

NYCRR Title 9, Executive

Subtitle T

New York State [Racing and Wagering Board] Gaming Commission

Chapter I

Division of Horse Racing and Pari-Mutuel Wagering

Subchapter D

Promotion of Equine Research

9 NYCRR, Chapter I, Subchapter D, part 4500 is renumbered, as amended, as part 4250:

PART [4500]4250

Equine Research Fund

§ [4500]4250.1. Research fund created.

Pursuant to section 701 of the Racing, Pari-Mutuel Wagering and Breeding Law [L. 1978, c. 328], a fund for the promotion of equine research is hereby created in the New York State Veterinary College at Cornell, as a regents approved veterinary college facility of a land grant university within this State. The fund is hereby designated the "Harry M. Zweig Memorial Fund for Equine Research" in honor of the late Harry M. Zweig, D.V.M. The monetary assets of the fund shall be used for equine research conducted by the State Veterinary College pursuant to the rules and regulations of the State [Racing and Wagering Board] Gaming Commission.

§ [4500]4250.2. Committee.

(a) The Harry M. Zweig Memorial Fund for Equine Research Committee (committee) is established within the State [Racing and Wagering Board] Gaming Commission for the purpose of administering the funds and supervising its work on behalf of the [State Racing and Wagering Board] commission. The committee will consist of not less than [9, nor] nine and not more than 15 members[,] including[,] but not limited to:

(1) the chair[man] of the [New York State Racing and Wagering Board (board), or in his absence the board's] commission, or the chair's designee;

(2) the dean of New York State Veterinary College at Cornell (Veterinary College), or [his] the dean's designee;

(3) a member, or the executive director of the Agriculture and New York State Horse Breeding Development Fund[,] to be nominated by such fund;

(4) a member[,] or the executive director of the New York State Thoroughbred Breeding and Development Fund[,] to be nominated by such fund;

(5) other bona fide residents of New York State who have a cogent interest in the racing and breeding industry in New York State[,] of which at least five will be New York breeders, owners, trainers or veterinarians in equine practice.

(b) The committee[, whose initial membership has been constituted by this board, upon its organization] will establish its own bylaws [which] that will include a system for electing its own officers and for perpetuating its membership, providing for the terms of its members, their replacement and succession, and such other administrative details as it deems necessary to effectuate the purposes of the statute. The [board] commission shall review and approve such bylaws and amendments thereto prior to their implementation. Members and officers shall be approved by the [board] commission and will serve without remuneration.

§ [4500]4250.3. Interest bearing account.

(a) Two percent of all monies accruing respectively to the Agriculture and New York State Horse Breeding Development Fund (harness fund) and the New York State Thoroughbred Breeding and Development Fund, Inc. (thoroughbred fund) for the purpose of conducting equine research shall be deposited by such funds in a special interest bearing account, title to which shall be in New York State Veterinary College at Cornell and control over which shall be in the [board] commission through the committee. Withdrawals from such accounts will be made only upon the authorization of the committee, and the signatures of two of the committee's members as designated by the committee. All monies accrued by the thoroughbred or harness funds [as of November 30, 1978 shall be transferred by such funds to such special account on or before December 31, 1978. Monies accrued subsequently] shall be deposited monthly within one month of its accrual by the harness fund and thoroughbred fund, and notice thereof shall be forwarded to the committee and this [board] commission.

(b) On or before January 1 and July 1[,] of each [subsequent calendar] year, the harness fund and the thoroughbred fund shall provide to the committee and this [board] commission a certified statement of amounts then deposited to the credit of the committee and a projection of funds to be deposited to the credit of such committee for the subsequent six-month period.

§ [4500]4250.4. Research proposals.

(d) The committee shall cause all such proposals to be transmitted within five days of receipt to the [State Racing and Wagering Board] commission.

(f) The committee's approval, disapproval and/or recommendations with regards to each proposal or [its] the committee's adoption of a budget will be sent to the [State Racing and Wagering Board] commission for [its] the commission's approval.

§ [4500]4250.5. Research grant.

(a) Upon approval of a proposal by the committee and subsequently by the [board] commission, the committee shall then enter into a contractual relationship with the applicant for the research grant within the limit of the funds available therefor and subject to the following limitations:

(1) all grants so provided shall be used for the direct cost of approved projects and shall not be used to supplant funds otherwise available to the applicant, to the institution with which he is affiliated, or for the general cost recoveries [which] that are rightfully the prior obligation of the institution to which the research grant is made;

(3) payments shall be made upon certified vouchers submitted to the committee[,] and prepared in a format satisfactory to the committee and to [this board] the commission.

(b) Copies of grant contracts shall be furnished to this [board] commission, the harness fund and the thoroughbred fund.

[Chapter II. Wagering Systems

Subchapter B] Subchapter E

Totalisator Systems

9 NYCRR part 5100 is relocated, as amended, as part 4300 of Subchapter E of Chapter I:

PART [5100]4300

Totalisator Systems

§ [5100]4300.1. Definitions and general provisions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *ASCII formatted flat file*[. A] means a data file containing structured data [which] that is both record and field delimited containing only characters found in the American Standard Code for Information Interchange (ASCII) specification.

(2) *Authorized pari-mutuel wagering entity*[. A] means a corporation or association that is duly licensed by the [board] commission or holds a franchise to conduct pari-mutuel wagering and simulcasting activity.

(3) *Betting interest*[. A] means a single wagering opportunity or a group of wagering opportunities coupled pursuant to the rules [which] that the totalisator system designates as an interest on which a patron may wager.

(4) [*Board. The*] Commission means the New York State [Racing and Wagering Board] Gaming Commission.

(5) *Downlink*[. The] means the portion and process of the communications link used to transmit simulcast signals from a satellite or other platform to the earth-based station. For purposes of this [chapter] Chapter, the term downlink also includes the equipment utilized in the process.

(6) *Export simulcast*[. A] means a race simulcast from a racetrack facility.

(7) *Firmware*[. The] means the system software permanently stored in a computer's or ticket issuing machine's read-only memory or elsewhere in the circuitry that cannot be modified by the user.

(8) *Guest site*[. A] means a facility at which a simulcast race is received and offered for wagering purposes.

(9) *Host racetrack*[. A] means a racetrack at which a race is conducted and simulcast for wagering purposes.

(10) *Import simulcast*[. A] means a simulcast race received at a guest site.

(11) *Intelligent terminal*[. A] means a terminal or peripheral device [which] that contains code extending beyond that which is necessary to allow the terminal to communicate with the central controlling device to which it is directly attached or to control the presentation of data on the display unit of the device.

(12) *Log*[. An] means an itemized list of each command, inquiry, or transaction given to a computer during operation or written record maintained pursuant to these rules.

(13) *Major revision*[. A] means a specific release of a hardware or software product, including additional functionality, major user interface revisions, or other program changes that significantly alter the basic function of the application.

(14) *Minor revision*[. An] means an incrementally improved version of hardware or software, usually representing an error (bug) fix, or a minor improvement in program performance [which] that does not alter basic functionality.

- (15) *Multi-leg wager*[. A] means a wagering pool that involves more than one race.
- (16) *Official*[. A] means a representative(s) of the [board] commission.
- (17) *Remote site*[. An] means an authorized location at which wagering is occurring that is linked via the totalisator system to a racetrack facility for pari-mutuel wagering purposes.
- (18) *Report*[. A] means a summary of wagering activity or a written record prepared pursuant to these rules.
- (19) *Simulcast*[. The] means the telecast of live audio and visual signals of thoroughbred, harness or quarter horse races for the purposes of pari-mutuel wagering.
- (20) *Totalisator system*[. A] means a computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.
- (21) *Totalisator system failure*[. When] means a state if affairs in which the tote system cannot receive, transmit or process wagers or wagering information.
- (22) *Totalisator operator*[. The] means the individual assigned to operate the totalisator system at an authorized facility.
- (23) *Tote board*[. A] means a display in public view of wagering activity required pursuant to statute and rule that lists all single wagering opportunities or a group of wagering opportunities coupled pursuant to the rules.
- (24) *Tote-to-tote network*[. A] means a wagering network in which each wagering location has a central processing unit.
- (25) *Unusual occurrence*[. Any] means any deviation from expected operations.
- (26) *Uplink*[. The] means the portion and process of the communications link used to transmit simulcast signals from an earth-based station to a satellite or other platform. For purposes of this [chapter] Chapter, the term uplink also includes the equipment utilized in the process.
- (27) *User*[. A] means a totalisator company employee authorized to use the totalisator system in the normal course of business.
- (28) *Wagering device*[. A] means a device enabling the placing of wagers.
- (29) *Wagering device-to-tote network*[. A] means a wagering network consisting of a single central processing unit and the wagering devices at any number of remote sites.

§ [5100]4300.2. Conduct of wagering.

(a) An authorized pari-mutuel wagering entity shall conduct pari-mutuel wagering in accordance with the New York State Racing, Pari-Mutuel Wagering and Breeding Law and the rules of the [board] commission.

(b) In conducting pari-mutuel wagering, an authorized pari-mutuel wagering entity shall use a totalisator system that:

(1) meets the requirements outlined in Subchapter E[B] of this Chapter; and

(2) is approved by the [board] commission and the New York State Department of Tax and Finance.

§ [5100]4300.3. Cooperation with officials.

If the [board] commission determines a certain cashed or canceled ticket, cashed or canceled voucher, computer printout, mutuel report, or other totalisator or mutuel record is needed to perform the official's regulatory duties, the official shall request the item from the mutuel manager and/or totalisator company representative. Upon receipt of a request under this section, the mutuel manager and/or totalisator company representative shall make the information available to the official no later than the deadline established by the official or provisions in this Subchapter.

§ [5100]4300.4. System failure.

(d) If the totalisator at the authorized pari-mutuel wagering entity loses communication with one or more sites the totalisator operator shall make an assessment to determine if communication can be reestablished before the start and/or end of the race(s). If the totalisator operator determines communication may not be re-established within these time frames then [he] the totalisator operator must ensure that stop betting has occurred at the start of the race and immediately notify the tote manager and stewards or racing judges. For New York State races, the [board] commission or duly appointed representative(s) shall make a determination of whether to keep the wagering pools open until communication with the affected site(s) can be reestablished.

§ [5100]4300.5. Access to magnetic media.

(a) An authorized pari-mutuel wagering entity shall submit a storage plan for all magnetic media storing computer logs to the [board] commission for approval. This plan must include sufficient information for the [board] commission to determine that the information will remain secure, including:

(c) All such magnetic media shall be stored at least three years after the end of the calendar year or unless otherwise released by the [board] commission.

§ [5100]4300.6. License to provide totalisator services.

(a) A totalisator company must be licensed annually by the [board] commission as a vendor to provide totalisator services to an authorized pari-mutuel wagering entity in New York. Each application must be accompanied by a nonrefundable application fee in the amount of \$500. In addition, the totalisator company shall pay the costs of the background investigation performed by the [board] commission or [its] the commission's designee. The [board] commission may estimate these costs and require a deposit to be paid by the applicant in advance as a condition precedent to beginning or continuing an investigation. The license application shall be made on a form prescribed by the [board] commission and must include at a minimum:

(3) a list of all totalisator personnel assigned to work in New York, or on behalf of an authorized pari-mutuel wagering entity operating in New York, as described in section [5100]4300.27 of this Part (relating to Personnel Requirements);

(5) information of sufficient detail for the [board] commission to determine that the totalisator company is in compliance with sections [5100]4300.22 through [5100]4300.37 of this Part; and

(6) policies and procedures to ensure their employees, officers and directors are licensed in accordance with [board] commission rules.

(b) No contract between the totalisator company and an authorized pari-mutuel wagering entity can be implemented without [board] commission approval.

(c) The totalisator company shall submit yearly a Type II, SAS 70 report, or other report approved by the [board] commission, that demonstrates the totalisator company's compliance with the tote standards.

* * *

(e) In considering an application for a license, the application shall be reviewed and licenses shall be issued in accordance with the standards set forth in Racing, Pari-Mutuel Wagering and Breeding Law Section 307(5)(a) and (b), which standards shall be applicable to the applicant entity as well as to the enumerated categories of individuals and entities set forth. Pending final determination of any question, the [Board] commission may issue a temporary license upon

such terms and conditions as it may deem necessary, desirable or proper to effectuate the provisions of the Racing, Pari-Mutuel Wagering and Breeding Law and these rules. The refusal to issue a license shall be subject to appeal in accordance with the provisions of Section 321 of the Racing, Pari-Mutuel Wagering and Breeding Law.

§ [5100]4300.7. License to provide other services.

(a) A company providing uplink, downlink, simulcast and the gathering and dissemination of wagering information must be licensed annually by the [board] commission as a vendor to provide totalisator services to an authorized pari-mutuel wagering entity in New York. Each application must be accompanied by a nonrefundable application fee in the amount of \$500. In addition, the company shall pay the costs of the background investigation performed by the [board] commission or its designee. The [board] commission may estimate these costs and require a deposit to be paid by the applicant in advance as a condition precedent to beginning or continuing an investigation. The license application shall be made on a form prescribed by the [board] commission and must include at a minimum:

* * *

(3) a list of all personnel assigned to work in New York, or on behalf of an authorized pari-mutuel wagering entity operating in New York, as described in section [5100]4300.27 of this Part (relating to Personnel Requirements);

(4) an affidavit stating that the company and its employees will comply with the rules regarding totalisator operations;

(5) information of sufficient detail for the [board] commission to determine that the company is in compliance with this Subchapter;

(6) policies and procedures to ensure their employees, officers and directors are licensed in accordance with [board] commission rules; and

(7) any other information that may be required.

(b) No contract between the company and an authorized pari-mutuel wagering entity or totalisator company can be implemented prior to the [board's] commission's approval.

* * *

(d) In considering an application for a license, the application shall be reviewed and licenses shall be issued in accordance with the standards set forth in Racing, Pari-Mutuel Wagering and Breeding Law Section 307(5)(a) and (b), which standards shall be applicable to the applicant entity as well as to the enumerated categories of individuals and entities set forth. Pending final determination of any question, the [Board] commission may issue a temporary license upon such terms and conditions as it may deem necessary, desirable or proper to effectuate the

provisions of the Racing, Pari-Mutuel Wagering and Breeding Law and these rules. The refusal to issue a license shall be subject to appeal in accordance with the provisions of Section 321 of the Racing, Pari-Mutuel Wagering and Breeding Law.

§ [5100]4300.9. Wagering explanations.

(b) Wagering explanations must be approved by the [board] commission before publication.

§ [5100]4300.10. Wagering information.

§ [5100]4300.11. Posting of race results.

(a) An authorized pari-mutuel wagering entity shall submit to the [board] commission for approval a plan for providing live and simulcast race results to the wagering public. The plan must include:

§ [5100]4300.12. Pari-mutuel tickets.

§ [5100]4300.13. Vouchers.

(a) Each voucher issued, except special promotional vouchers as approved by the [board] commission, must have printed on its face:

§ [5100]4300.14. Expiration date of pari-mutuel tickets.

(a) All winning pari-mutuel tickets must be presented for payment or refund before April [first] 1 of the year following the year of their purchase; and failure to present any such ticket within the prescribed period of time shall constitute a waiver of the right to payment.

(b) The totalisator company shall cause the substance of this rule to be imprinted upon each pari-mutuel ticket in words approved by the [board] commission.

§ [5100]4300.15. Refusal to cash.

(a) An authorized pari-mutuel wagering entity shall refuse to cash a pari-mutuel ticket if the authorized pari-mutuel wagering entity determines the ticket has been:

(2) directed by the New York State Department of Taxation and Finance or the [board] commission.

§ [5100]4300.16. Claim for payment.

(b) If a claim is made for payment of a mutilated ticket that does not contain the information required under section [5100]4300.12 of this Part (relating to pari-mutuel tickets), the authorized pari-mutuel wagering entity shall make a recommendation to accompany the claim forwarded to the New York State Department of Taxation and Finance. The recommendation must state whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

§ [5100]4300.17. Cashed pari-mutuel tickets and vouchers.

(b) The authorized pari-mutuel wagering entity shall prohibit unauthorized individuals from having access to the cashed tickets and vouchers and related storage areas. A list of authorized individuals shall be filed with the [board] commission.

§ [5100]4300.18. Altering cashed pari-mutuel tickets and cashed vouchers.

§ [5100]4300.19. Cashing outstanding pari-mutuel tickets.

(b) An authorized pari-mutuel wagering entity shall designate no more than one pari-mutuel ticket window at a mutuel bay where an outstanding pari-mutuel ticket may be cashed. If the authorized pari-mutuel wagering entity needs more than one window, the authorized pari-mutuel wagering entity must submit a written request for approval from the [board] commission for additional windows.

(e) At the end of each race day, the mutuel manager shall make available upon request to the [board] commission:

§ [5100]4300.20. Cancellation of wagers.

(a) A totalisator system must have the ability to restrict cancellations of tickets and vouchers electronically or by some other method at selected wagering devices in accordance with procedures prescribed by the [board] commission.

§ [5100]4300.21. Teller's records.

On a daily basis each authorized pari-mutuel wagering entity shall retain and account for each pari-mutuel teller all pari-mutuel tickets or vouchers cashed, refunded or canceled and all draws and returns by the teller. Each authorized pari-mutuel wagering entity shall then retain these records at least three years after the end of the calendar year or until such time as released by the [board] commission.

§ [5100]4300.22. Purpose.

The [Board] commission adopts these rules for totalisator companies to ensure all totalisator operations are adequate to maintain the integrity of pari-mutuel wagering.

§ [5100]4300.23. Facility requirements.

(a) Totalisator Room. An authorized pari-mutuel wagering entity shall provide a totalisator room to house the main computing and communications equipment and the operator's terminal at the authorized pari-mutuel wagering entity's facility. The room must include:

(5) a communication system connecting the totalisator operator with:

(iv) the [board's] commission's office;

(d) Totalisator Room Security.

(1) The totalisator room housing the computer processing unit (CPU) that processes wagers made at an authorized pari-mutuel wagering entity's facility must be secured at all times. Annually on a date established by the [board] commission, the authorized pari-mutuel wagering entity shall submit to the [board] commission for approval a security plan for the totalisator room housing the CPU that processes wagers made at the authorized pari-mutuel wagering entity's facility. The security plan must include:

§ [5100]4300.24. Hardware requirements.

(a) Cash/Sell System.

(3) The schematic chart, required pursuant to [paragraph] subdivision (b) of this section must be submitted to the [board] commission at least two weeks before the scheduled date for system installation and testing.

(b) Schematic Chart.

(1) The totalisator company must provide to the [board] commission an overview of the equipment in the totalisator systems in use [at/by] at or by the New York facilities the company services. The overview must be a detailed schematic chart showing the interconnections of each piece of hardware.

* * *

(3) If the totalisator company desires to change any component in the hardware layout, the company must revise the schematic chart and submit it to the [board] commission within seven days of said changes.

(c) Peripherals. A totalisator system must include the following peripherals:

(4) wagering information screen displays that meet the requirements of section [5100]4300.10 of this Part (relating to Wagering Information);

(d) Stop wagering devices.

(1) The totalisator company shall install two separate devices that activate the stop wagering function of the totalisator system in a manner consistent with stop wagering procedures approved by the [board] commission. This requirement is applicable only to a host racetrack.

(2) The primary device must be located near the stewards or racing judges, in a location approved by the [board] commission, to issue the stop wagering command during normal operations and activate the "off bell." This requirement is applicable only to a host racetrack.

(5) The totalisator company, for good reason, may request from the [board] commission additional or alternative stop wagering devices.

(e) Tote Board. The tote board must:

(1) update the odds on each betting interest in the win pool at intervals of not more than 60 seconds, or at intervals expressly directed by the [board] commission, and

(i) Common Pooling.

(1) An authorized pari-mutuel wagering entity shall use a totalisator system that operates in either a Tote-to-Tote network or a wagering device-to-Tote network. The totalisator system must, without regard to the location of the CPU:

(iii) use the inter-tote communication standard prescribed by the [board] commission; and

(iv) use the current version of standardized track codes recognized by the Association of Racing Commissioners International ("ARCI") or other inter-tote communication standard prescribed by the [board] commission.

(3) The host racetrack for which a common pool is created must also provide a totalisator system that:

* * *

(ii) produces reports showing the amount wagered on each betting interest and pool from each site, in accordance with the current inter-tote communication standard prescribed by the [board] commission.

(4) A totalisator company must file with the [board] commission the disaster recovery plan for the current operating year ensuring that the authorized pari-mutuel wagering entity it provides services to may continue to conduct pari-mutuel wagering within a reasonable period of time in the event of a disaster at the CPU's location.

(j) Emergency Procedures.

* * *

(3) If a hardware problem occurs, the tote operator may make an emergency fix to the totalisator system. Immediately after the fix has been made to the totalisator system, the totalisator company shall file a written report with the [board] commission that states:

* * *

(l) Independent Monitoring System. [(1)] The totalisator company shall utilize an independent real time transaction monitoring system approved by the [board] commission. This system is to provide information in a read only format. At a minimum the system shall:

[(i)1] Verify all transactions performed by the totalisator;

[(ii)2] Provide access to the [board] commission and the authorized pari-mutuel wagering entity for monitoring activity;

[(iii)3] Notify the authorized pari-mutuel wagering entity's mutuel manager or duly appointed representative when the system detects a discrepancy in the totalisator operation and/or with the independent monitoring system automatically. The mutuel manager shall determine the cause of the error and make any necessary repairs or adjustments pursuant to the rules and notify the [board] commission immediately after each occurrence; and

[(iv)4] Perform other requirements deemed appropriate by the [board] commission.

§ [5100]4300.25. Software requirements.

(a) General requirements.

(1) The totalisator system program must be able to:

(ii) produce the required reports and logs and other reports and logs the [board] commission may prescribe;

(ix) document changes to programs, including who made the change and when the change was made (this log is to be made available to the [board] commission upon request);

(xiii) generate within twenty-four hours data usable across two major revisions, and within all minor revisions or retrieve archived data reports as requested by the [board] commission;

(xv) provide a utility/application that writes requested pari-mutuel wagering data on media readable by the [board] commission. The totalisator company must also provide documentation about the structure of the data; and

(xvi) have the ability to close remote sites before post-time if the [board] commission so determines.

(3) The totalisator company must upon request make available to the [board] commission an inventory of all programs included in the system.

(4) A totalisator system must be able to produce a copy of all data necessary to recreate the wagering activity of any race performance that the [board] commission requests.

(b) Documentation. Software documentation, using computer software industry accepted methods, must be available to the [board] commission upon request and must provide at a minimum:

(c) Backup. The totalisator system must be backed-up to removable media. Before beginning operations in this State, the totalisator company shall submit a backup procedure plan to the [board] commission for approval and should include at a minimum:

* * *

(d) Changes to Totalisator Software.

(1) All changes to the software on the central site computers, peripherals, or firmware changes downloaded to terminals may be subject to the approval of the [board] commission and [T]the New York State Department of Tax and Finance.

(2) The totalisator company is responsible to notify the [board] commission and [T]the New York State Department of Tax and Finance at least 30 days prior to any major revisions except as provided under [sub]paragraph (4) of this subdivision.

(3) A major revision to the software may not be initialized or operated during wagering until tested and approved by the [board] commission and [T]the New York State Department of Tax and Finance. The daily computer log must show:

(4) If a software problem occurs, the programmers may make an emergency fix to the totalisator software. Immediately after the fix has been made to the software, the totalisator company shall file a written report with the [board] commission that states:

§ [5100]4300.26. General management requirements.

(a) Programming.

(2) The totalisator company shall develop and maintain a written Systems Development Life Cycle (SDLC) that requires sign-offs at pertinent checkpoints. The SDLC must address the following or the equivalent as acceptable to the [board] commission:

(3) A totalisator company must develop and follow procedures to manage all program changes without regard to the complexity of the modification. The procedures must at a minimum:

(vi) maintain a written or electronic log to be made available to the [board] commission upon request when programmers have physical access to the totalisator room or electronic access to the operation environment.

(4) Before a totalisator company may place a major programming revision into production or transfer any data affected by the revision from the test environment to the production environment, the totalisator company must follow the procedures for Changes to Totalisator Software found in subdivision (d) of section [5100]4300.25[(d)] of this Part.

(b) Totalisator Operations. A totalisator company shall maintain a written operations manual for each totalisator system. The manual must clarify the authority, duties, responsibilities, and lines of communication for totalisator operators and network managers. The manual must contain sufficient detail to ensure totalisator personnel understand their job duties. The operations manual must include complete documentation for operation of the totalisator system and its software, including at a minimum:

(1) the duties described in section [5100]4300.27 of this Part (relating to Personnel Requirements);

§ [5100]4300.27. Personnel requirements.

(a) General Requirements.

(2) All totalisator personnel and personnel working for entities referenced in section [5100]4300.7 of this Part located in or outside of New York State assigned to work on totalisator operations for a licensed pari-mutuel wagering facility in New York State must be licensed by the [board] commission. All officers and directors of the totalisator company and entities referenced in section [5100]4300.7 of this Part must be licensed by the [board] commission. The fee for each license shall be \$10.

(5) The totalisator company is responsible for the actions of its personnel relating to the operations and use of the totalisator system. The totalisator company shall designate an individual to act as a point of contact for communications between the [board] commission and the totalisator company.

(6) With each license application, a totalisator company must include a list of all certified totalisator personnel assigned to work on totalisator operations in New York. The list must indicate the position for which each person is qualified. If a new employee is assigned to work on totalisator operations in New York, the totalisator company must update the list of certified personnel and provide it to the [board] commission and ensure that each employee is properly licensed.

(7) A totalisator company employee may not hold a position of programmer and totalisator operator simultaneously unless approved by the [board] commission.

(b) Network Manager. A network manager shall:

(4) provide information and prepare any report requested by the authorized pari-mutuel wagering entity, the [board] commission, or the New York State Department of Tax and Finance; and

(c) Totalisator operator. A totalisator operator shall:

(2) consult with the mutuel manager and the [board] commission or duly appointed representative, if available, when a problem occurs in determining a pool or calculation and suggest alternatives for continued operation, including possible temporary restrictions on or suspension of the communication links;

(6) perform daily back-ups as outlined in subdivision (c) of section [5100]4300.24[(c)] of this Part (relating to Software Requirements);

(8) provide to the [board] commission an incident report of the incident detailing each unusual occurrence during totalisator system operations including a description of the probable cause of the occurrence and the corrective action taken;

(10) consult with the [board] commission or duly appointed representative regarding any other operational issues encountered.

(f) National Racing License. Interstate compact licenses in an applicable category shall be accepted according to the terms of Article XI of the Racing, Pari-Mutuel Wagering and Breeding Law, and the state fee for the use of a compact license shall be waived where the

background investigation for the issuance of that compact license was not performed by the [board] commission.

§ [5100]4300.29. Totalisator network.

(a) Common pools must be merged and calculated at the site the totalisator company designates as the network-computing center. In a Tote-to-Tote network or at remote sites, the totalisator company providing totalisator services for the authorized pari-mutuel wagering entity must use the inter-tote communication protocol prescribed by the [board] commission.

(b) A host racetrack shall not accept wagers transmitted by remote sites through a Tote-to-Tote-to-Tote network unless specifically required by law or regulation and approved by the [board] commission.

§ [5100]4300.30. Data transmission protocols.

(b) A remote site is considered part of a Tote-to-Tote network and is subject to the requirements of section [5100]4300.24 of this Part (relating to Hardware Requirements).

(c) If the failure to compile pools or payout winning prices is isolated to a remote site, the stopping of wagering or the manual cashing and accounting of tickets need only occur at the affected site. The relevant information must be transmitted between the CPU and the remote site through the established communication links or facsimile machine and must be verified. Such manual merges are prohibited unless required specifically by law or regulation and approved by the [board] commission.

§ [5100]4300.31. General requirements.

(a) General Requirements.

(2) A totalisator company shall retain the information needed to produce these reports and logs on storage devices for at least three years after the end of the calendar year, unless otherwise released by the [board] commission.

(3) A totalisator company shall provide a report or log requested by the [board] commission no later than 48 hours, unless required otherwise, after the totalisator company receives the request. A printed report must have consecutively numbered pages. Each page of the report must be headed with:

§ [5100]4300.32. Pre-race reports.

(a) Unless otherwise exempted by the [board] commission, before starting wagering each day, the totalisator operator shall print at a minimum all of the following reports:

§ [5100]4300.33. Race-by-race reports.

(a) For each race offered, the totalisator system must be capable of printing the following reports and have them available for review by the mutuel manager[,] and/or the [board] commission:

§ [5100]4300.34. End-of-day reports.

§ [5100]4300.35. Special reports.

(a) A totalisator company shall produce any special report requested by the [board] commission no later than 72 hours, unless otherwise directed, after receiving the request:

(12) Inter-Track Wagering Report for a card showing the separate or consolidated report for wagers made at participating tracks, including all money wagered on each runner or combination of runners in each pool for each race. Separate or consolidated reports for the host track and each satellite track and the combined totals are required and any additional reports, as determined by the [board] commission;

§ [5100]4300.37 Logs.

(a) On-Line Logs. The totalisator operator shall provide a printed copy of a daily log to the [board] commission on request. The totalisator system must produce at a minimum the following logs:

(1) Teller/Machine History Log showing for every wagering device operated during a performance:

(viii) pari-mutuel tickets include all paper and paperless tickets as defined in section [5100]4300.12 of this Part.

(2) Ticket History Log showing for every pari-mutuel ticket issued:

(viii) pari-mutuel tickets include all paper and paperless tickets as defined in section [5100]4300.12 of this Part.

(b) Off-line Log. In addition to the computer generated reports and logs, the totalisator personnel must maintain at a minimum the following logs for review by the [board] commission or duly appointed representative:

(1) The totalisator operator must maintain a system incident log and make it available on request for review by the [board] commission. The system incident log must include a description of each incident involving the totalisator system, including system failures, their causes, and corrective actions taken.

Subchapter F

Off-Track Pari-Mutuel Betting

9 NYCRR parts 5200 - 5212 are relocated, as amended, as parts 4400 - 4412 of Subchapter F of Chapter I:

PART [5200]4400

Definitions

§ [5200]4400.1. Definitions.

(a) *Board of directors* [. A] means a board of directors of a regional off-track betting corporation.

(b) *Branch office* [. The] means the premises maintained and operated by a regional off-track betting corporation, at which premises lawful off-track pari-mutuel wagering may take place.

(c) Commission means the New York State Gaming Commission.

[(c)] (d) Corporation[. The term corporation shall mean] means a regional off-track betting corporation created pursuant to section [8113 of the Unconsolidated Laws, the New York City Off-Track Betting Corporation and the Schenectady Off-Track Betting Commission] 502 or section 603 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(e) Dark or dark day means a day upon which no racing is being conducted at a track. For purposes of this Subchapter, a meeting is deemed not in progress at such track on such day.

[(d)] (f) Gambling offenses[. Any] means any act proscribed by article [XXV] 225 of the Penal Law of the State of New York.

(g) Open means a day on which racing is being conducted at a track. A meeting is in progress at such track on such day.

[(e)] (h) Out-of-state track[. A] means a horse track located outside the State of New York, operated lawfully according to the laws of the state or commonwealth in which such facility is situated.

(i) Pool constituents. A pool is deemed to have been constituted entirely upon the day of the race, all advance days' sales being deemed made upon the day such race is contested. All telephone bets shall be deemed to have been made in the county in which the telephone exchange receiving such telephone call bet is located. In this regard, calls into exchanges located in counties not permitted to accept bets upon certain tracks' races shall not be accepted upon such races.

[(f)] (j) Region[. A] means a region defined in [subsection 1 of] section [8063 of the Unconsolidated Laws] 519 of the Racing, Pari-Mutuel Wagering and Breeding Law.

[(g)] State. The State of New York, except that the phrase another state shall mean a state or commonwealth other than the State of New York.

(h) State Board. The New York State Racing and Wagering Board.]

[(i)] (k) Track shall mean the grounds or enclosures within which horse races, at which pari-mutuel betting is permitted, are conducted by any person, corporation or association licensed by the [board] commission.

[(j)] (l) Telephone deposit betting center (TDBC)[. The] means the facility of the participating regional corporation[,] for the conduct of pari-mutuel wagering by telephone.

[(k)] (m) Unclaimed ticket monies[. The] means the accumulated sum of all valid winning tickets remaining uncashed at the conclusion of the calendar year in which they were issued.

PART [5201]4401

[The] State [Racing and Wagering Board] Gaming Commission

§ [5201]4401.1. Form of [board] commission decision, directive or order.

A decision, order or directive of the [board] commission shall be issued over the signature of the executive director of the commission, the secretary to [chairman of] the [board] commission, or over the signature of the designee of the [chairman] executive director.

§ [5201]4401.2. Amendment of this Part.

This Part may be amended from time to time by the [board] commission. An order or directive issued by the [board] commission may likewise be changed or amended by the [board] commission. The [board] commission may waive compliance with any rule or regulation if in the judgment of the [board] commission it shall be deemed in the best interest of racing and off-track pari-mutuel betting in this State, so to do. Such waiver shall not, however, be construed as a precedent in respect of future decisions by the [board] commission.

§ [5201]4401.3. Decision, directive or order of immediate necessity.

A decision, directive or order, subject to an immediate necessity that a decision, directive or order be issued, made, modified or rescinded, may be so issued, modified, rescinded or made by the [board] commission subsequent to a telephonic or other informal communication among the members of the [board] commission. Any such decision, directive or order of immediate necessity shall be issued thereafter in a manner prescribed by section [5201]4401.2 of this Part.

§ [5201]4401.4. Disputes.

Disputes between a regional corporation and a track with respect to the purposes or objectives set forth in section 518 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be submitted in writing to the [board] commission for determination. The [board] commission may make its determination based on the submissions or may hold a hearing on the matter. The [board's] commission's determination shall be final.

PART [5203]4403

Formation of Corporations

§ [5203]4403.1. Condition of operation.

A condition precedent to the exercise of authority by any corporation is strict compliance with each rule, regulation, decision, directive, or order of the [State Racing and Wagering Board]

commission. The [State Board] commission may suspend or revoke in whole or in part the operating authority of a corporation.

§ [5203]4403.2. Plan of operation.

Each corporation shall file with the [State Board] commission a verified petition [which] that shall set forth:

(i) such other details [which] that, in the corporation's judgment, are or may be material or [which] that may be requested of the corporation by the [State Board] commission.

§ [5203]4403.3. Organizational plan of the corporation.

§ [5203]4403.4. Additional information.

The [State Board] commission may require at any time such additional information data or documents as may be deemed necessary in order to properly consider and evaluate such plan. The plan shall not be deemed to be complete for consideration by the [board] commission until all of the [board's] commission's requirements have been complied with. The [board] commission shall have the statutory period of time from determining such plan to be complete in which to issue an order approving the plan finally or conditionally, approving it with modifications or denying approval.

§ [5203]4403.5. Job security agreements for track employees.

The plan of operation of a corporation shall set forth specifically or by reference to another document, which shall be appended thereto, the provisions for job security for employees at regional race tracks made and accepted by the employer and the employees involved individually or through their collective bargaining representatives. Such agreements shall cover race tracks affected by off-track betting conducted by the regional corporation, as prescribed by law, and the different classifications of track employees there employed; provided, however, for the purposes of this section, the New York City, Suffolk, Nassau, mid-Hudson and Catskill regions shall constitute a single combined region, and all job security agreements for corporations in this single combined region relating to tracks and their employees located within such single combined region shall be jointly negotiated by the regional corporations existing at the time of such negotiations, and each regional corporation thereafter created within such single combined region shall, at the time of its creation, be deemed a party to previously negotiated existing agreements by other regional corporations and employees in such single combined region, and such existing agreements shall be deemed a part of its proposed plan of operation. All such provisions for job security as concern track employees shall be approved by

the [board] commission and when approved shall be deemed a part of the plan of operation of the corporation.

§ [5203]4403.6. Transmission equipment.

§ [5203]4403.7. Contracts for audio-visual broadcasts.

The plan of operation shall include any agreement for a radio broadcast or for a television broadcast of any racing program or of any part thereof, or of any other event at a track within or without this State. Each such contract shall include a provision that the contract shall not be effective unless [it] such contract is approved by the [State Board] commission.

§ [5203]4403.8. Board of directors and officers.

The plan of operation shall include the names of each director and officer of the corporation, together with a report of the professional character, qualifications, fitness and reputation of each such person. In the event of any vacancy, the corporation shall notify the [board] commission that it will submit the name of a person to fill the vacancy. The corporation shall forward such name together with the aforementioned report as to such person's character to the [State Board] commission.

§ [5203]4403.9. Approval of plan.

The [State Board] commission may approve a plan of operation finally or conditionally[;] and may provide in such order of approval any limitations or conditions upon the authority of the corporation to operate and conduct off-track betting. Should the [State Board] commission grant temporary authority, [it] such authority shall be for such limited period of time as may be set forth in its order. The [State Board] commission may reconsider its action in respect of the approval or disapproval of a plan of operation at any time.

§ [5203]4403.10. Amendment to plan.

A plan of operation may be amended from time to time at the request of the corporation or the [State Board] commission. Amendments proposed by the corporation shall be submitted in writing to the [State Board] commission, and [they] the commission shall approve or disapprove of such proposed amendment within 30 days of [its] such proposed amendment's having been submitted [to the board]. No prepared amendment shall be effective unless the same shall have been approved by the [State Board] commission and ordered by [it] the commission incorporated in the plan of operation. The [State Board] commission may at any time propose amendments to a plan of operation. A corporation may request a hearing concerning the rejection by the [State Board] commission of an amendment proposed by [it] such corporation or the proposal of an amendment by the [board] commission by filing a request therefor with the

[State Board] commission, in writing, within five days of receipt of notification of the [board's] commission's action to which the corporation takes exception [to].

§ [5203]4403.11. Affirmative duty of notification.

Each board of directors has an affirmative duty to report to the [State Board] commission any change or intended change of any fact or proposal [which] that is part of its plan of operation as submitted to the [State Board] commission, or of any change [which] that is material to the operation of the corporation. All such changes in the plan of operation shall be of no effect until the same shall have been approved by the [State Board] commission in the same manner as an amendment to a plan of operation.

§ [5203]4403.12. Corporation rules and regulations.

A corporation may propose rules and regulations with respect to the implementation of [its] such corporation's plan of operation[which]. Such rules and regulations shall not become effective without the prior approval of the [State Board] commission.

§ [5203]4403.13. Transmission of racing information.

Except as otherwise provided in the rules or by statute, information concerning races conducted at any pari-mutuel track in New York shall not be transmitted from any such track unless approved by the [board] commission. Furthermore, information concerning races conducted at any track outside New York State shall not be transmitted to an off-track betting facility in New York State unless approved by the [board] commission. The term racing information shall be deemed to include live, delayed or simulated descriptions of a race whether by audio or video transmission, the odds resulting from any betting registered before a race and other types of information including but not limited to entries, program numbers, jockey changes, post positions, scratches, race results, and payoff prices.

(a) In making its determination, the [board] commission shall consider the following criteria, information concerning which must be submitted by the racing association or corporation:

(6) any other relevant information [which] that may be specifically requested by the [board] commission.

(b) In addition to the foregoing, if an application involves the transmission of racing information to a location other than an off-track betting corporation facility via a cable or closed circuit radio or television transmission, which location is either within a nonparticipating county or within the market area of a regional track then the off-track betting corporation shall notify the clerk of such county and the head of such track in order that such county or track may submit written comments on such application to the [board] commission.

(c) The [board] commission, in [its] the commission's discretion, may order a hearing on any application seeking [its] the commission's approval for the transmission of racing information pursuant to this section.

(d) The [board] commission shall [only] approve an application submitted pursuant to this section only if [it] the commission finds that such application is consistent with the best interest of the racing industry in general.

(e) The [board] commission may suspend or revoke [its] the commission's prior approval of the transmission of racing information and may order the termination of any such transmission for good cause.

§ [5203]4403.14. Combination of New York wagers with wagers made in other states or foreign countries.

Pursuant to section [907] 905 of the Racing, Pari-Mutuel Wagering and Breeding Law, New York wagers may be combined with wagers made in other states or foreign countries if proposed pursuant to a written plan describing the method of operation under each of the criteria set forth under such law and evidence of compliance with each of the requirements of such law is furnished by the applicant. Such application shall be approved by the [board] commission if [it] the commission is satisfied that the statutory criteria have been met and that such operation is consistent with the public interest and the best interests of racing generally.

PART [5204]4404

Operation of a Corporation

§ [5204]4404.1. Persons prohibited from entry into a branch office.

Any person:

(c) who conducts himself or herself in a manner [which] that is offensive or disturbing to other individuals;

§ [5204]4404.2. Transmission equipment.

No person may bring into a branch office any manual, electrical, mechanical[,] or electronic communications equipment capable of transmitting or receiving

(a) the results of any race; [or of]

(b) any information with respect to odds or wagering pools;

(c) information with respect to track conditions, jockeys, drivers or equipment; or

(d) any other information [which] that concerns a race or pari-mutuel wagering information relative to such races.

§ [5204]4404.3. Telephones prohibited.

§ [5204]4404.4 Bets.

A bet may be placed for win, place, or show in each race, or for a daily double, an exacta, a quinella[,] or a triple. All other types of wagering other than those enumerated in this section are prohibited without the prior written approval of the [State Board] commission.

§ [5204]4404.5. Computation of payment.

§ [5204]4404.6. Food and beverages.

No food or beverages may be sold, served or consumed, nor merchandise of any kind sold by vending machine or otherwise in the public area of any branch office without the prior approval of the [board] commission.

§ [5204]4404.7. Distribution of printed matter.

No printed or written material [which] that pertains in whole or in part to horse racing, pari-mutuel wagering or any aspect thereof shall be sold or distributed by any person in any branch office, except that a corporation may, with the prior approval of the [board] commission, distribute such material as is appropriate to the proper conduct of off-track betting, or sell official race track programs for no less than the price charged by the racing association to [its] such racing association's patrons.

§ [5204]4404.8. Separate betting pools.

A corporation may furnish its own pari-mutuel pool for wagering on out-of-state races with the prior approval of the [State Board] commission.

§ [5204]4404.9. Branch offices.

Unless the [State Board] commission shall approve a branch office otherwise constructed, all such branch offices shall have entrances thereto from the street and shall be constructed so as to

afford clear visibility from the exterior and interior of the premises. Window shades or blinds or screens or other materials shall not obstruct the view from the exterior or the interior of the premises. The establishment of temporary sites and/or mobile betting units shall require [State Board] commission approval.

§ [5204]4404.10. Betting by a person under the age of 18.

A person who is less than 18 years of age shall not enter a branch office[,] and shall not place a bet at any branch office directly[,] for himself or herself or for or through another person.

§ [5204]4404.11. Telephone betting.

A bet placed by telephone shall be subject to the rules and regulations [which] that govern the placing of all off-track bets.

§ [5204]4404.12. Closing of a branch office.

§ [5204]4404.13. Interface agreements.

Each agreement for the combination of all off-track wagers with on-track wagers between a State track or an out-of-state track and a corporation shall be subject to the prior approval of the [State Board] commission.

§ [5204]4404.14. Branch office location.

(a) Except for good cause shown satisfactory to the [board] commission in individual circumstances, a corporation shall not open or maintain a branch office within 500 feet of an educational institution or place of worship. The measurement of 500 feet shall be along the public road [which] that the branch office faces or to which it has nearest access, and along straight-line courses [which] that a pedestrian may take legally and as of right from the nearest doorway of general access of the branch office to the nearest doorway of general access of the institution or place of worship; provided, however, in cities with a population of 250,000 or more the prohibited area of proximity above noted shall be 200 feet.

(b) No branch office shall be located within one mile of the boundary of any licensed or franchised track except with specific written consent of the track involved and written authorization of the [board] commission.

§ [5204]4404.15. Calculation of odds and payoff prices.

* * *

(c) (1) If, as a result of paying the statewide price, a corporation's liability for payoff and track settlements is less than its net pool after takeout, such difference shall be added, as most feasible, to the next available statewide net pools of the same type for the same track, unless otherwise ordered by the [board] commission.

(e) The site of the statewide interface shall, in the case of wagers offered at a New York State track be that track, and in the case of other off-track wagers be operations center of the agreed upon off-track betting corporation or as designated by the [board] commission.

§ [5204]4404.16 Restrooms.

(a) Except for good cause satisfactory to the [board] commission, each off-track betting branch facility shall provide restroom facilities for patrons.

(b) In determining good cause, the [board] commission may consider the following factors:

§ [5204]4404.17. Internet posting to assist compulsive gamblers.

Each corporation[, which] that maintains a website on the Internet[,] shall post on its home page a message designed to assist compulsive gamblers. Such posting shall include, but not be limited to, a notice of the availability of one or more organizations approved by the commissioner of mental health, pursuant to the provisions of [subdivision (g) of section 7.09] of the Mental Hygiene Law, which offer assistance in dealing with the problem of compulsive gambling.

PART [5205]4405

Miscellaneous

§ [5205]4405.1. Data processing center.

The [State Board] commission shall establish a data processing center for the purpose of providing centralized data processing services to a corporation on such terms and conditions as [it] the commission may deem advisable, including and without limitation, the payment of any charge or expense incurred in connection with such operation. Provided, however, that the [State Board] commission may authorize one or more corporations to use a regional or other independent data processing center for an interim period until centralized statewide data processing services are made available by the [State Board] commission. No region may establish or expand regional data processing facilities without the prior approval of the [State Board] commission.

§ [5205]4405.2. Report of criminal activity.

A corporation shall report to the [State Board] commission any violation of law [which] that occurs at a branch office, or any communication with a law enforcement agency.

§ [5205]4405.3. Transfer of bets.

§ [5205]4405.4. Posting of results.

§ [5205]4405.5. Overnight retention of monies.

Cash shall not be retained overnight in any branch office unless the [State Board] commission shall have determined that adequate safeguards exist with respect to the retention of such monies.

§ [5205]4405.6. Alarm systems.

For the purpose of maintaining a uniformly high standard of branch office security, all branch offices shall be equipped with forced entry alarm systems [which] that shall be approved by the [State Board] commission prior to installation thereof. Additionally, all branch office cashier locations shall be equipped with alarm systems [which] that shall be approved by the [State Board] commission prior to installation.

§ [5205]4405.7. State lottery.

Where feasible, a corporation shall maintain a State lottery outlet at a branch office at the direction of the [State Board] commission and shall receive reasonable compensation therefor on a strict cost reimbursement basis.

§ [5205]4405.8. Inspection.

The [State Board] commission may inspect a branch office or the corporation offices at any time and shall be accorded full access to all premises of the corporation for such purpose.

§ [5205]4405.9. Implementation.

This Part is intended to implement in part the requirements of Articles V, V-a, and VII of the Racing, Pari-Mutuel Wagering and Breeding Law [the New York State Off-Track Pari-mutuel Betting Law, the New York City Off-Track Betting Corporation Law, and the Regional Off-Track Betting Corporation Law, section 8061 et seq., Unconsolidated Laws].

PART [5206]4406

[The] Conduct of Off-Track Betting

§ [5206]4406.1. Denial of telephone betting account.

No person who is known or reputed to be a bookmaker or engages in any activity [which] that is deemed to be a gambling offense as defined in article [XXV] 225 of the Penal Law of the State of New York, or is a fugitive from justice shall, be granted a wagering account with the telephone deposit betting center facility.

§ [5206]4406.2. Minimum payoff.

No less than \$2.10 shall be paid for the redemption of a valid [two-dollar] \$2 winning ticket and no less than \$3.15 shall be paid for the redemption of a valid [three-dollar] \$3 winning ticket.

§ [5206]4406.3. Posting of entries.

§ [5206]4406.4. Calculation of separate pools.

Determination of payoff to winning bettors shall be in the form prescribed by the Racing, Pari-Mutuel [Revenue] Wagering and Breeding Law. The shared pool, or profit, shall be that amount resulting by the deduction of the retained commission and involved breakage from the total pari-mutuel pool.

§ [5206]4406.5. Presentation for payment.

(a) Except for telephone accounts, payment on a winning pari-mutuel wager shall be made only upon presentation and surrender of the ticket representing such wager. In the discretion of the corporation or by direction of the [board] commission, payments may be made by cash or by check to the holder of such winning ticket and identification of any winner may be required by either the [board] commission or the corporation.

(b) All winning pari-mutuel tickets must be presented for payment or refund before April [1st] 1 of the year following the year of their purchase and failure to present any such ticket within the prescribed period of time shall constitute a waiver of the right to refund or to participate in the award or dividend. Each corporation shall cause the substance of this subdivision to be imprinted upon each pari-mutuel ticket[,] in words approved by the [board] commission.

§ [5206]4406.6. Sale, exchange of tickets.

No pari-mutuel tickets shall be sold except at regular ticket windows, properly designated by signs showing the types of tickets sold at such windows, except that, tickets may be issued by

automated ticket machines, or bets may be sold by designated couriers, according to procedures approved by the [board] commission. No such tickets shall be exchanged.

PART [5207]4407

Employees, Officers and Directors

§ [5207]4407.1. Background investigations.

Each prospective employee, officer or director of a corporation identified as such, shall be the subject of a background investigation by the corporation prior to his employment, appointment or retention. Such information shall be made available to the [State Board] commission at [its] the commission's request.

§ [5207]4407.2. Comportment.

Employees who are assigned to branch offices shall dress neatly[,] and shall be courteous to patrons.

§ [5207]4407.3. Bets by personnel.

§ [5207]4407.4. Bets by personnel of other corporations.

No officer, director, or employee of any firm, entity or agency [which] that is retained by a corporation or by the [State Board] commission for the purpose of supervising the operation or maintenance of the system of off-track betting may place any bet, directly or indirectly at any branch office, whether personally or by telephone, or receive any gratuity from any patron.

§ [5207]4407.5. Approval of special policemen.

Each special policeman of a regional corporation other than New York City, who is to have the status of a peace officer shall be previously approved by the [State Board] commission. Application for such approval shall be made on the forms supplied by the [board] commission. The term of such appointment shall be set by the [board] commission but may be terminated at any time prior thereto by the [board] commission. The [board] commission may set conditions upon such approval.

§ [5207]4407.6. Limitation on directors and officers of a corporation.

No director or officer shall participate in the corporation, other than within the prescribed duties of his or her title.

§ [5207]~~4407~~.7. **Shortages.**

A corporation may deduct from the wages of a branch unit employee monies owed as a result of such employee's going short on any particular racing day. The term *short* as used in this section [shall mean] means any loss to the corporation arising from amounts missing from funds in the possession, custody or control or under the supervision of any branch unit employee or employees in the course of the performance of his, her or their duties in betting operations.

PART [5208]~~4408~~
Records and Reports

§ [5208]~~4408~~.1. **Method of accounting.**

§ [5208]~~4408~~.2. **Annual report.**

Within 120 days after the end of the fiscal year of the corporation, each corporation shall submit to the [State Board] commission a copy of its annual report of operations audited by an independent certified public accounting firm in accordance with Generally Accepted Government Auditing Standards as prescribed by the Comptroller General of the United States for approval prior to its distribution. The report shall include the following supplemental schedules in a form prescribed by the [State Board] commission:

§ [5208]~~4408~~.3. **Quarterly reports.**

Each corporation shall file with the [State Board] commission, within 15 days of the close of each fiscal quarter, a quarterly report of the activities of the corporation in a form prescribed by the [board] commission. The commission may for good cause grant a reasonable extension of time for the filing of any such report.

§ [5208]~~4408~~.4. **Signatures on reports.**

Each quarterly report shall be signed by at least one of the corporation's principal officers[,] and by the person who prepared the report.

§ [5208]~~4408~~.5. **Other reports.**

The corporation shall furnish to the [State Board] commission annual reports [which] that shall include:

(c) a list of directors and of officers[,] and the compensation paid to each;

§ [5208]4408.6. Books and records.

The [State Board] commission may conduct such investigations as it deems necessary in order to effectively carry out the purposes and objectives of off-track pari-mutuel betting as provided by law. The [State Board] commission may determine the method of accounts, and maintenance of books and records of each corporation, consistent with the powers of the New York State Department of Taxation and Finance and of the Office of the State Comptroller to prescribe uniform methods of accounts, records and books so as to adequately reflect the method of doing business and all financial transactions of the corporation including revenue received and distributions made thereof. Books and records of a corporation shall be maintained by the corporation as ordered by the [State Board] commission and shall not be destroyed by the corporation or abandoned without the prior approval of the [State Board] commission.

§ [5208]4408.7. Inspection and delivery.

The [State board] commission may inspect the records of a corporation at any time at the office of the corporation. A corporation shall, upon appropriate notice, deliver promptly to the office of the [State board] commission any records [which] that the [State board] commission shall request.

PART [5209]4409

Surtax

§ [5209]4409.1. Surtax imposed.

§ [5209]4409.2. Determination of surtax.

The surcharge plus the breaks will not be deducted from any pool if to do so would result in a payoff basis of less than \$2.10 for a [two-dollar] \$2 wager. Thus, where a payout is greater than \$2.10 but would be reduced to less than \$2.10 upon deduction of the full surcharge, a surcharge will be imposed and deducted only insofar as [it] such surcharge will allow a minimum payoff of \$2.10 for each [two-dollar] \$2 wager.

§ [5209]4409.3. Transmission of pool data.

§ [5209]~~4409~~.4. **Disposition of revenues.**

§ [5209]~~4409~~.5. **Distribution of surcharge revenues.**

All revenues received from the surcharge pursuant to section 532 of the Pari-Mutuel Wagering and Breeding Law shall be distributed in accordance with the provisions of section 532 and, as applicable, section 516 of such law. [monthly as follows:

(a) 50 per centum per centum to such city, or to the counties and cities entitled to receive revenues from the regional corporation pursuant to section 516 of the Racing, Pari-Mutuel Revenue Law and in the same proportion as provided therein, or to an off-track betting operator; and

(b) the balance to cities and counties through the regional off-track corporation in which such cities or counties are located; provided, however, in the event that such cities or counties otherwise entitled to receive such revenues are not participating cities or counties within a regional off-track betting corporation, then such monthly distributions shall be payable directly to such cities or counties, as follows:

(1) where the track conducting the race on which the bet was placed is located within a city with a population in excess of 100,000, to such city;

(2) where the track conducting the race on which the bet was placed is not located within a city with a population in excess of 100,000, to the county in which such track is located;

(3) where the track conducting the race on which the bet was placed is located partially within a city with a population in excess of one million and partially within a county, 25 per centum of such balance to the city and the remainder to the county; and

(4) where the track conducting the race on which the bet was placed is located outside the State, in the same manner as described in subdivision (a) of this section.

(c) At such time as the distribution of such revenues shall be made, the regional corporation originating such surcharge shall transmit to the board a track summary report, which shall be in a form prescribed by the board, which shall indicate, by track, monthly totals of the following items:

(1) total off-track payout for bettors after surcharge;

(2) total OTB surcharge (including surcharge breakage);

(3) payments to participating cities and counties within the corporation, segregated between payments due pursuant to subdivisions (a) and (b), respectively, of this section, with date of payment;

(4) payments to nonparticipating cities and counties, pursuant to subdivision (b) of this section, with date of payment; and

(5) payments to other regional corporations, by corporation, for distribution to participating cities and counties in such other regional corporations pursuant to subdivision (b) of this section, with date of payment.

(d) Each regional off-track betting corporation which receives payments for distribution to its participating cities and counties from other regional off-track betting corporations, shall distribute such payments to the appropriate participating cities and counties within three days of receiving such payments, and shall submit a report of payment to the board upon such distribution. The report shall include the amount of surcharge revenue received from each other off-track betting corporation, listed separately, the date such revenue was received, and the date payments thereof were made to the appropriate participating cities and counties.]

§ [5209]4409.6. Maintenance of depositories for surcharge revenues.

§ [5209]4409.7. Dispute resolution.

Disputes between any regional corporation, commission or other organization authorized to conduct off-track pari-mutuel betting in the State and any track or other person, association or corporation with respect to the collection or payment of the surcharge, shall be submitted in writing to the [board] commission for determination.

§ [5209]4409.8. Maintenance of books and records.

[§ 5209.9. Effective date of surcharge.

The surcharge imposed by section 131 of chapter 439 of the Laws of 1974 shall be effective as follows: with respect to the New York City region, July 1, 1974; with respect to all other regional corporations, OTB commissions or OTB operators authorized to conduct OTB in this State, on August 19, 1974.]

§ 4409.9. [Reserved]

§ [5209]4409.10. One percent increase in surcharge for capital acquisition fund.

(a) [Effective July 18, 1990, t]The surcharge of five percent provided for in section 532 of the Racing, Pari-Mutuel Wagering and Breeding Law [(RPMWBL), is hereby] has been increased by a supplemental one percent surcharge on the portion of pari-mutuel wagering pools of multiple, exotic and super exotic bets [distributal] distributable to persons having placed bets at off-track betting facilities[, pursuant to the provisions of section 41 of chapter 346 of the Laws of 1990].

(d) If the applicable corporation has not created such fund, or has not designated such fund to receive such supplemental surcharge, such supplemental surcharge shall be distributed monthly with the surcharge and breakage [which it] that such supplemental surcharge supplements.

§ [5209]4409.11. Determination of breakage.

(a) On thoroughbred races, the breaks on surcharge shall be calculated based on the formula established in subdivision one of Section [229] 238 of the Racing, Pari-Mutuel Wagering and Breeding Law[, as amended by Chapter 281 of the Laws of 1994].

(b) On harness races, the breaks on surcharge shall be calculated based on the formula established in subdivision one of Section 318 of the Racing, Pari-Mutuel Wagering and Breeding Law[, as amended by Chapter 281 of the Laws of 1994].

PART [5210]4410

Pari-Mutuel Pool Calculations

§ [5210]4410.1. Applicable rules.

Unless otherwise provided in this Part, the formulas, methods of distribution and other provisions regarding pari-mutuel pools at in-State tracks under the jurisdiction of the [board] commission shall constitute the rules governing pools conducted by off-track betting corporations on racing at such tracks.

§ [5210]4410.2. Out-of-state double exacta.

(c) Races in which double exacta pools shall be conducted shall be approved by the [board] commission and shall be clearly designated in the program and racing cards and mutuel tickets issued by the corporation.

§ [5210]4410.3. **Off-track pick four pool conducted solely off-track.**

(a) When approved by the [board] commission after filing of the required written consent of the track affected, an off-track betting pool designated a pick four pool may be conducted by one or a combination of off-track betting corporations in a single off-track pool, which pool is not combined with any pool at a track.

(b) The pick four (or other approved name) is a form of pari-mutuel wagering conducted by an off-track betting corporation on four races run at any track specifically designated as the pick four races by the [board] commission. Each bettor selects, in order, the first placed horse in each of the four races designated and advertised by the corporation as the pick four races, in the race order so designated by the [board] commission.

(e) Races in which pick four pools shall be conducted shall be approved by the [State Racing and Wagering Board] commission and shall be clearly designated in the program and racing cards issued by the corporation.

(g) Scratched horses and nonstarters. At any time after wagering begins on the pick four pool, should an entire betting entry or field be scratched or declared a nonstarter in any pick four race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the pick four pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the site of the statewide interface in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field with the lowest program number shall be designated.) Wagers in the pick four pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except that if [totalizator] totalisator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), is employed, then the wagers upon scratched constituent horses will be deemed wagers upon the "designated horse" in such race. In case no starter remains representing any betting entry or field, wagers upon such entry or field, shall be deemed wagers upon the "designated horse" in the race affected by the scratch. Should the balance of a betting entry or field race as a nonbetting starter for purposes of other pari-mutuel pools at the site of the statewide interface, wagers upon such entry or field shall be deemed wagers upon the "designated horse" for such race. Should a programmed starter be scratched or declared a nonstarter in any pick-four race prior to the start of the first leg, the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg.

§ [5210]4410.4. Off-track pick three pool conducted solely off-track.

(a) When approved by the [board] commission after filing of the required written consent of the track affected, an off-track betting pool designated a pick three pool may be conducted by one or a combination of off-track betting corporations in a single off-track pool, which pool is not combined with any pool at a track.

(b) The pick three (or other approved name) is a form of pari-mutuel wagering conducted by an off-track betting corporation on three consecutive races run at any track, specifically designated as the pick three races by the [board] commission. Each bettor selects, in order, the first placed horse in each of the three races designated and advertised by the corporation as the pick three races, in the order so designated by the [board] commission.

(e) Races in which pick three pools shall be conducted shall be approved by the [board] commission and shall be clearly designated in the program and racing cards issued by the corporation.

§ [5210]4410.5. Parlay betting.

(a) When consistent with the public interest and the best interests of racing generally, with permission of the [board] commission, an off-track operator may offer parlay betting as a service to the betting public involving races at tracks similarly offering such service.

[PART 5211. Distribution of Tracks' Percentages of Off-Track Betting Pools

< Part 5211 is repealed (3 terms moved to section 5200.1 Definitions) >

Section

- 5211.1 Definitions
- 5211.2 Pool constituents
- 5211.3 Regional tracks
- 5211.4 Distribution to tracks from out-district western OTB pools
- 5211.4 Distribution to tracks from out-district western OTB pools
- 5211.5 Distribution to tracks from in-district western OTB pools
- 5211.6 Distribution to tracks from capital OTB pools
- 5211.7 Distribution to tracks from metro region OTB pools
- 5211.9 Distribution to tracks from out-district central OTB pools
- 5211.10 Distribution to tracks from in-district central OTB pools

- 5211.11 Distribution to tracks respecting reduction in retained commission
- 5211.12 Distribution to tracks from out district western OTB exotic betting pools
- 5211.13 Distribution to tracks from in-district western OTB exotic betting
- 5211.14 Distribution to tracks from capital OTB exotic betting pools
- 5211.15 Distribution to track from metro region OTB exotic betting pools
- 5211.17 Distribution to tracks from out district central OTB exotic betting pools
- 5211.18 Distribution to tracks from in-district central OTB exotic betting pools
- 5211.19 Distributions relating to pools on races at Yonkers, Roosevelt and Monticello Raceways]

PART ~~[5212]~~4412

Voluntary Exclusion from Off-Track Betting Premises and Restriction on Telephone Account Wagering

§ ~~[5212]~~4412.1. General requirement.

§ ~~[5212]~~4412.2 Self-exclusion from off-track betting simulcast branches and teletheaters.

(e) Each off-track betting shall file with the [board] commission [no later than thirty days after the effective date of this Part] a plan for implementing this section and for disseminating the information contained in the applications for placement on the list of self-excluded persons. The plan shall be designed to safeguard the confidentiality of the information but shall include dissemination to all of the following:

(h) A request for removal from the self-exclusion list shall include:

- (1) the identifying information specified in paragraphs [(c)](1)[-] through (5) of subdivision (c) of this section;

(i) This rule does not create any right or cause of action on behalf of the individual whose name is placed on the list of self-excluded persons against the State of New York, the [board] commission or an off-track betting corporation.

§ [5212]4412.3. Voluntary restrictions on telephone account wagering.

(a) Any holder of an account authorized pursuant to section 1012 of the Racing, Pari-Mutuel Wagering and Breeding Law may voluntarily place limits on the amount of his or her wagers. This restriction may be calculated on a daily or weekly basis.

(1) Each off-track betting corporation [which] that maintains telephone betting accounts for wagering on races shall establish procedures that are designed to deny wagering privileges beyond a daily or weekly threshold set by the account holder.

(b) Each off-track betting corporation [which] that maintains telephone betting accounts for wagering on races shall file with the [board] commission [no later than thirty days after the effective date of this Part] a copy of its procedures established pursuant to this section.

Subchapter G

Internet and Telephone Account Wagering

9 NYCRR part 5300 is relocated, as amended, as part 4500 of Subchapter G of Chapter I:

PART [5300] 4500

Internet and Telephone Account Wagering

§ [5300]4500.1. Definitions and general provisions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(a) *Account* [shall mean] means a formal record of all transactions (debits, wagers, deposits, withdrawals and credits) initiated by an account holder in a wagering account with an authorized pari-mutuel wagering entity.

(b) *Account holder* [shall mean] means a natural person authorized by an authorized pari-mutuel wagering entity to place wagers via account wagering.

(c) *Account wager* [shall mean] means a wager placed by means of account wagering. An account wager may be made by the account holder in person, via telephonic device or by the internet or by communication through other electronic means.

(d) *Account wagering* [shall mean] means pari-mutuel wagering in which an individual deposits money in an account with an authorized pari-mutuel wagering entity to be used for pari-mutuel wagering authorized by law to be conducted by the authorized pari-mutuel wagering entity.

(e) *Account wagering center* [shall mean] means the facility or facilities which have the capability of accepting account wagers utilizing wired or wireless communications devices, including but not limited to wireline telephones, wireless telephones, and the internet, to transmit the placement of wagers on races and special events.

(f) *Account activity* [shall mean] means any deposit, withdrawal, wager or other transaction made by the account holder.

(g) *Authorized pari-mutuel wagering entity* [shall mean] means a corporation or association that is duly licensed by the [board] commission or holds a franchise to conduct pari-mutuel wagering and simulcasting activity.

(h) [Board shall mean The] Commission means the New York State [Racing and Wagering Board] Gaming Commission.

(i) *Internet* [shall mean] means a computer network consisting of a worldwide network of computer networks that use the TCP/IP network protocols to facilitate data transmission and exchange.

(j) *Official* [shall mean] means a representative(s) of the [board] commission.

(k) *Racing law* means title 47A of the consolidated laws of the State of New York, the New York State Racing, Pari-Mutuel Wagering and Breeding Law.

(l) *Regional off-track-betting corporation* [shall mean] means a corporation created pursuant to [Section] section 502 or [Section] section 603 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law.

(m) *Report* [shall mean] means a summary of wagering activity or other written record prepared pursuant to this subchapter.

(n) *Stored value instrument* [shall mean Funds] means funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

(o) *Totalisator system* [shall mean] means a computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.

(p) *Wagering device* [shall mean] means a device enabling the placing of wagers.

§ [5300]4500.2. Account wagering, general.

An authorized pari-mutuel wagering entity may offer a system of account wagering whereby wagers and withdrawals are debited and winning payoffs and deposits are credited to an account held by an authorized pari-mutuel wagering entity on behalf of an account holder provided:

- (a) Prior [board] commission approval is granted for the account wagering system.

§ [5300]4500.3. Approval of account wagering.

Authorized pari-mutuel wagering entities are authorized to conduct account wagering pursuant to the written plan of operation approved by the [Board] commission. The plan of operation shall include, at a minimum:

- (c) System security [which] that shall include[,] but not be limited to[,] the use of access encryption and firewalls.

§ [5300]4500.4. Establishment of an account.

- (a) Accounts shall be used for wagering purposes only. Authorized pari-mutuel wagering entities may establish/open accounts for individuals provided the following minimum requirements are met:

- (2) Accounts may be opened in accordance with procedures set forth in a plan of operation approved by the [board] commission.

- (5) Except in the case of an online application, the name of each new account holder will be confirmed in accordance with the Federal Government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of Homeland Security Employment Verification Form [I9] I-9). A copy of each properly validated credential will be maintained with the appropriate account application. A copy of a social security card is not required to be maintained at the time of the application if the number is verified with a credit reporting agency and such report is maintained with the account application. In the case of an online application, the pari-mutuel wagering entity shall verify the applicant's identity using, at a minimum, the name, address, social security number and

date of birth of the applicant through a credit reporting agency, public database, or similarly reliable sources as provided for in the plan of operation. If there is a discrepancy between the minimum information submitted and the information provided by the electronic verification described above or if no information on the applicant is available from such electronic verification, then the pari-mutuel wagering entity shall not open the account and shall require verification through the Federal Government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of Homeland Security Employment Verification Form [I9] I-9).

(b) Bearer Accounts.

(1) Notwithstanding the provisions of [part] subdivision (a) of this section, an authorized pari-mutuel wagering entity may establish an account for a customer without collecting the information found in [part (a)(2) - (5)] paragraphs (2) through (5) of subdivision (a) of this section provided that:

(ii) The account [can not] cannot be used for internet and telephone wagering.

(5) All other provisions of this Subchapter apply except:

(ii) Account Statements pursuant to section [5300]4500.13 of this Part are not required to be mailed but must be made available to the person possessing the card issued in paragraph (2) of this subdivision.

(iii) The provisions of sections [5300]4500.5 of this Part and [5300]4500.6 of this Part do not apply.

§ [5300]4500.5. Official address.

§ [5300]4500.6. Changes to account information.

The authorized pari-mutuel wagering entity shall provide a method for the account wagering holder to make official changes to [his/her] his or her account information. The method shall

include the name, date, address, and social security number, account wagering identification number, PIN and signature.

§ [5300]4500.7. Right to refuse an account.

(b) The authorized pari-mutuel wagering entity shall refuse an account to:

(ii) any person who engages in any activity [which] that is deemed to be a gambling offense as defined in Article 225 of the Penal Law of the State of New York;

§ [5300]4500.8. Segregation of funds.

§ [5300]4500.9. Conduct of wagering.

(a) Account wagers shall [only] be transacted through only an account wagering center.

§ [5300]4500.10. Record of wager; pari-mutuel tickets.

§ [5300]4500.11. Withdrawals and other debits to accounts.

(a) Excepting bearer accounts, withdrawals may be made by completing a request for withdrawal in accordance with procedures set forth in a plan of operation approved by the [board] commission. The request for withdrawal shall include, at a minimum;

§ [5300]4500.12. Credits to accounts.

§ [5300]4500.13. Account statements.

§ [5300]4500.14. Recordkeeping.

§ [5300]4500.15. Confidentiality of accounts.

The authorized pari-mutuel wagering entity, its employees and agents may not divulge any account information without the express written permission of the account holder[,] except to the [board] commission, by [board] commission order, or as may otherwise be prescribed by law.

§ [5300]4500.16. Closing of accounts.

§ [5300]4500.17. Dormant accounts.

The authorized pari-mutuel wagering entity shall deactivate all accounts if there is no account wagering activity during a period of 36 consecutive months. All monies in such dormant accounts shall be distributed in accordance with §[S]ection 1012 of the [racing law] Racing, Pari-Mutuel Wagering and Breeding Law.

§ [5300]4500.18. Surcharge

Any regional off-track-betting corporation may suspend surcharge of accounts pursuant to section 1012 of the [Racing Law] Racing, Pari-Mutuel Wagering and Breeding Law and consistent with [its] such corporation's plan of operation.

§ [5300]4500.19. Vouchers.

[Vouchers are] A voucher is a document or card produced by a pari-mutuel system device, with a value printed on its face, that is recorded in and redeemed through the pari-mutuel system.

(a) Vouchers are not accounts or account wagers for purposes of this section.

(b) Vouchers may only be used to place wagers in-person and only pursuant to an approved plan of operation.

§ [5300]4500.20. Reports to [board] commission.

No later than March [15th] 15, the authorized pari-mutuel wagering entity shall file with the [Board] commission a report detailing the following for the previous calendar year in which account wagering was offered:

(e) Any other report as may be prescribed by the [board] commission.

§ [5300]4500.21. Yearly audit.

Authorized pari-mutuel wagering entities shall audit or cause to have audited the account wagering system data input and account updates not less than once during each calendar year. Such reports shall be provided to the [board] commission upon request.

§ [5300]4500.22. Disputes/complaints/adjustments.

§ [5300]4500.23. Cooperation with officials.

If the [board] commission determines that a certain computer printout, mutuel report, or other totalisator or mutuel record is needed to perform the official's regulatory duties, the official shall request the item from the mutuel manager (or his or her designee) and/or totalisator company representative. On receipt of a request under this section, the mutuel manager and/or totalisator company representative shall make the information available to the official no later than the deadline established by the official or provisions of this [subchapter] Subchapter.

Subchapter H

Adjudicatory Proceedings for Racing

9 NYCRR part 5402 is relocated, as amended, as part 4550 of Subchapter H of Chapter I:

PART 4550[5402]

Adjudicatory Proceedings

§ [5402]4550.1. Applicability.

This Part applies to all adjudicatory proceedings held by the [board] commission [commenced on or after the effective date of this Part or an applicable amendment thereto] pursuant to Chapter I of this subtitle.

§ [5402]4550.2. Definitions.

(a) The term [*board shall mean*] commission means the New York State [Racing and Wagering Board] Gaming Commission. The [board] commission is an agency authorized by law to make final determinations in adjudicatory proceedings and is an "agency" within the meaning of Executive Order No. 131 dated December 4, 1989.

(b) The term *adjudicatory proceeding* [shall mean] means any activity in which a determination of legal rights, duties or privileges of named parties thereto is required by law to be made, only on a record and after an opportunity for a hearing, provided however, that such term shall not apply to a rule making proceeding or an employee disciplinary action or other personnel action.

(c) The term [*chairman* shall mean] chair means the chair[man] of the [New York State Racing and Wagering Board] commission.

(d) The term *hearing officer* [shall mean] means a person designated by the chair[man] as such and assigned by the chair[man] to conduct an adjudicatory proceeding.

(e) The term *hearing officer report* [shall mean] means the findings, conclusions and recommendations, if any, issued by the hearing officer.

§ [5402]4550.3. Notice of adjudicatory proceedings.

(a) An adjudicatory proceeding shall be commenced by service of a notice of hearing or order to show cause. A hearing in any matter as to which the [board] commission is required to hold an adjudicatory hearing or otherwise determines to do so shall be held upon reasonable notice to each party, and shall be conducted at such place as the [board] commission shall determine. Notice of such hearing, may be served on the party or provided by certified mail addressed to the party involved at the party's last known address.

(3) A notice of appearance by any attorney representing the party shall be filed with the counsel to the [board] commission. A written answer to the charges, if demanded in the notice, or at the option of the party notified, shall be filed at least five days before the hearing commences.

§ [5402]4550.4. Disclosure.

(a) When the hearing seeks the revocation of a license previously granted by the [board] commission, either the [board] commission or any party may, upon written demand and at least seven days prior to the hearing, require disclosure of the evidence that the other party intends to introduce at the hearing, including documentary evidence and identification of witnesses; provided, however, that a party shall not be required to disclose information or material otherwise protected by law from disclosure, including information and material protected because of privilege or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.

(b) If a party fails to disclose evidence sought pursuant to subdivision (a) of this section, the hearing officer may, in [his] the hearing officer's discretion, impose sanctions[,] which may include preclusion of said evidence from introduction at the hearing.

§ [5402]4550.5. Procedure for adjudicatory hearing.

(a) General procedure. At the hearing, the case may be presented by a party either personally or by an attorney. Each party will be afforded a reasonable opportunity to present evidence, examine, and cross examine witnesses. The hearing officer shall conduct the hearing in a fair and impartial manner. Each witness shall testify under oath or by affirmation. The hearing officer may examine witnesses. The hearing officer shall not be bound by the technical rules of evidence[,] or by formal rules of procedure. The hearing officer may exclude irrelevant or unduly repetitive testimony or evidence from any hearing. Official notice may be taken of all facts of which judicial notice can be taken and of other facts within the specialized knowledge of the [board] commission. When official notice is taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to the decision to dispute the fact or its materiality. Briefs as to the facts and law may be submitted and the hearing officer may order a brief to be submitted in any proceeding and fix the time when briefs may be filed.

5402]4550.6. Hearing officer.

(a) The chair[man] shall assign the hearing officer.

(c) A hearing officer is authorized to:

(2) issue subpoenas in the name of the [board] commission, at the request of any party or the direction of the [board] commission, requiring attendance and testimony by witnesses and/or the production of books, papers, documents and other evidence. Subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall affect the authority of an attorney for a party to issue subpoenas under the provisions of the Civil Practice Law and Rules;

(d) If so directed in the assignment of the chair[man], the hearing officer shall prepare findings of fact and make recommendations to the [board] commission.

(e) The report of the hearing officer shall be based upon the testimony, [the] briefs[,] and [the] exhibits received at the hearing. [It] The report shall be in the form of a written recommendation to the [board] commission and shall be filed with the secretary to the [board] commission together with the record of the proceeding.

(g) A hearing officer may consult on questions of law with supervisors, agency attorneys or other hearing officers, provided that such supervisors, hearing officers or attorneys have not been engaged in investigative or prosecuting functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding. Hearing officers may also consult with supervisors, other hearing officers, support staff or court reporters on ministerial matters such as scheduling or the location of a hearing. The chair[man] shall strictly enforce the prohibition set forth herein and in subdivision (f) of this section.

§ [5402]4550.7. Disqualification of hearing officer.

(a) A party may request the removal of a hearing officer by filing an affidavit of personal bias or disqualification with the [board] commission. The affidavit shall state the specific reasons why the hearing officer should no longer preside over the case under consideration. The [board] commission shall determine the matter as part of the record of such case, and the hearing may continue during the time that the [board] commission considers the request for removal of the hearing officer. A party must file said motion within 48 hours of the date when the party knew or should have known of the basis for disqualification.

(b) Whenever a hearing officer is disqualified or it becomes impracticable for the hearing officer to continue the hearing, another hearing officer may be designated to continue with the case unless it is shown that substantial prejudice to the party will result.

§ [5402]4550.8. Determination of the [board] commission.

(a) All orders, decisions and determinations of the [board] commission shall be in writing or stated in the record and shall include such findings of fact, conclusions of law, reasons for the decision or determination, as may be made by the [board] commission, and when appropriate, such direction of specific action as may be ordered by the [board] commission. Orders, decisions and determinations shall be issued over the signature of the Secretary to the [board] commission, [or] the chair[man] of the [board] commission, or [his/her] the chair's designee.

(b) After determination of the [board] commission, a copy of the final decision or determination of the [board] commission together with any report of the hearing officer shall be made available to the parties to the hearing or proceeding[,] and shall be delivered or mailed forthwith to each party and to [its] each party's representative of record.

(c) The [board] commission may not order or otherwise direct a hearing officer to make any specific findings of fact, to reach any specific conclusions of law, or to make or recommend any specific disposition of a charge, allegation, question or issue, except by remand, reversal, or other decision on the record of the proceeding. The [board] commission may confirm, modify, or reject any recommendation of the hearing officer. If the [board] commission issues a decision that includes findings of fact or conclusions of law that conflict with any findings of fact, conclusions, or recommended decision of the hearing officer, the [board] commission shall set forth in writing the reasons why the [board] commission reached a conflicting decision.

§ [5402]4550.9. Record.

(a) The [board] commission shall cause to be made a complete record of all adjudicatory proceedings. Any party to the adjudicatory proceeding may inspect the record. Upon request, the [board] commission shall furnish a copy of the record including exhibits and transcripts or any part thereof to any party, and the [board] commission may charge that party not more than [its] the commission's cost for the preparation and furnishing of such record or transcript or any part thereof, or in the alternative, the [board] commission may charge the rate specified in [its] the commission's contracts with a private hearing stenographer. A party also shall be entitled to obtain at [its] such party's own cost a copy of the transcript directly from the hearing stenographer.

(b) The [board] commission shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the [board] commission in adjudicatory proceedings. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying.

§ [5402]4550.10. Application to reopen.

(a) The hearing officer may reopen an adjudicatory proceeding upon [his or her] the hearing officer's own initiative or upon written application made by a party prior to the [board's] commission's determination.

(b) The [board] commission may reopen an adjudicatory proceeding, on its own initiative or upon written application made by a party, subsequent to the [board's] commission's determination.

(c) Such applications shall be determined in accordance with the following:

(1) Where a party other than the [board] commission[,] failed to appear at the hearing, the party making the application to reopen must establish that there were valid reasons for having failed to appear and that there is a meritorious defense on behalf of such party.

(2) Where a party has appeared at the hearing, the party must establish that there is newly discovered evidence that [which], despite due diligence by the party, was not available at the

time of the hearing[,] or establish other compelling reasons for reopening. This paragraph shall also apply to counsel to the [board] commission.

§ [5402]4550.11. Penalties.

All penalties imposed by the [board] commission, and all license suspensions, fines, exclusions and other sanctions imposed by the [board] commission upon any person charged shall continue in full force and effect until the determination of the [board] commission is rendered, unless otherwise directed in writing by the [board] commission. In this regard, the [board] commission may reduce, increase, modify, or substitute any penalty, license suspension, fine, exclusion, or other sanction after review of the record of the administrative proceeding. In addition, the [board] commission may assess an additional penalty, upon notice and opportunity to be heard at a hearing, if [it] the commission finds that any appeal taken from a ruling was frivolous[, which are those appeals]. A frivolous appeal is one commenced in bad faith or for purposes of delay[,] or [which are] is one that is unreasonable and without substance or merit.