

## **NYCRR Title 9, Executive**

### **Subtitle T**

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

##### **Chapter IV**

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##### **Subchapter B**

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#### **§ 5300.1. Definitions.**

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

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

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

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



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

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

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

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

(h) *Non-gaming employee* means any natural person, not otherwise included in the definition of casino key employee or gaming employee, who is employed by a gaming facility licensee or an affiliate, intermediary, subsidiary or holding company of a gaming facility licensee.

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

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

- (1) a bank as defined under Federal securities laws;
- (2) an insurance company as defined under Federal investment company laws;
- (3) an investment company registered under Federal investment company laws;
- (4) an investment advisor registered under Federal investment company laws;



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

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

- (1) if the gaming facility applicant is a corporation:
  - (i) each officer;
  - (ii) each director;
  - (iii) each shareholder holding five percent or more of the common stock of such company; and
  - (iv) each lender;
- (2) if the gaming facility applicant is a limited liability corporation:
  - (i) each member;
  - (ii) each transferee of a member's interest;
  - (iii) each director;
  - (iv) each manager; and
  - (v) each lender;
- (3) if the gaming facility applicant is a limited partnership:
  - (i) each general partner;
  - (ii) each limited partner; and
  - (iii) each lender;
- (4) if the gaming facility applicant is a partnership:
  - (i) each partner; and



(ii) each lender;

(5) any gaming facility licensee manager or operator;

(6) any direct and indirect parent entity of a gaming facility applicant or licensee, including any holding company;

(7) any entity having a beneficial or proprietary interest of five percent or more in a gaming facility applicant or licensee;

(8) any other person or entity that has a business association of any kind with the gaming facility applicant or licensee; and

(9) any other person or entity that the commission may designate as a qualifier.

(l) *Temporary service provider* means a vendor, a vendor’s agents, servants and employees engaged by a gaming facility licensee to perform temporary services at a gaming facility for no more than 30 days in any 12-month period.

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

**PART 5301**

**Gaming Facility Licensing**

Section

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

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

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



*(b) Applicant information.*

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

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

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

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

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

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

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

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

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

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



- (x) the region and locality in which the gaming facility is proposed to be located along with the name, business address, email address, telephone number and fax number for the applicant's primary contact at each host municipality;
- (2) An applicant shall identify all conflicts of interest, including, without limitation, any relationship or affiliation of the applicant, manager or any of their respective affiliates that currently exist with any member, employee, consultant or agent of the Gaming Facility Location Board or the commission that is a conflict of interest, or may be perceived as a conflict of interest, during the application process. Further, if any such conflict should arise during the term of the application process, the applicant shall notify the Gaming Facility Location Board in writing of such conflict.
- (3) An applicant shall also identify relationships with public officials, including, without limitation:
- (i) any public official or officer or employee of any governmental entity, and immediate family members of such public official, officer or employee, who directly or indirectly owns any financial interest in, has any beneficial interest in, is the creditor of, holds any debt instruments issued by, or holds or has an interest, direct or indirect, in any contractual or service relationship with the applicant, the manager or their affiliates; and
  - (ii) any person not identified in subparagraph (i) of this paragraph who has any arrangement, written or oral, to receive any compensation from anyone in connection with the application, the application process or the obtaining of a gaming facility license. The applicant shall describe the nature of the arrangement, the services to be provided and the amount of such compensation, whether actual or contingent.
- (4) If the applicant does not identify any direct or indirect conflict of interest, or perceived conflict of interest, the applicant shall state that no direct or indirect conflict of interest, or perceived conflict of interest, exists with respect to its application.
- (5) If the applicant identifies a direct or indirect conflict of interest, or potential conflict of interest, the applicant shall disclose such conflict of interest or potential conflict of interest and the steps the applicant will take to resolve such conflict of interest or potential conflict of interest.
- (6) The Gaming Facility Location Board shall, after providing the applicant or manager, as applicable, with an opportunity to present comments, make the final determination as to whether any activity constitutes a conflict of interest. The decision of such board with regard to an asserted conflict shall be final.



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

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

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

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



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

- (1) describe its finance and capital structure including:
  - (i) minimum capital investment plans;
  - (ii) a study completed by an expert who is neither the applicant nor an affiliate of the applicant, assessing the size of the potential gaming market for the proposed gaming facility;
  - (iii) a detailed financial forecast annually for a period of at least 10 years after opening for gaming on a best-, average- and worst-case basis;
  - (iv) a qualitative five-year business plan for the proposed gaming facility describing, at minimum, the components and projected results of the material revenue lines and expense categories of the proposed gaming facility, the applicant's sources and availability of financing, the principal business and financing risks of the proposed gaming facility and plans to mitigate those risks;
  - (v) a detailed description of how the project will be financed;
  - (vi) a detailed description in regard to each financing source;
  - (vii) a schedule of the financing sources' anticipated capital structure after construction and first three years of operation of the proposed gaming facility; and
  - (viii) an analysis of how the financing plans for the application fee, application and suitability investigation expenses, license fee, capital investment deposit, construction and first three years of operation of the proposed gaming facility will affect the applicant's compliance with the financial covenants under its current financing arrangements;
- (2) submit an independent audit report for each of the last five fiscal years in regard to the applicant and each of its parents;
- (3) submit bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies and business and personal accounting check records and ledgers and copies of securities analyst and credit rating agency reports for the past three years;
- (4) submit all United States Securities and Exchange Commission filings, if any, for the financing sources, for the three fiscal years ended before the date applications filed pursuant to this section are due and any interim period between the end of the most recent fiscal year and the date applications are due;
- (5) provide any information relating to legal actions including, without limitation:



- (i) pending legal actions, whether civil, criminal or administrative in nature, to which the applicant is a party and a brief description of any such actions;
  - (ii) any settled or closed legal actions, whether civil, criminal or administrative in nature, against the applicant over the past 10 years;
  - (iii) any judgments against the applicant within the past 10 years, including the case name, number, court, and what the final ruling or determination was from the court, administrative body or other tribunal;
  - (iv) a statement whether the applicant was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past 10 years; and
  - (v) a statement whether the applicant was the subject of any order, judgment or decree of any court, administrative body or other tribunal of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past 10 years;
- (6) describe any bankruptcies, voluntary or involuntary, assignments for the benefit of creditors, appointments of a receiver or custodian or similar insolvency proceedings made, commenced or pending during the past 10 years by or involving any applicant;
- (7) describe any contract, loan agreement or commitment that the applicant has breached or defaulted on during the past 10 years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default;
- (8) describe any delinquencies in the payment of any fees or tax required under any federal, state or municipal law within the past 10 years by an applicant and describe the circumstances for any payment not made because of a dispute;
- (9) describe any gaming-related licenses issued in any jurisdiction, and provide a detailed explanation if the applicant has ever had a gaming-related license denied, suspended, withdrawn or revoked, or if there is a pending proceeding that could lead to any of these conditions; and
- (10) describe any disciplinary action brought against the applicant by any gaming licensing authority during the past five years.
- (11) describe the applicant's and, if applicable, the manager's experience, training and expertise in developing, constructing and operating gaming facilities and related facilities;

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

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

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

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

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

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

(iii) how the applicant plans to compete with other nearby gaming facilities in New York and other jurisdictions; and

(iv) the applicant's overall perspective and strategy for broadening the appeal of the region and the host municipality in which the gaming facility is located.

(2) a description of any loyalty, reward or similar frequent player program maintained by the applicant, or, if applicable, by the manager and whether this program maintains a casino customer relationship management system and database that tracks the program members and to whom this program and database will be used to market, promote and advertise the gaming facility.

(3) economic impact studies completed by an independent expert showing the applicant's proposed gaming facility's:

(i) overall economic incremental benefit to the region, the State and the host municipality and nearby municipalities;

(ii) positive and negative impacts on the local and regional economy, and on the host and nearby municipalities including impacts on incremental job creation, unemployment rates, cultural institutions and small businesses; and

(iii) projections for all estimated state, county and local tax revenue for the first five years of operations on a high-, average- and low-case basis.



- (4) a description of the proposed gaming facility's inclusion within, and coordination with, a regional and local economic plan;
- (5) a description of plans and minimum commitments for use of New York-based suppliers and materials in the construction and operational phases of applicant's project;
- (6) a description of the employment opportunities created by the proposed gaming facility, including, among other things, the number of employees to be employed at the proposed gaming facility and the pay rate and benefits for employees;
- (7) a description of the competitive environment in which the applicant anticipates the proposed gaming facility will operate over the 10 years after opening;
- (8) a description of the target market segments of the gaming facility;
- (9) the marketing plans for the proposed gaming facility with specific reference to pre-opening marketing and opening celebrations; and
- (10) a description of strategies to be used by the applicant to deal with the cyclical/seasonal nature of tourism demand.

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

- (1) describe the location of the proposed gaming facility, including:
  - (i) the address, maps, book and pages numbers from the appropriate registry of deeds;
  - (ii) the dimensions and total acreage of the land that will be developed for the proposed gaming facility;
  - (iii) the assessed value of the land for the proposed gaming facility and of the existing facilities, improvements and infrastructure thereon, if any, at the time of application, and a schedule of the real estate taxes paid on such property for the past five years;
  - (iv) description of, and aerial and surface photography demonstrating the topographic, geographic, and vegetative characteristics of the land for the proposed gaming facility as well as any significant existing facilities, improvements or infrastructure thereon;
  - (v) description of any geological or structural defects of the proposed gaming facility and any engineering, design and construction plans to remedy the defect; and

- (vi) any phase I or II reports or any other investigations of the site, sub-surface, geotechnical or environmental conditions or hazardous materials that have been completed related to the land for the proposed gaming facility;
- (2) describe the ownership of the land, including:
- (i) all ownership interests in the land for the past 20 years, including all easements options, encumbrances and other interests in the property;
  - (ii) copies of any lease, deed, option or other documentation and provide an explanation as to the status of the land upon with the gaming facility will be constructed;
  - (iii) the total amount the applicant has spent or proposes to spend to acquire or occupy the land for the proposed gaming facility; and
  - (iv) if the applicant does not currently possess an ownership interest in the land at the proposed location, describe how the applicant intends to acquire the necessary interest in the land;
- (3) provide copies of current local zoning approvals and any rezoning, variances and/or land use approvals and any State or local permits or special use permits required for the gaming facility site, a detailed explanation of the status of any request for any of the foregoing, together with copies of all filings, including a specific schedule of applications for such approvals and anticipated approval dates;
- (4) provide a description of, and schematics illustrating, the applicant's master plan for the land and the gaming facility site showing major activities and functions, and a phasing plan for the proposed components;
- (5) provide designs for the proposed gaming facility including among other things, a site plan, floor plans, building elevations and perspectives, cross sections sufficient to illustrate the interrelation of principal building program components, proposed hardscape, landscape and landscape treatments including any off-site improvements required to implement the proposal, exterior lighting design, plans for parking structures, surface parking and traffic circulation plans, color perspective renderings of the exterior (day and night) and interior of the gaming facility; and access plans indicating adjacent properties with all related infrastructure and access to and egress from all major traffic arterials;
- (6) describe the proposed gaming area, including square footage, number and types of table games and slot machines, electronic gaming devices, poker tables and any other forms of gaming, number of gaming positions, specific location of the games and machines in the proposed gaming facility, any special purpose rooms, layout of cage area, count room, players club areas, any other gaming related amenities not included in the above, and any phased building plans;



- (7) provide a detailed description of the proposed amenities including hotels, meeting and convention facilities, dining facilities, entertainment venues and non-gaming amenities; in addition, provide a statement of how the proposed amenities will compare in quality to other area amenities and those offered in competitive gaming facilities;
  - (8) provide the applicant's proposed hours of operation for the various components of the proposed gaming facility including the casinos, restaurants, bars and other amenities;
  - (9) provide a description of the square footage of back house security, kitchen and office facilities to support the remaining building programs;
  - (10) provide a detailed description of proposed parking and transportation infrastructure including, among other things, parking spaces for employees, patrons and buses; tour bus, taxi and valet drop-off areas; and service vehicle and satellite parking;
  - (11) provide a description of the planned dock and loading facilities, as well as armored car bay;
  - (12) provide a description of mechanical systems and other on-site infrastructure plans;
  - (13) provide the names, addresses and relevant experiences of the architects, engineers, contractors, and designers of the proposed gaming facility and related proposed infrastructure improvements;
  - (14) provide a detailed construction budget and timeline for construction, including plans for mitigating impacts during and following construction;
  - (15) provide information concerning the number and quality of construction jobs to be provided during the construction period; and
  - (16) provide names of all proposed gaming equipment vendors.
- (f) *Internal controls and security systems.* An applicant shall:
- (1) provide a description of the proposed internal controls, electronic surveillance systems and security systems for the proposed gaming facility and any related facilities; and
  - (2) provide a table of organization that shows staffing levels and identifies the critical departments for each control/risk management activity, data process, internal audit, compliance, security and surveillance function.
- (g) *Assessment of local support and mitigation of local impact.* An applicant shall:



- (1) demonstrate local support by submitting to the Gaming Facility Location Board a resolution passed after a date announced by such board by a majority of the membership of the local legislative body of the host community supporting the application;
- (2) provide completed studies and reports by independent experts showing the proposed gaming facility's cost to, among other things, each host municipality, nearby municipalities and the State for the proposed gaming facility including, without limitation, the incremental effect on local government services as well as the impact on the traffic infrastructure and the environment;
- (3) provide plans for mitigating potential impacts on host municipality and nearby municipalities that might result from the development or operation of the gaming facility; and
- (4) provide an assessment of the likely impact on housing stock and school populations in the host municipality and nearby municipalities resulting from new jobs at the gaming facility and the applicant's plans and commitments to remedy or mitigate any negative impacts.

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

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

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



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

(1) the applicant's workforce development plans including:

(i) human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program;

(ii) an affirmative action program that identifies specific goals for the use of minorities, women, persons with disabilities and veterans on construction, service and professional jobs;

(iii) on-the-job opportunities and training in areas and with respect to demographic groups with high unemployment; and

(iv) approach and experience in the last 10 years with hiring in general, and with particular respect to demographic groups evidencing high unemployment.

(2) whether the applicant and, as applicable, the manager, is subject to, or is negotiating any contract with organized labor, including hospitality services and whether the applicant or, as applicable, the manager has the support of organized labor for its application; and

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

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

(l) *Duty to update application.*

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



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

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

### **§ 5301.2. Application forms.**

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

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

(2) a multi-jurisdictional personal history disclosure form, as promulgated by the International Association of Gaming Regulators as of the date of the adoption of this section, for each natural person who is a director, manager, general partner or person holding an equivalent position with the applicant, a manager or any direct or indirect parent entity of the applicant, a casino key employee, a person having beneficial or proprietary interest of five percent or more in an applicant or a manager and any other person that may be designated by the Gaming Facility Location Board or the commission; and

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

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

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

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

(3) the principal business address of the entity;





- (4) the date and place of formation and information concerning each person forming the entity;
- (5) all other names under which the entity has conducted business and the approximate time periods during which such names were used;
- (6) all other addresses presently used by the entity and all addresses from which the entity is presently doing business;
- (7) all addresses, other than those listed in paragraph (6) of this subdivision, that the entity held, or from which it was conducting business during the last 10-year period, and the approximate time periods during which such addresses were held;
- (8) a description of the business conducted and intended to be conducted by the entity and its parent, holding, subsidiary and intermediary entities and the general development of such business during the past five years, or such shorter period as the entity or its parent, holding, subsidiary and intermediary entities may have been engaged in business. The description shall include information on the following:
  - (i) competitive conditions in the industry or industries involved and the competitive position of the entity, if known;
  - (ii) the principal products produced and services rendered by the entity and its parent, intermediary and subsidiary entities, the principal markets for said products or services and the methods of distribution;
  - (iii) the sources and availability of raw materials essential to the business of the entity;
  - (iv) the importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises and concessions held; and
  - (v) a description of any material changes in the business entity's mode of conducting the business.
- (9) a description of any former business, not listed in response to paragraph (8) of this subdivision, that the entity or any parent, intermediary or subsidiary company engaged in during the last 10-year period and the reasons for the cessation of such business, indicating the approximate time period during which each such business was conducted;
- (10) personal information, including but not limited to, the name, home and work addresses and date of birth of each director, trustee, and officer of the entity for the last 10 years. Officers include all persons serving as president, secretary, treasurer, chairman of the board, vice-president, general/corporate counsel or any such other officers as may be prescribed by the entity's governing documents;



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

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

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

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

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

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

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

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

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

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



- (iv) the dates held.
- (20) the name and address of all persons with whom the entity has contracts or agreements of \$250,000 in value or more including employment contracts of more than one year duration, or who have supplied goods and services within the last six months and the nature of such contracts or the goods and services performed;
- (21) information in regard to any transaction within the last five years involving a change in the beneficial ownership of the entity's equity securities on the part of any current or former director, officer or beneficial owner of more than 10 percent of any class of equity security;
- (22) a description of any civil, criminal, administrative and investigatory proceedings in any jurisdiction for the entity and each director, trustee or officer as follows:
  - (i) any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
  - (ii) any criminal proceeding in which such person has been named a party or an unindicted co-conspirator;
  - (iii) any civil litigation that exists or that existed within the previous five years to which the entity, its parent or any subsidiary is, or was, a party, if damages exceeded \$100,000, or are reasonably expected to exceed \$100,000, unless such damages involved or involve, claims against the entity that were, or are, fully and completely covered under an insurance policy;
  - (iv) any judgment order, consent decree or consent order entered against the entity pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction; and
  - (v) any judgment order, consent decree or consent order pertaining to any state or federal statute, regulation or code that resulted in a fine or penalty of \$50,000 or more within the past 10 years.
- (23) for the entity, parent or any intermediary entity, information in regard to any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the federal bankruptcy code or any state insolvency law; and information in regard to any receiver, fiscal agent, reorganization trustee or similar officer appointed for the property or business of the entity or its parent, holding, intermediary or subsidiaries;
- (24) a description of whether, during the last 10 years, the entity has had any license or certificate issued by any governmental agency denied, suspended or revoked;



- (25) a description of whether, during the last 10 years, the entity, its parent or any subsidiary ever applied in any jurisdiction for a license, permit or other authorization to participate in lawful gambling operations (including casino gaming, horse racing, dog racing, pari-mutuel operation, lottery, sports betting, etc.);
- (26) a description of whether, during the last 10 years, the entity its parent or any subsidiary, director, officer or employee or any third party acting on behalf of the entity made any bribes or kickbacks or made any payments alleged to have been bribes or kickbacks to any employee, company, organization, government official, domestic or foreign, to obtain favorable treatment;
- (27) a description of whether, during the last 10 years, the entity, its parent, any subsidiary or related entity or individual has:
- (i) donated or loaned property or anything of value for the purpose of opposing or supporting any government, political party, candidate, or committee, either foreign or domestic;
  - (ii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of reimbursing such individuals for political contributions, either foreign or domestic; and
  - (iii) maintained a bank account or other account, domestic or foreign, not reflected on the books of the entity, or maintained any account in the name of the nominee of the entity;
- (28) the names and addresses of any of the entity's current or former directors, officers, employees or third parties who would have knowledge or information concerning subparagraph (iii) of paragraph (27) of this subdivision;
- (29) a copy of the following:
- (i) audited financial statements for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
  - (ii) all annual financial statements prepared in the last five years, any exceptions taken to such statements by the independent auditor retained by the entity and the management response thereto;
  - (iii) annual reports to shareholders for the last five years;
  - (iv) any annual reports prepared within the last five years on Form 10K pursuant to the Securities Exchange Act of 1934;



- (v) the last quarterly unaudited financial statements prepared by or for the entity, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed 10Q;
  - (vi) any current report prepared due to a change in control of the entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the entities certifying accountant, or other material events, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed form 8K;
  - (vii) each press release issued by the entity for the past five years;
  - (viii) last definitive proxy or information statement filed pursuant to the section 14 of the Securities Exchange Act of 1934;
  - (ix) registration statements filed in the last five years pursuant to the Securities Act of 1933; and
  - (x) all reports and correspondence submitted in the last five years by independent auditors for the entity that pertain to the issuance of financial statements, managerial advisory services, or internal control recommendations.
- (30) the name, address, and telephone number of the current outside auditor or auditors;
- (31) a certified copy of the articles of incorporation, charter and by-laws and all amendments proposed thereto or other formation documents, if the entity is not a corporation;
- (32) a current ownership organizational chart of the entity, its parent entity and each subsidiary of the entity;
- (33) a functional table of organization for the filing entity, including position descriptions and the names of persons holding such positions;
- (34) a copy of all Federal Internal Revenue Service tax returns filed by the entity in the last five years;
- (35) a release authorization (dated and signed by the president or any officer of the entity authorized to affirm and sign the document) directing all courts, probation departments, selective service boards, employers, educational institutions, banks, financial institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the entity as required by the commission and its authorized agents and representatives;



(36) a waiver of liability (dated and signed by the president or any officer of the entity authorized to affirm and sign the document) as to the State of New York and its instrumentalities and agents for any damages resulting from any disclosure or publication of any material or information acquired during the licensing or investigation process;

(37) a consent (dated and signed by the president or any officer of the entity authorized to affirm and sign the document) to inspections, searches and seizures and the supplying of handwriting exemplars; and

(38) a signed, dated and notarized affidavit of truth in a form provided by the commission (dated and signed by the president or any officer of the entity authorized to affirm and sign the document).

(c) *Multi-jurisdictional personal history disclosure supplemental form.* A multi-jurisdictional personal history disclosure form shall require the applicant to provide the following information and such additional information as the commission may in its discretion require:

(1) name and nature of position with or interest in a gaming facility license applicant or licensee, a vendor enterprise applicant or licensee, or a holding company, as applicable;

(2) current photograph;

(3) citizenship, and if applicable, resident alien status, including any certificate of naturalization, United States Citizenship and Immigration Services documentation, employment authorization with expiration date, country of which the applicant is a citizen, place of birth, proof of entry to the United States and name of address of sponsor upon arrival;

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

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

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

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



- (iii) maintained a bank account, or other account, whether domestic or foreign, that is not reflected on the books or records of the business;
  - (iv) maintained a domestic or foreign numbered bank account or other bank account in a name other than the name of the business;
  - (v) donated or loaned corporate funds or corporate property for the use or benefit of, or for the purpose of opposing, any government, political party, candidate or committee either domestic or foreign;
  - (vi) compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposition to any government or political party domestic or foreign; and
  - (vii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign;
- (6) copies of Federal and State tax returns and related information for the last five years, including:
- (i) United States Internal Revenue Service forms 1040, 1040X and related schedules;
  - (ii) an audit narrative or failure to file narrative; and
  - (iii) foreign tax returns and schedules;
- (7) a signed, dated and notarized release authorization that shall direct all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, Federal, state and local, both foreign and domestic, to release any and all information pertaining to the applicant as requested by the commission, the Gaming Facility Location Board or any employee, agent or representative thereof;
- (8) the name, address, occupation, phone number, email address and years known of persons who can attest to the good character and reputation of the applicant;
- (9) a waiver of liability as to the State of New York and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the licensing process, or during any inquiries, investigations or hearings;
- (10) a consent to inspection, searches and seizures and the supplying of handwriting exemplars;



- (11) a notification and authorization form for employment credit report; and
- (12) a signed, dated and notarized affidavit of truth.

**§ 5301.3. Application fees.**

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

**§ 5301.4. Waiver of licensing requirements by commission.**

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

- (1) Qualified institutional investors and passive investors as defined in Part 5300.1 of this Subchapter;
- (2) in the case of gaming facility applicant or licensee corporations and holding, intermediary and subsidiary corporations of said applicant or licensee corporations, those persons holding less than five percent of the voting securities of the company;
- (3) a lender to a gaming facility applicant or licensee that is obtaining financing for the construction or operation of the gaming facility shall be required to be licensed unless each of the following applies:
  - (i) the lender is in the business of providing debt or equity capital to individuals or entities;
  - (ii) the loan is in the ordinary course of the lender's business; and
  - (iii) the lender does not have the ability to control or otherwise influence the affairs of the gaming facility applicant or licensee.
- (4) a party that acquires a debt instrument issued by a gaming facility applicant or licensee in a public or exempt private offering shall not be required to be licensed if:
  - (i) the party does not have a right or ability to control or influence the affairs of the gaming facility applicant or licensee; and





(ii) the party's acquisition of the debt instrument is in the ordinary course of business and is not part of a plan or scheme to avoid the requirements of this section.

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

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

(1) the applicable waiver certification form available on the commission's website; and

(2) any additional information deemed necessary by the commission to act on the request for a waiver.

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

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

(f) Any party granted a waiver under this part that subsequently anticipates engaging in any activity that will or could influence or affect the affairs or operations of the gaming facility applicant or licensee or the holding, intermediary or subsidiary company thereof, shall provide at least 30 days' notice to the commission of such intent and the party shall not exercise any influence or effect on the affairs or operations of the gaming facility applicant or licensee or the holding, intermediary or subsidiary company thereof unless and until the commission issues a determination of suitability under section 5301.5 of this Part.

### **§ 5301.5. Suitability determination.**

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

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



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

**§ 5301.6. License determination.**

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

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

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

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

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

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

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

**§ 5301.7. Form and posting of the license.**

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

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

(2) the duration of the license;

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



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

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

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

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

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

#### **§ 5301.8. Award and duration of license.**

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

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

#### **§ 5301.9. Post-licensure conditions.**

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

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

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

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

#### **§ 5301.10. Required notifications.**

(a) *Material changes to commitments and development plans.* The applicant or licensee shall notify the commission in writing and in a timely manner of any proposed material changes to commitments and development plans that were presented in such applicant's or licensee's gaming facility application, including, without limitation, in

regard to finance and capital structure; land, construction and design of physical plant; workforce development; and sustainability and resource management. The duty to disclose changes in information shall continue throughout any period of licensure granted by the commission. Commission licensees or applicants for gaming facility licenses must maintain current release of information forms as originally submitted to the Gaming Facility Location Board. No material changes to such commitments and development plans are permitted without the approval of the commission in writing.

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

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

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

(2) In the event that a gaming facility applicant or licensee contemplates consummation of a material debt transaction that does not require prior commission review and approval pursuant to paragraph (1) of this subdivision the gaming facility applicant or licensee nevertheless shall notify the commission in writing, at least 10 days prior to entering an arrangement, of a transaction subject to one of the above exceptions. The notice shall, at a minimum, include the reasons the debt transaction is an allowable exception and all relevant calculations relating to the debt transaction.

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

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

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

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

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

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

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

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

(1) Project schedules and reporting.

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

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

- (a) all major stages of design and construction including all permitting and approvals, design deliverables, site preparation, foundation, structure, plumbing, electrical, mechanical, exterior finish and fenestration, long-lead items, insulation, interior finish and furnishings and landscaping, building commissioning and commissioning of gaming equipment and information technology systems;
  - (b) a timeline for commencement of the final stage of construction; and
  - (c) a timeline for the stage of construction at which the gaming facility licensee shall be approved to open for business.
- (iii) If unforeseen or changed circumstances necessitate a change to a project schedule that will impact the completion date or requires a major change in the method or progress of construction as outlined in the gaming facility application, the gaming facility licensee may submit to the commission for its approval a revised project schedule, with a detailed statement of the unforeseen changed circumstances that justify the revised project schedule. If the commission approves such revised project schedule, it shall substitute and supersede the previously approved project schedule.
- (iv) To assist in adherence to the project schedule, a gaming facility licensee shall submit to the commission in a media, format and level of detail acceptable to the commission, a quarterly status report.
- (v) The licensee shall have a continuing obligation to provide to the commission in a timely manner an updated permits chart as well as any updates to the approvals process, such that the commission is continuously apprised of all material developments with respect to all permits and approvals required for the gaming facility.
- (2) Inspection of construction and related records.
- (i) At all times the commission or its representative may physically inspect the progress of construction, subject to reasonable construction site safety rules, to determine a gaming facility licensee's compliance with the approved design, project schedule and the terms and conditions of the license.
  - (ii) The commission may request or have access to, and the licensee shall provide, at any time, plans, specifications, submittals, contracts, financing documents or other records concerning the construction of the project or related infrastructure.
  - (iii) Following inspection of the construction site or review of construction records, the commission or its representative may notify a gaming facility licensee of any non-compliance with the terms of the license, including non-

compliance with an approved design or project schedule. Upon receipt of such notification, a gaming facility licensee shall present a plan to the commission to address such non-compliance to the satisfaction of the commission.

(3) Certification of final stage of construction.

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

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

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

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

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

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

(ii) determined that such gaming facility licensee has completed the permanent gaming area and other ancillary entertainment services and non-gaming amenities;

(iii) determined that such gaming facility licensee has completed all infrastructure improvements onsite and offsite and around the vicinity of the gaming facility, including projects to account for traffic mitigation or any other condition required by the gaming facility license in connection with the gaming facility;

(iv) had an adequate opportunity to inspect the completed gaming facility and related infrastructure, as well as relevant plans, contracts or other records to determine that the completed gaming facility and related infrastructure comply with the terms of the license, host and surrounding community agreements,



impacted live entertainment venue agreements and certificates of occupancy permits and approvals issued in connection with such gaming facility; and

(v) issued an operation certificate for the gaming establishment pursuant to this subchapter.

**PART 5303**

**General Provisions in Regard to Licensing and Registration**

Section	
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**§ 5303.1. General.**

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

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

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





### **§ 5303.2. Identification.**

(a) Every natural person applying for a license or registration pursuant to this Part shall establish such person's identity to the satisfaction of the commission pursuant to the requirements of the license or registration application. For the purposes of this Part, applicants for licenses and registrations shall submit to the commission the information as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1323(2) or section 1324(4), respectively.

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

### **§ 5303.3. Fingerprinting.**

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

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

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

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

### **§ 5303.4. Photograph.**

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

**§ 5303.5. Minimum age.**

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

**§ 5303.6. Eligibility to work in the United States.**

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

**§ 5303.7. Filing.**

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

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

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

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

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

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

**§ 5303.8. Processing.**

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

**§ 5303.9. Amendment.**

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

(1) remains current; and

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

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

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

#### **§ 5303.10. Withdrawal.**

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

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

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

#### **§ 5303.11. Investigations.**

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

#### **§ 5303.12. Issuance of a license or registration.**

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

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



### **§ 5303.13. Disqualifying criteria.**

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

### **§ 5303.14. Fees.**

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

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

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

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

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

### **§ 5303.15. Application and employment after denial or revocation.**

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

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



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

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

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

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

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

**§ 5303.16. Disciplinary action.**

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

**§ 5303.17. Restrictions on wagering.**

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

**PART 5304**

**Casino Key Employee Licensing**

Section

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



- 5304.4 Temporary license for casino key employee
- 5304.5 Duration of license

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

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

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

(a) Each applicant for a casino key employee license shall produce such information, documentation and assurances as requested by the commission concerning the qualification criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law sections 1323(2)(a) through (c).

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

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

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

**§ 5304.4. Temporary license for casino key employee.**

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

**§ 5304.5. Duration of license.**

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

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

**PART 5305**

**Gaming Employee Registration**

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



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

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

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

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

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

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

**§ 5305.3. Gaming Employee Registration form.**

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

**§ 5305.4. Duration of registration.**

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

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

**PART 5306**

**Non-Gaming Employee Registration**

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



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

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

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

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

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

**§ 5306.3. Non-gaming employee registration forms.**

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

**§ 5306.4. Duration of registration.**

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

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

**PART 5307**

**Vendor Licensing and Registration**

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





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

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

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

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

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

**§ 5307.3. Registration of other vendors.**

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

**§ 5307.4. Standards for issuance of vendor licenses.**

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

**§ 5307.5. Vendor application and disclosure forms.**

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

(b) Owners, managers, supervisory personnel and employees of a casino vendor licensee or ancillary casino vendor licensee who provide services to the gaming area of a gaming facility are required to fill out a casino key employee application form and



comply with the standards for issuance of a casino key employee license as set forth in section 5304.2 of this Subchapter.

**§ 5307.6. Temporary service providers; badges.**

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

(b) Temporary service badges shall:

- (1) remain on the property of the gaming facility at all times;
- (2) be distributed to the temporary service provider upon daily arrival at the gaming facility; and
- (3) be returned daily by such temporary service provider to the gaming facility at the close of the temporary service provider's work shift.

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

**§ 5307.7. Duration of license and registration.**

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

**PART 5311**

**Minority- and Women-owned Business Enterprise Requirements**

Section	
5311.1	Purpose and scope
5311.2	Definitions
5311.3	Establishment of utilization plan; plan review
5311.4	Quarterly reporting
5311.5	Required notification
5311.6	Additional deficiency reporting



- 5311.7. Waiver request
- 5311.8 Failure to attain goals; penalty

**§ 5311.1. Purpose and scope.**

(a) The purpose of this Part is to ensure gaming facility licensees comply with the provisions of Article 15-A of the Executive Law and the rules and regulations set forth in Parts 140 through 144 of Title 5 of these Codes, Rules and Regulations. These policies are intended to promote and encourage maximum feasible participation by minority- and women-owned businesses in State contracting opportunities. The commission intends to apply these policies to contracting opportunities in gaming facilities licensed pursuant to Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(b) It is the policy of the commission to ensure that gaming facility licensees construct their gaming facility and ancillary development and conduct all aspects of their operations in a manner that assures diversity of opportunity.

(c) It is the further policy of the commission to ensure diversity in contracting by each gaming facility licensee and its contractors, subcontractors, assignees, lessees, vendors and agents.

**§ 5311.2. Definitions.**

Unless the context indicates otherwise, the following definitions apply throughout this Part:

(a) *Available* means a minority-owned or women-owned business enterprise, without regard to its geographic location, that is ready, willing and able to provide a commercially useful function on a contract.

(b) *Contract* means a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby a gaming facility licensee is committed to expend or does expend funds in return for labor, services, including without limitation legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to, such gaming facility licensee; or a written agreement in excess of \$100,000 whereby such gaming facility licensee is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

(c) *Division* means the Division of Minority and Women’s Business Development in the Department of Economic Development.

(d) *Established goals* means the percentage of aggregate gaming facility licensee expenditures targeted for the participation of minority- and women-owned business enterprises sought to be included in a gaming facility licensee’s operation by contractors, subcontractors, suppliers, consultants, joint ventures, teaming agreements

or other similar arrangements. The commission shall adopt such goals annually. In determining what established goals are appropriate in relation to a particular gaming facility licensee, the commission shall consider the following factors:

- (1) number, type and percentage of minority- and women-owned business enterprises available;
- (2) potential subcontract opportunities in a contract and the availability of minority- and women-owned business enterprises to respond thereto; and
- (3) disparity in the contracting area as evidenced by a relevant Department of Economic Development disparity study authorized pursuant to Executive Law section 312(a).

(e) *Gaming facility licensee* means the holder of a gaming facility license issued by the commission pursuant to Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law as set forth in Part 5301 of this Subchapter.

(f) *Gaming facility capital project* means a project undertaken by a gaming facility applicant or licensee (including affiliates of any such applicant or licensee) related to the gaming facility and any necessary improvements that include the gaming area and any other non-gaming structure related to the gaming area and may include, hotels, restaurants or other adjoining amenities.

(g) *Minority- and-women-owned business enterprise* means a business enterprise, including a sole proprietorship, partnership or corporation that has been certified as a minority- or woman-owned business enterprise pursuant to Article 15-A of the Executive Law.

(h) *MWBE director* means the director of the division.

(i) *Subcontract* means any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between the gaming facility licensee and a contractor, in which a portion of the contractor's obligation under contract is undertaken or assumed by a business enterprise not controlled by the contractor.

(j) *Utilization plan* means the plan annually submitted to the commission by a gaming facility licensee listing minority- and women-owned business enterprises that the licensee intends to use in the performance of its operation, or any component of operation, that the gaming facility licensee intends minority- and women-owned business enterprises to perform.

### **§ 5311.3. Establishment of a utilization plan; plan review.**

(a) Each gaming facility licensee shall annually submit to the commission for approval a utilization plan illustrating specific goals for each contract type, divided by commodities,



construction consultants, construction, goods and services, and consultants; and the name, address and telephone number of each minority- and women-owned business enterprise with which the gaming facility licensee intends to contract or subcontract, or otherwise submit in connection with satisfaction of its established goals.

(b) The commission shall review each utilization plan within 20 business days, consistent with subdivision (c) of section 142.6 of Title 5 of these Codes, Rules and Regulations. If the commission does not approve such utilization plan, the commission shall provide the gaming facility licensee a written notice of utilization plan deficiency within 20 business days of the receipt of the proposed plan. Should a notice of deficiency be issued, such notice shall include, without limitation, the following:

- (1) a list of minority- and women-owned business enterprises that the gaming facility licensee could potentially use;
- (2) the name of any minority- and women-owned business enterprise that is not acceptable for the purpose of complying with the established goals; and
- (3) any other information that the commission determines to be relevant to developing an approvable minority- and women-owned business enterprise utilization plan.

The commission shall promptly provide the division with copies of all documents that are submitted to it by the gaming facility licensee under this section.

#### **§ 5311.4. Contract approval and quarterly reporting.**

(a) The gaming facility licensee shall include in all of its procurement solicitations and contracts related to gaming facility capital projects language provided by the commission that promotes and encourages the maximum feasible participation by minority- and women-owned businesses in such contracting opportunities.

(b) A gaming facility licensee shall submit all of its procurement contracts for gaming facility capital projects to the commission for review and approval by the division prior to the execution of such contract by the gaming facility licensee. No such procurement contract shall be effective unless and until such procurement contract has been reviewed and approved by the division as to the procurement contract's compliance with subdivision (a) of this section.

(c) A gaming facility licensee shall submit to the commission quarterly minority- and women-owned business enterprise utilization reports in a form designated by the commission.

(d) A gaming facility licensee shall, upon request of the commission, provide access to other relevant documentation, including without limitation books, records and payroll records, relating to such gaming facility licensee's operations and implementation of such gaming facility licensee's utilization plan.

(e) Any waivers of compliance issued by the commission, or modifications to the utilization plan as set forth in section 5311.7 of this Part, shall be posted on the gaming facility licensee's website within 10 business days of such commission decision.

(f) The commission shall promptly provide the division with copies of all documents that are submitted to it by the gaming facility licensee pursuant to this section.

**§ 5311.5. Required notification.**

(a) Within 30 days after a gaming facility licensee determines that it will not attain an established goal, the gaming facility licensee shall submit a report to the commission that includes a detailed description of its good-faith efforts to attain the established goal or capacity, including, without limitation, the following:

(1) documentation of direct contact or negotiations with minority- and women-owned business enterprises for specific contracting or transacting opportunities. The actions taken shall be reported in a manner that includes the following items:

(i) a detailed statement of the efforts made to negotiate with minority- and women-owned business enterprises, including the following:

(a) the names, business addresses and business telephone numbers of the minority- and women-owned business enterprises contacted; and

(b) a detailed statement of the reason why prospective agreements were not reached; and

(ii) a detailed statement of the efforts, if any, to be undertaken by the gaming facility licensee expected to increase the likelihood of achieving the established goal;

(2) documentation of any advertising performed in the search for prospective minority- and women-owned business enterprises for the contract or transaction;

(3) documentation of any notifications provided to minority- and women-owned business assistance agencies for the purpose of locating prospective minority- and women-owned business enterprises for the contract or transaction; and

(4) documentation of efforts taken to research other possible areas of participation.

(b) The gaming facility licensee shall maintain adequate records of all relevant data in regard to the utilization and attempted utilization of minority- and women-owned business enterprises and shall provide full access to these records to the commission upon request.

(c) The commission shall promptly provide the division with copies of all documents that are submitted to it by the gaming facility licensee under this section.

**§ 5311.6. Additional deficiency reporting.**

(a) The commission may require additional minority- and women-owned business enterprise documentation if a gaming facility licensee submits deficient minority- and women-owned business enterprise good-faith effort documentation.

(b) A gaming facility licensee shall respond to any request for additional documentation by submitting a proposed remedy in writing within seven business days, consistent with subdivision (e) of section 142.6 of Title 5 of these Codes, Rules and Regulations.

**§ 5311.7. Waiver request.**

If a deficiency is not remedied, and the gaming facility licensee is requesting a waiver of compliance with this Part:

(a) If the written remedy submitted is found to be inadequate, such failure to remedy the deficiency may be grounds for sanctioning such gaming facility licensee, including the possibility of forfeiture of such gaming facility's license, or the commission will notify the contractor and direct the same to submit, within five business days, a request for partial or total waiver of utilization goals, consistent with subdivision (f) of section 142.6 of Title 5 of these Codes, Rules and Regulations.

(b) The commission shall submit a copy of the deficient utilization plan to the MWBE director, along with the gaming facility licensee's good-faith documentation, and waiver request.

(c) The commission, in consultation with the MWBE director, shall determine whether additional action can be taken to assist the gaming facility licensee to reach such gaming facility licensee's goal or whether a formal request will be made to waive the goal.

(d) The commission may, with prior approval from the MWBE director, grant a partial or total waiver of established goal requirements only upon the submission of information supporting a waiver request by the gaming facility licensee and the verification of requisite documentation of good-faith efforts by the gaming facility licensee to justify a waiver request.

**§ 5311.8. Failure to attain goals; penalty.**

(a) A gaming facility licensee may be considered as having failed to satisfy minority- and women-owned business enterprise participation goals if the gaming facility licensee:

- (1) has failed to make a good-faith effort to achieve the established goals; or
- (2) fails to prepare and file accurate or timely reports as required.

(b) The commission may, in its discretion, impose a fine, after notice and hearing, upon a gaming facility licensee for failure to use good faith in attaining established goals pursuant to this Part. No fine shall exceed an amount equivalent to the value of the opportunity lost by minority- and women-owned business enterprises.

## PART 5312

### Workforce Enhancement Standards

Section	
5312.1	Policy and purpose
5312.2	Workforce diversity plans
5312.3	Self-assessment review; additional reporting
5312.4	Compliance monitoring
5312.5	Failure to meet goals; penalty

#### § 5312.1. Policy and purpose.

The commission is committed to ensuring that each gaming facility licensee maintains a diverse workplace and provides an opportunity of employment for all residents. This Part is intended to ensure that each gaming facility licensee faithfully adheres to workforce enhancement standards and considers annually its workforce diversity approach and practice.

#### § 5312.2. Workforce diversity plans.

Each gaming facility licensee shall submit annually for commission approval a workforce diversity plan, which shall detail such gaming facility licensee's commitment to ensuring a diverse workplace and opportunity of employment for all residents. The annual plan shall review any previously submitted topical material, including without limitation the workplace development commitments contained within the gaming facility licensee's submitted proposals, and suggest changes necessitated by best practices or practical experience. The annual workforce diversity plan shall detail the gaming facility licensee's:

(1) commitment to establish, fund and maintain a workforce training program that:

(i) establishes transparent career paths with measurable criteria that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion; and

(ii) provides employees access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades;

(2) establishment and implementation of an affirmative action program of equal opportunity, including specific goals for the engagement of minorities, women,



persons with disabilities and veterans on construction jobs and service and professional jobs during operation; and

(3) strategy for providing on-the-job opportunities and training with respect to regional and local demographic groups with high unemployment.

### **§ 5312.3. Self-assessment review; additional reporting.**

(a) Each gaming facility licensee shall submit annually to the commission a self-assessment review detailing the previous year's actual practice in regard to such gaming facility licensee's workforce diversity practice, including review of human resources, affirmative action and job opportunities and training for the underemployed. The underemployed are those workers who are highly skilled but working in low-paying or low-skilled jobs and part-time workers who would prefer to be full time

(b) Additionally, each gaming facility licensee shall file annually a report with the commission concerning the performance of such gaming facility licensee's diversity plan. The report shall contain the following:

(1) employment data, including information on the following:

(i) minority and women representation in the gaming facility licensee's workforce in all job classifications;

(ii) salary information;

(iii) recruitment and training information, including executive and managerial level recruitment and training; and

(iv) retention and outreach efforts; and

(2) information on minority and women investment, equity ownership and other ownership or management opportunities initiated or promoted by the gaming facility licensee.

(b) Each gaming facility licensee shall submit any other information as the commission in writing may request to enable review of such gaming facility licensee's workforce diversity plan.

### **§ 5312.4. Compliance monitoring.**

The commission will determine whether the stated goals set forth in each workforce diversity plan are consistent with commitments contained within a gaming facility licensee's submitted proposals, reasonable as to any deviations identified and whether attempts to meet such commitments reflect a good-faith effort to ensure that all persons are accorded equality of opportunity in employment by such gaming facility licensee.



**§ 5312.5. Failure to meet goals; penalty.**

(a) A gaming facility licensee may be considered as having failed to meet its workforce diversity plan goals if the gaming facility licensee:

- (1) has failed to make a good-faith effort to achieve such goals;
- (2) fails to improve its efforts toward attainment of such goals after becoming aware that it will fail to meet such goals; or
- (3) fails to prepare and file accurate or timely reports as required.

(b) The commission may, in its discretion, levy and collect penalties as provided by Racing, Pari-Mutuel Wagering and Breeding Law section 116 and Article 13, or impose other sanctions in the commission's discretion, after notice and a hearing, upon a gaming facility licensee for failure to use good faith in attaining workforce diversity plan goals.