Any firm exempt from competitive bidding must be at arm's length from the [facility] video lottery gaming agent.

(e) Denial of approval. In the event the commission does not approve [the] a capital project request, the video lottery gaming agent shall be so notified in writing and any costs incurred for the project shall be the sole responsibility of [the] such video lottery gaming [facility] agent and shall not be [reimbursable] withdrawn from the capital [award] investments account.

(f) Withdrawal of funds for approved projects. Upon receiving the commission's approval of a capital project, [the] a video lottery gaming agent may at any time submit requests [for reimbursement of costs] to withdraw the amounts associated with the approved

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project. [Such] Any such request shall be submitted in writing to the commission and shall be accompanied by supporting documentation in the form of invoices and cancelled checks, or other documents as may be required to show proof of payment for capital expenditures associated with the approved project. Upon receiving the commission's approval [of a reimbursement request], [the] a video lottery gaming agent shall be authorized to withdraw the approved funds from the segregated capital [award] investments account.

(g) Review of books and records. The commission or the commission's representative may, at the discretion of the commission, review the books and records of [the] a video lottery gaming agent[,] to determine additional needs for assurance [regarding utilization] in regard to use of the capital award. Each agent shall maintain sufficient documentation and a clear audit trail to support the [reimbursement of any and all capital awards] expenditures from the segregated capital investments account.

(h) Violations. The failure of [the] a video lottery gaming agent to submit any report required by this Part shall be a violation of such video lottery gaming agent's license, the act and [these regulations] this Part. [In addition to any other remedy available to the commission pursuant to these regulations, any failure of the agent to submit any report as required by this Part shall permit the commission to withhold the capital award until such time as such report is submitted and approved. The commission may release such capital award with such continuing restrictions as the commission determines to be appropriate pursuant to these regulations.]

(i) Inquiries. Exceptions, discrepancies, or questionable spending [identified by] the commission identifies must be explained by the video lottery gaming agent in a timely manner to the satisfaction of the commission, but in no event later than 30 days from the date of the commission inquiry. A failure by the video lottery gaming agent to adequately respond to any inquiry of the commission shall be a violation of [these regulations] this Part.

(j) Detail of expenses. The agent shall prepare each report in a professional manner, detailing the use of funds from the capital [awards] investments account. Appropriate penalties may be applied if the commission determines that [the] a video lottery gaming agent has submitted expenses that do not qualify as a capital expense.

(k) Sanctions. In the event an expenditure or discrepancy [raised by] the commission raises cannot be adequately explained by the video lottery gaming agent, or in the event any violation of [these regulations] this Part remains uncured for a period of up to 30 days, the commission, in addition to any other remedy permitted by [these regulations] this Subtitle, may take any or all of the following actions:

(1) rescind or withhold [the] approval of capital [award or any portion thereof] projects, in which event no further [payment] withdrawal from the capital investments account shall be permitted until such violation is cured;

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(2) deny the cost and deduct the amount thereof from the balance of any [next] succeeding approved capital [award] improvement project;

(3) require the agent to reimburse the [commission for the] capital [award] investments account in an amount equal to the discrepancy; and

(4) reimburse the commission for the cost of the commission's expenses related to researching and investigating such expenditure.

(l) Insufficient expense reports. In the event any expense reports are deemed insufficient at the commission's 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.

(m) Documentation. Each agent shall maintain sufficient documentation to support the [reimbursement of any and all of] withdrawals made from such agent's capital investments account [improvement expenses].

A health care plan or a provider, including those in a rural area, should not need to retain professional services, such as lawyers or auditors, to comply with this amendment.

3. **Costs:** Health care plans and providers, including those in rural areas, may incur additional costs to comply with the amendment. A health care plan may incur additional compliance costs as it may need to file new policy and contract forms and rates with the Department and will be required to provide written notification of the amendment to its in-network providers. However, any costs should be minimal because health care plans submit policy or contract form and rate filings and provide written notifications to providers as a part of the normal course of business.

A provider, including those in rural areas, may incur additional costs to comply with the amendment. Those additional costs may include costs to ensure that the insured is not required to pay a copayment, coinsurance, or annual deductible that is prohibited from being imposed at any time, including at the time the services are provided. However, any additional costs should be minimal because a provider should receive reimbursement, including the insured's copayment, coinsurance, or annual deductible, from the health care plan directly with respect to any impacted claims.

4. **Minimizing adverse impact:** This amendment uniformly affects health care plans and providers that are located in both rural and non-rural areas of New York State. The amendment should not have an adverse impact on rural areas.

5. **Rural area participation:** The Department contacted trade associations representing health care plans that are in rural areas before it promulgated this amendment and considered comments it received from these associations. The Department also notified trade associations representing providers in rural areas that it intended to promulgate this amendment and considered comments it received from these associations. Health care plans and providers in rural areas will also have an opportunity to participate in the rulemaking process when the amendment is published in the State Register and posted on the Department's website.

#### **Job Impact Statement**

This amendment should not adversely impact jobs or employment opportunities in New York State. The amendment prohibits policies and contracts of hospital, surgical, or medical expense insurance from imposing, and provides that no insured shall be required to pay, copayments, coinsurance, and annual deductibles for covered in-network laboratory tests to diagnose the novel coronavirus ("COVID-19") and for visits to diagnose COVID-19 at the following locations, including through telehealth: an in-network health care provider's office, an in-network urgent care center, any other in-network outpatient provider setting able to diagnose COVID-19, or an emergency department of a hospital. As a result, there should be no impact on jobs or employment opportunities.

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## New York State Gaming Commission

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

#### **Amendment of Video Lottery Gaming Regulations**

**I.D. No.** SGC-29-21-00010-P

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

**Proposed Action:** This is a consensus rule making to amend sections 5100.2, 5103.8, 5104.1, 5109.3, 5112.1, 5112.2, 5112.5, 5113.5, 5116.1, 5116.2, 5116.4, 5116.5, 5116.7, 5116.8, 5116.10, 5116.11, 5118.9, Part 5122; and repeal sections 5112.3 and 5116.3 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19); Tax Law, section 1617-a

**Subject:** Amendment of video lottery gaming regulations.

**Purpose:** To amend the video lottery gaming regulations to reflect amendments to Tax Law section 1612.

**Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>):** Proposed changes to Rule 5100.2 would change the definitions of "marketing allowance" and "marketing allowance account" to reflect the amendments to Tax Law 1612. Marketing is now funded out of the vendor's fee and is not kept in a segregated account. Additionally, some stylistic edits are being proposed.

Proposed changes to Rules 5103.8, 5104.1, and 5109.3 would make stylistic edits to the existing regulations.

Proposed changes to Rules 5112.1, 5112.2, and 5112.5, and the repeal of Rule 5112.3, would make changes to the existing regulations to reflect the amendments to Tax Law 1612. Because marketing is now funded out of the vendor's fee, a segregated account is no longer necessary. For capital awards, the Commission approves projects and the reimbursement process has been eliminated. The proposed changes reflect this new process. Additionally, some stylistic edits are being proposed.

Proposed changes to Rule 5113.5 would make changes to the potential penalties imposed by the Commission. The changes reflect the amendments to Tax Law 1612. Marketing is now funded out of the vendor's fee and is not kept in a segregated account. Rule 5113.5(c) will need to be removed because it is no longer a viable potential penalty. Additionally, some stylistic edits are being proposed.

Proposed changes to Rules 5116.1, 5116.2, 5116.4, 5116.5, 5116.7, 5116.8, 5116.10, and 5116.11, and the repeal of Rule 5116.3, would make changes to existing regulations to reflect the amendments to Tax Law 1612. Marketing is now funded out of the vendor's fee and is no longer kept in a segregated account. Video lottery gaming agents no longer receive a marketing allowance. Additionally, some stylistic edits are being proposed.

Proposed changes to Rule 5118.9 will correct a cross reference to Tax Law 1617.

Proposed changes to Part 5122 would make changes to existing regulations to reflect the amendments to Tax Law 1612. For capital awards, the Commission approves projects and the reimbursement process has been eliminated. Some stylistic edits are also being proposed.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3332, email: [gamingrules@gaming.ny.gov](mailto:gamingrules@gaming.ny.gov)

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

**Public comment will be received until:** 60 days after publication of this notice.

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

#### **Consensus Rule Making Determination**

This proposed rulemaking will amend the New York State Gaming Commission's video lottery gaming regulations to reflect amendments to Tax Law 1612. The changes are necessary to conform the agency's regulations to the amendments to Tax Law 1612. Other stylistic changes are proposed. Due to the non-controversial nature of these proposed amendments, no person is likely to object to the proposed revisions.

#### **Job Impact Statement**

A job impact statement is not required for this consensus rulemaking proposal because the proposed amendments will not adversely affect jobs or employment opportunities.

The proposal will amend the New York State Gaming Commission's video lottery gaming regulations to reflect amendments to Tax Law 1612 and make other stylistic changes.

The proposed amendments will not have an impact on jobs or employment opportunities and will not impose any adverse impact on jobs or employment opportunities.

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## Metropolitan Transportation Agency

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### EMERGENCY RULE MAKING

**Requiring Mask Wearing When Using the Facilities and Conveyances of the MTA and its Operating Affiliates and Subsidiaries**

**I.D. No.** MTA-16-21-00004-E

**Filing No.** 804

**Filing Date:** 2021-07-02

**Effective Date:** 2021-07-02

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

**Action taken:** Addition of Part 1030 to Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 1266(4) and (5)



Commissioners  
November 3, 2021  
Page 2

attachment

cc: Robert Williams, Executive Director  
Stacy Harvey, Director, Division of Charitable Gaming

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**Subdivision (b) of section 4620.22 and subdivision (b) of section 5402.1 of 9 NYCRR would be amended to read as follows:**

(7) Internet and mobile device sales.

(i) No entity, other than an authorized organization to which the commission has issued a games of chance identification number and a raffle license, if applicable pursuant to General Municipal Law section 190-a(1), is permitted to sell raffle tickets through the internet or a mobile device.

(ii) No sale of a raffle ticket through an internet or a mobile device platform may occur unless the server or other electronic equipment that initiates the offering of a raffle ticket for sale and accepts a request to purchase such ticket is located in a municipality in this State in which the sale of such tickets is authorized as set forth in General Municipal Law section 189(13) and the purchaser of such ticket is located, at the moment of purchase, in this State. Locations shall be determined by the physical location of each of the purchaser and the server or other electronic equipment of the seller and not the purchaser or seller's usual address. An authorized organization's internet or mobile device raffle sale platform shall block any attempts to purchase a raffle ticket from a location outside of this State.

(iii) No sale of a raffle ticket through an internet or a mobile device platform may occur unless the purchaser or such ticket has first established a raffle ticket account with the authorized organization conducting such raffle. Such account shall include, for each purchaser:

(a) the purchaser's legal name;

(b) the purchaser's date of birth;

(c) an account number unique to such purchaser;

(d) the purchaser's address;

(e) the purchaser's electronic mail address; and

(f) the purchaser's telephone number.

(iv) No sale of a raffle ticket may be made to any person on the commission's self-exclusion list maintained pursuant to section 5403.2 of this article.

(v) No authorized organization shall outsource or otherwise delegate to another entity or person, including, without limitation, a third-party fundraising entity, the conduct of a raffle through the internet or mobile device.

(vi) Each authorized organization that proposes to sell a raffle ticket for a specifically identified raffle through an internet or a mobile device platform shall seek commission approval to conduct such raffle. To obtain such approval, an

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authorized organization shall, not less than 60 days before offering any tickets for sale on such platform:

(a) demonstrate to the satisfaction of the commission that the server or other electronic equipment that initiates the offering of a raffle ticket for sale and accepts requests to purchase such tickets is located in a municipality in this State in which the sale of such tickets is authorized as set forth in General Municipal Law section 189(13);

(b) demonstrate to the satisfaction of the commission, which may be done by providing evidence of competent native or third-party geolocation procedures, that such organization has geolocation technology in place to ensure that each purchaser of a ticket is located within this State;

(c) submit procedures to prevent minors from purchasing a raffle ticket through the authorized organization's internet or mobile application platform. An authorized organization shall implement any changes to such procedures as the commission may direct at any time. Such plan, at a minimum, shall include the following components:

(1) specification of parental control procedures to allow parents and guardians to exclude persons under the age of 18 from entering a raffle through the authorized organization's internet or mobile device platform. The authorized organization shall display conspicuously the specific steps a parent or guardian may take to implement parental controls;

(2) detailed explanation of the steps taken to prevent persons under the age of 18 from purchasing a raffle ticket through the authorized organization's internet or mobile device platform. The authorized organization shall explain what types of native or third-party age verification procedures are implemented to verify that each person entering a raffle with such authorized organization's internet platform or mobile application is not under the age of 18. The authorized organization shall explain the mechanism or mechanisms used to identify and deactivate accounts or purchases created or used by minors; and age verification and identification procedures to exclude persons under the age of 18 from creating an account or purchasing a raffle ticket on the authorized organization's internet platform or mobile application;

(3) procedures used to identify and deactivate accounts created or used by persons under the age of 18 and to exclude such persons from all raffles offered through such authorized organization's internet and mobile device platforms; and

(4) procedures to ensure that persons under the age of 18 do not receive promotional materials that relate to raffles held on authorized organization's internet and mobile device platforms;

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(d) submit procedures to protect the privacy of ticket purchasers on such internet or mobile device platforms; and

(e) submit procedures to protect the security of personal information of ticket purchasers on such internet or mobile device platforms from unauthorized disclosure;

(f) submit procedures to ensure that no person on the commission's self-exclusion list maintained pursuant to section 5403.2 of this article may purchase a raffle ticket through the authorized organization's internet or mobile application platform.

(vii) Each authorized organization that the commission authorizes to sell raffle tickets for a specifically identified raffle through an internet or a mobile device platform shall have an ongoing duty to inform the commission of any material change to any of the procedures submitted pursuant to subparagraph (vi) of this paragraph or any material change in the anticipated performance of geolocation technology as described to the commission.

(viii) The commission may, in its discretion, revoke any approval given pursuant to this paragraph to conduct a raffle through an internet or mobile device platform if the commission has cause to believe that the conditions required by General Municipal Law section 189(16) will not be or are not being satisfied or are at significant risk of not being satisfied.

(ix) The commission may, in its discretion, declare an authorized organization ineligible to conduct raffle ticket sales through an internet or mobile device platform for a period of time, or for an indefinite time, if such authorized organization fails to comply with this paragraph or the conditions required by General Municipal Law section 189(16).

(8) Any supplier of software, platforms or electronic equipment designed to enable an authorized organization to conduct an internet or mobile raffle pursuant to paragraph (7) of this subdivision shall apply for a license as a games of chance supplier pursuant to General Municipal Law section 189-a and Part 4623 of this subchapter.

~~[(7)]~~ (9) No ticket shall be sold in conjunction with any raffle, including raffles in which winning tickets are scheduled to be drawn on multiple dates, more than 180 days prior to the date scheduled for the drawing of the last ticket in that raffle.

~~[(8)]~~ (10) All raffle tickets, with the exception of the two-part "admission-style" tickets used in the game commonly known as a "50/50 raffle," shall be sold at a uniform price per ticket, unless the discount offered is based on the selling price per book of tickets and the price per single ticket and the discounted price per book of tickets are printed on each ticket.

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[(9)] (11) The value of merchandise to be awarded as a raffle prize shall be the fair market value of the merchandise at the time of submission of an application or verified statement for a raffle license.

\* \* \*

#### **§ 5402.1. Definitions.**

For purposes of this Part:

\* \* \*

(b) *gaming operator* means any licensee or operator authorized to conduct or operate gaming or other activity pursuant to articles 2, 3, 4, 5, 6, 9, 10, 13 or 14 of the Racing, Pari-Mutuel Wagering and Breeding Law; [or] video lottery gaming pursuant to Tax Law section 1617-a; or raffles pursuant to General Municipal Law section 189(16).



# Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

## NEW YORK STATE GAMING COMMISSION

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IN THE MATTER OF THE DENIAL OF ENTRIES OF  
SEVEN HORSES AT SARATOGA RACE COURSE TO  
RACE ON AUGUST 1, 3 AND 4, 2021

DECISION  
MO 36-2021

KENNETH McPEEK,  
Appellant

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Appeal from Stewards' decision denying appellant's entries of quarantined horses for races to be run at the Saratoga Race Course on August 1st, 4th and 5th of 2021. See 9 NYCRR § 4039.5 (Appeal from stewards' decision).<sup>1</sup> The New York State Gaming Commission has designated me to determine this appeal.

Appellant seeks a declaratory judgment in his favor and demands the Commission be directed to adopt formal "protocols in the future addressing this issue to protect all horseman similarly situated and grant any sundry relief available to the Commission to assuage the injury to Mr. McPeek and his owners."

The facts in this matter are not in dispute. On or about July 15, 2020, a racehorse stabled in Barn 86 at the Saratoga Race Course tested positive for EHV-1 herpes virus.

After consultation between the New York State Department of Agriculture and Markets, the New York Racing Association (NYRA) and the New York State Gaming Commission, a quarantine was issued for all horses stabled in Barn 86. Appellant had a number of horses stabled in Barn 86 and thus his horses were subject to the quarantine.

The length of time of the quarantine was 21 days, retroactive to July 11, 2021. During the length of the quarantine period, all horses stabled in Barn 86 would not be

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<sup>1</sup> This matter is not an adjudicatory proceeding within the meaning of State Administrative Procedure Act section 102(3) because it is not a matter "required by law to made only on a record and after an opportunity for a hearing."

permitted to enter races or train among the general horse population. It was the position of the Stewards that should there be no additional cases in Barn 86, the quarantine would be lifted on August 1, 2021. The quarantine was in fact lifted on August 1, 2021.

Appellant wanted to run a number of his horses stabled in Barn 86 in races scheduled to go off after the quarantine was lifted. Specifically, he wished to enter various horses in races set for August 1st, 4th and 5th of 2021. However, it appears NYRA rules required that to run a race on August 1, 2021, a horse must be entered by July 29, 2021; to race on August 4, 2021, entry must have been made on July 30, 2021; and for racing on August 5th, entry was required on July 31, 2021.

Appellant attempted to enter a number of his horses from Barn 86 on the dates NYRA required so they could race August 1st, 4th and 5th, respectively. The entry dates were all during the quarantine period.

He was denied entry for each date as a result of the Stewards' decision not to allow quarantined horses to be entered into a race during the quarantine period.

Appellant argues the Stewards' decision was arbitrary and capricious, entitling him to a declaratory judgment.

A declaratory judgment is not available when the existence of a controversy is contingent upon the happening of future events which may never occur. Louis v. City of Gloversville, 246 A.D.2d 804, 805 (3d Dep't 1998); Matter of Town of Coeymans v. City of Albany, 237 A.D.2d 856, 858 (3d Dep't), *lv. denied*, 90 N.Y.2d 803 (1997).

Declaratory relief is warranted, and available, only where the controversy between the parties is justiciable. The dispute must have a direct and immediate effect upon the rights of the parties and must be real, definite and not hypothetical, contingent or advisory in nature. Premier Restorations of N.Y. Corp. v. N.Y. State Dep't of Motor Vehicles, 127 A.D.3d 1049, 1050 (2d Dep't 2015).

As the times to enter the appellant's horses in the desired races has passed, there is no longer existing a controversy that will have a direct and immediate effect upon the rights of the parties. Granting the appellant's request for a declaratory judgment

and the relief he is seeking would constitute issuing an advisory opinion, which is not allowable under the facts and circumstances of this matter.

Appellant seeks as relief a ruling that directs the Commission to create a "protocol" (rule) for the future to decide the issue raised by him. Such relief is beyond the scope of this proceeding.<sup>2</sup>

Therefore, appellant's request for a declaratory judgment is denied.

DATED: SCHENECTADY, NEW YORK  
October 28, 2021

/s/ Peter J. Moschetti (electronic)  
PETER J. MOSCHETTI, JR.  
GAMING COMMISSION MEMBER

To (by electronic mail):

Andrew Mollica, Esq., on behalf of Appellant (jdmol@aol.com)  
Jessica Desany, Esq., on behalf of Commission staff ([jessica.desany@gaming.ny.gov](mailto:jessica.desany@gaming.ny.gov))

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<sup>2</sup> To the extent Appellant seeks economic damages relating to his vague request for "any sundry relief available to the Commission to assuage the injury," even if Appellant were to establish that the Stewards' decision had been mistaken, damages relating to the potential result of a horse race would be merely speculative. See West v. Ky. Horse Racing Comm'n, 972 F.3d 881, 889 (6th Cir. 2020) (courts "are ill-equipped to determine the outcome of sporting contests"); Youst v. Longo, 43 Cal. 3d 64, 78-79 (1987) (tort damages alleged to arise from interference by competitor in horse race would be too speculative); Shapiro v. Queens County Jockey Club, 184 Misc. 295, 301-02 (Queens Mun. Ct. 1945) (bettor's allegation of which horse would have won canceled race was "pure speculation").

VETO #49

October 25, 2021

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 7024, entitled:

“AN ACT to amend the racing, pari-mutuel wagering and breeding law, in relation to coupled entries”

NOT APPROVED

Coupling of entries is a practice in horse racing wagering whereby horses sharing a relationship with each other are combined into a single betting interest. This bill would prevent the coupling of entries in Thoroughbred horse races when a horse is trained or ridden by a spouse, parent, issue, or member of the household of another jockey in the race. The bill would also require the racetrack “operator” to inform the public “adequately” with regard to relationships among jockeys and trainers.

The New York State Gaming Commission and its predecessor agency have for more than 35 years had a regulation requiring coupling of entries in such circumstances, and tracks required it as a house rule long before that. The rule applies neutrally to all jockeys, without regard to gender, and is intended to enhance the wagering public’s confidence in the integrity of a race. Coupling of entries does not prevent related parties from participating in a race; rather, coupling of entries merely aggregates those related parties into a single betting interest in the race.

However, I am directing the Gaming Commission, the agency charged with regulation of horse racing and wagering, to review the continued need for mandatory coupling and the circumstances under which such a requirement might be relaxed, and to seek input from industry stakeholders and the wagering public regarding this topic. For these reasons, I am constrained to veto this bill.

The bill is disapproved.

A handwritten signature in black ink that reads "Kathy Hochul". The signature is written in a cursive, flowing style with a large initial "K".