

NYCRR Title 9, Executive

Subtitle T

New York State Gaming Commission

Chapter IV

Division of Gaming

Subchapter B

Casino Gaming

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PART 5300

General

Section

5300.1 Definitions

§ 5300.1. Definitions.

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

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



- (b) *Casino vendor* means a vendor providing goods or services to a gaming facility applicant or licensee that directly relate to gaming activity.
- (c) *Career offender* means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, using such methods as are deemed criminal violations of the public policy of this State.
- (d) *Career offender cartel* means any group of persons who operate together as career offenders.
- (e) *Commission* means the commissioners, staff and designees of the New York State Gaming Commission.
- (f) *Excluded person* means a person who is excluded from a gaming facility pursuant to Part 5326 of this Subchapter.
- (g) *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.
- (h) *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.
- (i) *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.
- (j) *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.
- (k) *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.

(l) *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.
- (m) *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.
- (n) *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 which the gaming facility will be constructed;

(iii) the total amount the applicant has spent or proposes to spend to acquire or occupy the land for the proposed gaming facility; and

(iv) if the applicant does not currently possess an ownership interest in the land at the proposed location, describe how the applicant intends to acquire the necessary interest in the land;

(3) provide copies of current local zoning approvals and any rezoning, variances and/or land use approvals and any State or local permits or special use permits required for the gaming facility site, a detailed explanation of the status of any request for any of the foregoing, together with copies of all filings, including a specific schedule of applications for such approvals and anticipated approval dates;

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

(5) provide designs for the proposed gaming facility including among other things, a site plan, floor plans, building elevations and perspectives, cross sections sufficient to illustrate the interrelation of principal building program components, proposed hardscape, landscape and landscape treatments including any off-site improvements required to implement the proposal, exterior lighting design, plans for



parking structures, surface parking and traffic circulation plans, color perspective renderings of the exterior (day and night) and interior of the gaming facility; and access plans indicating adjacent properties with all related infrastructure and access to and egress from all major traffic arterials;

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

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

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

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

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

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

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

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

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

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

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

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

- (1) provide a description of the proposed internal controls, electronic surveillance systems and security systems for the proposed gaming facility and any related facilities; and
- (2) provide a table of organization that shows staffing levels and identifies the critical departments for each control/risk management activity, data process, internal audit, compliance, security and surveillance function.

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

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

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

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



(4) local agreements designed to expand gaming facility draw, including the number of patrons brought to the region; and

(5) cross-marketing efforts with other attractions.

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

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

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

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

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

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

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

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

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

(k) *Sustainability, resource management and sourcing.* An applicant shall describe its sustainability and resource management plans with respect to the gaming facility, including its plans to, among other things, mitigate traffic flow, obtain LEED certification,



use energy efficient equipment, manage storm water, conserve water, use renewable energy, monitor energy consumption and purchase, whenever possible, domestically manufactured slot machines.

(l) Duty to update application.

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

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

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

§ 5301.2. Application forms.

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

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

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

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



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

- (1) the name, title, phone number and email address of a person to be contacted in reference to the application;
- (2) the current and former d/b/a or trade names used by the entity;
- (3) the principal business address of the entity;
- (4) the date and place of formation and information concerning each person forming the entity;
- (5) all other names under which the entity has conducted business and the approximate time periods during which such names were used;
- (6) all other addresses presently used by the entity and all addresses from which the entity is presently doing business;
- (7) all addresses, other than those listed in paragraph (6) of this subdivision, that the entity held, or from which it was conducting business during the last 10-year period, and the approximate time periods during which such addresses were held;
- (8) a description of the business conducted and intended to be conducted by the entity and its parent, holding, subsidiary and intermediary entities and the general development of such business during the past five years, or such shorter period as the entity or its parent, holding, subsidiary and intermediary entities may have been engaged in business. The description shall include information on the following:
 - (i) competitive conditions in the industry or industries involved and the competitive position of the entity, if known;
 - (ii) the principal products produced and services rendered by the entity and its parent, intermediary and subsidiary entities, the principal markets for said products or services and the methods of distribution;
 - (iii) the sources and availability of raw materials essential to the business of the entity;
 - (iv) the importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises and concessions held; and
 - (v) a description of any material changes in the business entity's mode of conducting the business.



- (9) a description of any former business, not listed in response to paragraph (8) of this subdivision, that the entity or any parent, intermediary or subsidiary company engaged in during the last 10-year period and the reasons for the cessation of such business, indicating the approximate time period during which each such business was conducted;
- (10) personal information, including but not limited to, the name, home and work addresses and date of birth of each director, trustee, and officer of the entity for the last 10 years. Officers include all persons serving as president, secretary, treasurer, chairman of the board, vice-president, general/corporate counsel or any such other officers as may be prescribed by the entity's governing documents;
- (11) the annual compensation of directors, trustees and officers of the entity and whether such compensation is in the form of salary, wages, commissions, fees, stock options, bonuses or otherwise;
- (12) the name, business address, date of birth, and position of each person other than a director, trustee or officer, who receives annual compensation from the entity of more than \$250,000 and the length of time employed and the amount of compensation;
- (13) a description of all bonus, profit sharing, pension, retirement, deferred compensation and similar plans in existence;
- (14) a description of the nature, type, number of authorized and issued shares, terms, conditions, rights and privileges of all classes of voting, non-voting and other stock issued, or to be issued, or other similar indicia of ownership by the entity including the number of shares of each class of stock authorized or to be authorized and the number of shares of each class of stock outstanding, not held by or on behalf of the issuer, or other similar information applicable to other indicia of ownership as of this date;
- (15) the name, home address and date of birth of each shareholder of the entity, the class held, number of shares held and the percentage of outstanding voting or non-voting securities or other ownership interest held;
- (16) a description of the nature, type, terms, covenants, conditions and priorities of all outstanding debt and security devices utilized by the entity;
- (17) a description of each person or entity holding any outstanding debt and security devices the entity uses;
- (18) a description of any options existing or to be created with respect to securities issued by the entity in which description shall include, but not be limited to, the title and amount of securities subject to option, the year or years during which the options were or will be granted, the conditions under which the options were or will

be granted, the consideration for granting the option and the year or years during which, and the terms under which, optionees became or will become, entitled to exercise the options, and when such options expire;

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

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

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

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

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

- (i) any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
- (ii) any criminal proceeding in which such person has been named a party or an unindicted co-conspirator;
- (iii) any civil litigation that exists or that existed within the previous five years to which the entity, its parent or any subsidiary is, or was, a party, if damages exceeded \$100,000, or are reasonably expected to exceed \$100,000, unless such damages involved or involve, claims against the entity that were, or are, fully and completely covered under an insurance policy;
- (iv) any judgment order, consent decree or consent order entered against the entity pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction; and



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



(29) a copy of the following:

- (i) audited financial statements for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
- (ii) all annual financial statements prepared in the last five years, any exceptions taken to such statements by the independent auditor retained by the entity and the management response thereto;
- (iii) annual reports to shareholders for the last five years;
- (iv) any annual reports prepared within the last five years on Form 10K pursuant to the Securities Exchange Act of 1934;
- (v) the last quarterly unaudited financial statements prepared by or for the entity, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed 10Q;
- (vi) any current report prepared due to a change in control of the entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the entities certifying accountant, or other material events, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed form 8K;
- (vii) each press release issued by the entity for the past five years;
- (viii) last definitive proxy or information statement filed pursuant to the section 14 of the Securities Exchange Act of 1934;
- (ix) registration statements filed in the last five years pursuant to the Securities Act of 1933; and
- (x) all reports and correspondence submitted in the last five years by independent auditors for the entity that pertain to the issuance of financial statements, managerial advisory services, or internal control recommendations.

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

(31) a certified copy of the articles of incorporation, charter and by-laws and all amendments proposed thereto or other formation documents, if the entity is not a corporation;



(32) a current ownership organizational chart of the entity, its parent entity and each subsidiary of the entity;

(33) a functional table of organization for the filing entity, including position descriptions and the names of persons holding such positions;

(34) a copy of all Federal Internal Revenue Service tax returns filed by the entity in the last five years;

(35) a release authorization (dated and signed by the president or any officer of the entity authorized to affirm and sign the document) directing all courts, probation departments, selective service boards, employers, educational institutions, banks, financial institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the entity as required by the commission and its authorized agents and representatives;

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

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

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

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

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

(2) current photograph;

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



- (4) any ownership interest, financial interest or financial investment in any business entity applying to or presently licensed by the commission;
- (5) a disclosure of whether, during the last 10 years, any entity in which he or she had been a director, officer or principal employee or a holder of five percent or greater interest has:
 - (i) made or been charged with, either itself or through third parties acting for it, bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;
 - (ii) held a foreign bank account or has had authority to control disbursements from a foreign bank account;
 - (iii) maintained a bank account, or other account, whether domestic or foreign, that is not reflected on the books or records of the business;
 - (iv) maintained a domestic or foreign numbered bank account or other bank account in a name other than the name of the business;
 - (v) donated or loaned corporate funds or corporate property for the use or benefit of, or for the purpose of opposing, any government, political party, candidate or committee either domestic or foreign;
 - (vi) compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposition to any government or political party domestic or foreign; and
 - (vii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign;
- (6) copies of Federal and State tax returns and related information for the last five years, including:
 - (i) United States Internal Revenue Service forms 1040, 1040X and related schedules;
 - (ii) an audit narrative or failure to file narrative; and
 - (iii) foreign tax returns and schedules;
- (7) a signed, dated and notarized release authorization that shall direct all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, Federal, state and local, both foreign and domestic, to release any and all information pertaining to



the applicant as requested by the commission, the Gaming Facility Location Board or any employee, agent or representative thereof;

(8) the name, address, occupation, phone number, email address and years known of persons who can attest to the good character and reputation of the applicant;

(9) a waiver of liability as to the State of New York and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the licensing process, or during any inquiries, investigations or hearings;

(10) a consent to inspection, searches and seizures and the supplying of handwriting exemplars;

(11) a notification and authorization form for employment credit report; and

(12) a signed, dated and notarized affidavit of truth.

§ 5301.3. Application fees.

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

§ 5301.4. Waiver of licensing requirements by commission.

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

(1) Qualified institutional investors and passive investors as defined in Part 5300.1 of this Subchapter;

(2) in the case of gaming facility applicant or licensee corporations and holding, intermediary and subsidiary corporations of said applicant or licensee corporations, those persons holding less than five percent of the voting securities of the company;

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

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

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

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

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

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

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

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

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

(f) Any party granted a waiver under this part 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

- 5303.1 General
- 5303.2 Identification
- 5303.3 Fingerprinting
- 5303.4 Photographing
- 5303.5 Minimum age
- 5303.6 Eligibility to work in the United States
- 5303.7 Filing
- 5303.8 Processing
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- 5303.11 Investigations
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- 5303.14 Fees
- 5303.15 Application and employment after denial or revocation
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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 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 sections 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 sections 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 vendor licenses
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.

PARTS 5308-10

[Reserved]

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.

PART 5313

Conduct and Operation of Gaming

Section	
5313.1	System of internal control
5313.2	Age for gaming participation; signage; responsibilities



- 5313.3 Hours of operation
- 5313.4 Facility accessibility
- 5313.5 Access badges and temporary access credentials
- 5313.6 Licensee leases and contracts
- 5313.7 Emergency procedures
- 5313.8 Operation certificate
- 5313.9 Firearms
- 5313.10 Retention, storage and destruction of books, records and documents
- 5313.11 Key control
- 5313.12 Facial recognition
- 5313.13 License plate recognition
- 5313.14 Limitation on certain financial access

§ 5313.1. System of internal control.

(a) Consistent with Racing, Pari-Mutuel Wagering and Breeding Law section 1334, a gaming facility licensee shall submit to the commission a written description of its initial system of administrative and accounting procedures, including its internal control systems and audit protocols, at least 60 days prior to the projected date of issuance of an operation certificate unless otherwise approved in writing by the commission. A written system of internal controls shall include, without limitation:

- (1) organization charts depicting segregation of functions and responsibilities;
- (2) a description of the duties and responsibilities of each position shown on the organization charts and the respective lines of authority for each;
- (3) a detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of this Part;
- (4) a record retention policy relating to retention, storage and destruction of books, records and documents, as required by section 5313.10 of this Part;
- (5) procedures to ensure that assets are safeguarded and counted in conformance with count procedures as set forth in this Subchapter;
- (6) procedures governing the conduct of all gaming-related promotions to be offered;
- (7) procedures to ensure that the gaming facility licensee's employees comply with licensing or registration requirements;
- (8) other items the commission may request in writing to be included in such gaming facility's internal controls;



(9) administrative controls that include the procedures and records that relate to the decision-making processes leading to management's authorization of transactions;

(10) accounting controls that safeguard assets and revenues and ensure the reliability of financial records. Such accounting controls must be designed to provide reasonable assurance that:

(i) transactions or financial events that occur in the operation of a slot machine or table game are executed in accordance with management's general and specific authorization;

(ii) transactions or financial events that occur in the operation of a slot machine or table game are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States, Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter;

(iii) transactions or financial events that occur in the operation of gaming are recorded in a manner that provides reliable records, accounts and reports, including the recording of cash and evidences of indebtedness, for use in the preparation of reports to the commission;

(iv) transactions or financial events that occur in the operation of gaming are recorded to ensure accountability for assets and to permit the proper and timely reporting of gaming revenue, fees and taxes;

(v) access to assets is permitted only in accordance with management's general and specific authorization; and

(vi) the recorded accountability for assets is compared with existing physical assets at reasonable intervals and that appropriate action is taken with respect to any discrepancies;

(11) procedures and controls for ensuring that each slot machine and electronic table game directly provides and communicates all required activities and financial details to the online monitoring and accounting system;

(12) procedures and controls for ensuring that all functions, duties and responsibilities are segregated and performed in accordance with sound financial practices by qualified personnel; and

(13) procedures and controls for ensuring, through the use of surveillance and security departments, that the gaming facility is secure during normal operations and during any emergencies due to malfunctioning equipment, loss of power, natural disaster or any other cause.

(b) An internal control systems submission shall be accompanied by an attestation by the gaming facility's chief executive officer or other delegated person with a direct reporting relationship to the chief executive officer attesting that the signatory believes, in good faith, that the submitted internal controls:

(1) conform to the requirements of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter; and

(2) are designed to provide reasonable assurance that the financial reporting conforms to generally accepted accounting principles in the United States and complies with applicable laws and regulations, including Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter.

(c) An initial internal controls submission also shall be accompanied by a report from an independent certified public accounting firm that is in good standing with the New York State board for accountancy or with the state board for accountancy where such firm is licensed. Such report should express an opinion as to the suitability of the design of the submitted system of internal controls over financial reporting in accordance with the requirements of subdivision (a) of this section.

(d) The commission will review each initial submission made under subdivision (a) of this section and determine whether such submission conforms to the requirements of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter and provides adequate and effective controls to ensure the integrity of the operation of gaming at a gaming facility. If the commission determines that the submission is deficient in any area, the commission will provide written notice of the deficiency to the gaming facility licensee and allow the gaming facility licensee to submit a revision to such submission.

(e) A gaming facility licensee shall submit to the commission any proposed amendment to such licensee's approved system of internal controls. Such gaming facility licensee may implement such proposed amendment on the 30th calendar day following the filing of a complete submission, unless the commission rejects such proposed amendment in writing or tolls such 30-day period pursuant of subdivision (f) of this section.

(f) If, during a 30-day review period set forth in subdivision (e) or subdivision (g) of this section, the commission preliminarily determines that a procedure or omission in a submission is likely to affect negatively the integrity of gaming operations or the control of revenue, the commission shall, by written notice to the gaming facility licensee:

(1) specify the nature of the commission's objection and, when possible, suggest an acceptable alternative procedure; and

(2) direct that the 30-calendar-day review period set forth in subdivision (e) of this section be tolled and that any proposed internal control amendments not be implemented until approved pursuant to subdivision (g) of this section.



(g) When the commission tolls a proposed amendment pursuant to subdivision (f) of this section, the gaming facility licensee may submit a revised amendment within 30 days of receipt of the written notice from the commission. Such gaming facility licensee may implement a revised amendment upon receipt of written notice of approval from the commission or on the 30th calendar day following the filing of the revision, unless the commission rejects such proposed amendment in writing or tolls such 30-day period pursuant of subdivision (f) of this section.

(h) Each gaming facility licensee shall maintain a current version of such gaming facility licensee's internal controls in electronic form available through secure computer access to the accounting and surveillance departments of such gaming facility licensee and to commission staff at such gaming facility. Each page of such internal controls document shall indicate the date on which the commission approved such page. Each gaming facility licensee also shall maintain, for a minimum of five years, a copy, either in paper or electronic form, of

- (1) any superseded internal control procedures; and
- (2) the original, signed attestation required by subdivision (b) of this section.

§ 5313.2. Age for gaming participation; signage; responsibilities.

(a) To effectuate compliance with Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1), each gaming facility licensee shall post appropriate security personnel at any location in the facility that allows access to the gaming floor.

(b) A gaming facility licensee shall post signs that include a statement that is similar to the following: "It is unlawful for any individual under 21 years of age to enter or remain in any area where gaming is conducted. It is unlawful for any individual under 21 years of age to wager, play or attempt to play a slot machine or table game. Individuals violating this prohibition will be removed and may be subject to arrest and criminal prosecution." Such signs shall be posted prominently at each entrance and exit of the gaming floor.

(c) A gaming facility licensee shall identify and remove any person who is under 21 years of age and not otherwise authorized by law to be on the gaming floor and immediately notify onsite commission staff when a person under 21 years of age is discovered on the gaming floor, in areas off the gaming floor where gaming activity is conducted or engaging in gaming-related activities.

(d) A gaming facility licensee shall not allow or permit any person who is under 21 years of age to:

- (1) participate as a player at any game in such gaming facility;
- (2) receive any complimentary services or items as a result of, or in anticipation of, such individual's gaming activity;

(3) be present on the gaming floor without the escort of a licensed gaming facility employee and for longer than necessary to reach a destination that is not on the gaming floor; or

(4) make any wager at any such gaming facility.

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

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

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

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

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

(f) The commission shall penalize a gaming facility licensee found to have violated paragraph (4) of subdivision (d) of this section as follows:

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

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

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

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

(g) A gaming facility licensee shall implement procedures that ensure that persons less than 21 years of age do not receive junket solicitations, targeted mailing, telemarketing promotions, player club membership materials or other promotional materials relating to gaming activities.

§ 5313.3. Hours of operation.

(a) A change in scheduled hours of operation of a gaming facility means a change in scheduled hours effected pursuant to the requirements of Racing, Pari-Mutuel Wagering and Breeding Law section 1333(2).

(b) An alteration in scheduled hours of operation of a gaming facility means a temporary deviation from established hours of operation, as contemplated by Racing, Pari-Mutuel

Wagering and Breeding Law section 1333(3). A gaming facility licensee proposing an alteration of scheduled hours of operation must do so in writing to the commission at least 30 days prior to the effective date of the proposed alteration, and no such alteration shall be permitted absent prior approval by the commission; provided, however, that the commission may shorten or waive the prior notice and prior approval requirements if extraordinary circumstances exist, in the judgment of the commission.

(c) If a gaming facility is required to close during normal business hours due to an emergency, such facility shall notify the commission as soon as practicable.

§ 5313.4. Facility accessibility.

(a) Consistent with the requirements of Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12181-12189) and regulations promulgated thereunder (referred to in this section, collectively, as the ADA), each gaming facility licensee that is a public accommodation as defined in the ADA shall comply with Federal law pertaining to ensuring that individuals with disabilities are provided an equal opportunity to participate in or benefit from such licensee's goods and services. To accomplish these objectives, such gaming facility licensee's internal control system shall ensure ongoing ADA compliance, including, at a minimum:

(1) designation of or hiring an ADA compliance officer who, within 90 days of designation or hire, shall undergo training, at such gaming facility licensee's expense, in regard to the requirements of Title III of the ADA. The ADA compliance officer shall be responsible for handling, among other things, any disability-related complaints from patrons and guests of the gaming facility;

(2) training of all first-line supervisors and managers, within 90 days of hire, on Title III of the ADA as such law applies to a gaming facility and on the obligations to ensure that all guests with disabilities are afforded an equal opportunity to participate in the services, facilities and activities offered at the gaming facility; and

(3) development of an ADA-complaint resolution policy to address ADA-related complaints by patrons and guests of such gaming facility and provide a copy of such policy to the commission for review and input. Such policy shall identify the ADA compliance officer and the process by which complaints will be investigated and resolved. Such gaming facility licensee shall implement such policy within 60 days of receiving and implementing the commission's comments.

(b) Each gaming facility licensee shall report annually to the commission in regard to such licensee's ADA practices, including any complaints received and their resolution, any policies adopted and any training of employees that occurred (by date and the content of training). The commission may order such corrective or remedial action as the commission may deem necessary or advisable for a gaming facility licensee to undertake.

(c) The facility licensee shall also provide to the commission annually any research, proposed practices or practices implemented with regard to accommodations for disabled persons gaming within the facility.

§ 5313.5. Access badges and temporary access credentials.

(a) A gaming facility licensee shall develop an access control matrix indicating the restricted areas in a licensed facility to which each employee, and each employee of a vendor or any other authorized person has access in accordance with such person's job description. Access to restricted areas by a gaming facility employee or vendor employee shall be limited to the restricted areas to which such employee needs access in the course of the performance of such employee's normal duties listed in such employee's job description.

(b) A gaming facility licensee shall adopt an access badge system consisting of a badge that contains an employee's name, picture and identifying code that indicates such employee's title and/or job function.

(c) A gaming facility licensee shall prepare and maintain internal control procedures for:

(1) issuance of access badges for employees, vendor employees and other non-employees permitted to have access to one or more restricted areas and issuance of replacement access badges when a badge is misplaced, stolen, forgotten, damaged, not functioning or obsolete;

(2) issuance of temporary identification credentials to employees, vendor employees and other non-employees; and

(3) collection of such access badges or credentials when an employee, vendor employee or other non-employee has been suspended or discharged or when an employee's employment has been terminated.

(d) Each gaming facility employee shall be required to wear an access badge in a location visible to guests, surveillance cameras and security personnel at all times while working in a gaming facility.

(e) A complete listing of badge records, including without limitation the name of each badge recipient, employment position, badge number and assigned employment and access level shall be provided to the commission or the commission's designees prior to the issuance of a gaming facility's operation certificate. All additions, deletions and changes to such initial listing shall be provided to the commission or the commission's designees at a frequency that the commission may direct.

(f) Commission employees or designees shall have immediate, unfettered access to restricted areas during the performance of their respective duties and responsibilities.

§ 5313.6. Licensee leases and contracts.

(a) Consistent with Racing, Pari-Mutuel Wagering and Breeding Law section 1341, each gaming facility applicant or licensee shall maintain a record of each written or unwritten agreement in regard to the realty, construction, maintenance or business of a proposed or existing gaming facility or related facility, without regard to whether such gaming facility applicant or licensee is a party to such agreement.

(b) The commission may review any agreement described in subdivision (a) of this section on the basis of the reasonableness of its terms, including the terms of compensation, and of the qualifications of the owners, officers, employees and directors of any enterprise involved in the agreement.

(c) If the commission disapproves of such an agreement or of the owners, officers, employees or directors of any enterprise involved in such agreement, the commission may require termination of such agreement.

§ 5313.7. Emergency procedures.

(a) A gaming facility licensee shall submit to the commission, the New York State Police, local police department and the local fire department, no less than 90 days before the issuance of an operation certificate, an emergency action plan for the response to, and management of, fire, medical emergencies, loss of power, critical system and/or equipment failures, including without limitation surveillance and accounting, and natural disasters in all areas of the gaming facility and ancillary developments.

(b) Such plan shall include procedures for notification of the New York State Police, local police department, the local fire department or emergency medical personnel, and procedures for expedited and unimpeded access of the personnel into all areas of the gaming facility or ancillary developments in the event of a fire, medical or other emergency.

(c) Such plan shall also include a proposed inspection schedule allowing the New York State Police, local police department and local fire department personnel to inspect all areas of the gaming facility and ancillary developments for compliance with applicable fire and emergency laws, codes and ordinances.

§ 5313.8. Operation certificate.

(a) A gaming facility licensee may not open a gaming facility for business or begin gaming operations until the commission has issued a valid operation certificate in accordance with the requirements of Racing, Pari-Mutuel Wagering and Breeding Law section 1331.

(b) To obtain an operation certificate, each gaming facility shall establish to the satisfaction of the commission that the:



- (1) gaming facility complies in all respects with the applicable requirements of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter;
 - (2) gaming licensee has implemented necessary internal control procedures for the safe and efficient operation of the gaming facility;
 - (3) gaming facility has complied with the licensing provisions of this Subchapter;
 - (4) commission has been provided proof that all employees are licensed or registered for the performance of their respective responsibilities;
 - (5) gaming facility is prepared in all respects to receive and entertain the public;
 - (6) gaming facility meets or exceeds State and local fire and safety standards; and
 - (7) gaming facility has provided payroll records that establish to the satisfaction of the commission that it has complied with the requirements of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law, if applicable. Such payroll records shall be accompanied by an attestation by the gaming facility's chief executive officer or other delegated person as to their accuracy.
- (c) Subject to the commission's authority to revoke, suspend, limit or otherwise alter an operation certificate, each such certificate, once issued, shall remain in full force and effect for so long as the licensee holding such certificate remains licensed, under such terms and conditions as the commission may impose. Such operation certificate shall not be altered, modified or amended except in accordance with Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter.
- (d) The continued effectiveness of each operation certificate shall be a prerequisite for the gaming facility to which such certificate applies to remain open to the public for the operation of gaming.
- (e) Each gaming facility licensee to which an operation certificate is issued shall operate such licensee's gaming facility strictly in accordance with the terms of such licensee's original operation certificate and the approved gaming floor layout submitted in support thereof, and shall not change any of the items to which the operation certificate applies, except in accordance with Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter and after obtaining any required amendments to such operation certificate. Nothing in this subdivision shall prevent a gaming facility licensee from moving or reconfiguring gaming devices within the approved gaming floor layout provided the commission is notified of such change in writing at least five business days in advance of implementation and that such change is in compliance with State building code and this Subchapter.
- (f) Whenever a gaming facility licensee proposes a physical change to such licensee's gaming facility or to a restricted area that requires commission approval in order for such licensee's original operation certificate, or any approved amendments to such

operation certificate, to continue in force and effect, such gaming facility licensee must submit an application for amended operation certificate, the form of which the commission shall provide to the applicant upon request. Such application shall include, without limitation, the following:

(1) a revised gaming floor layout reflecting the proposed change, in which the revised plan shall be submitted in a format approved in writing by the commission and filed with such application; and

(2) a statement from an architect or other suitable professional licensed to practice in the State of New York certifying that the proposed change as presented will be in compliance with State building code and this Subchapter.

(g) The commission shall review any proposed change for compliance with Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter and shall issue a determination and, if approved, notice to proceed, within a reasonable time after receipt of the application for amended operation certificate.

(h) Upon receipt of the notice to proceed, the gaming facility licensee shall complete the changes outlined in the application for amended operation certificate and notify the commission in writing within five days of final completion of any proposed change. A gaming floor layout that depicts the actual changes made shall accompany the notice of final completion and be filed with the commission. Each such gaming floor layout shall depict the change and shall include updates, based on the actual changes made, for each item required to be included in the application for amended operation certificate pursuant to subdivision (f) of this section and described in the notice to proceed; provided, however, that a floor plan of the entire gaming facility that depicts all changes proposed in the application for amended operation certificate and any amendment thereto shall accompany the notice of final completion.

(i) Promptly after the filing of a notice of final completion pursuant to subdivision (h) of this section, the commission shall inspect the physical changes actually made to the gaming facility to ensure that such changes conform to the gaming floor layout accompanying the notice of final completion and the description previously submitted to the commission, as modified by any properly filed amendments thereto. Following such inspection, the commission shall notify the gaming facility licensee in writing as to which physical change is approved and which is rejected, whereupon:

(1) the gaming facility licensee, in the event any change is rejected, shall either:

(i) correct any rejected change to conform with the floor plan accompanying the notice of final completion and the description previously submitted to the commission, as modified by any properly filed amendments thereto, which correction shall be completed and inspected pursuant to this section;



(ii) submit for approval, pursuant to subdivision (f) of this section, a new application for amended operation certificate; or

(iii) take such other action as the commission may direct to ensure that the currently approved gaming floor layout accurately depicts the physical layout of the gaming facility, including any restricted areas; and

(2) the operation certificate shall be amended to conform to each inspected and approved physical change.

(j) An operation certificate shall be revoked, suspended or limited by the commission if the commission initiates disciplinary action against the gaming facility licensee and determines that the gaming facility licensee is in violation of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Subchapter or that the commission's action is in the best interests of the State and reasonably necessary and appropriate to protect and enhance the credibility and integrity of commercial gaming operations in this State.

§ 5313.9. Firearms.

(a) No person shall possess, or be permitted to possess, any firearm within a gaming facility without the prior express written consent of the commission, except any on-duty officer or agent of any local, State or Federal law enforcement agency, when such officer or agent is acting in an official capacity.

(b) The gaming facility licensee shall post in a conspicuous location at every entrance to the gaming facility a sign stating: "No Person Shall Possess Any Firearm Within This Facility."

§ 5313.10. Retention, storage and destruction of books, records and documents.

(a) For the purposes of this section, *books, records and documents* means any book, record or document pertaining to, prepared in or generated by the operation of a gaming facility licensee, including all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence and personnel records required to be generated and maintained (excluding physical tickets generated by slot machines as long as an electronic record of each ticket printed is maintained within the slot management system). This definition applies without regard to the medium through which the record is generated or maintained (e.g., paper, magnetic media or encoded disk).

(b) Original books, records and documents pertaining to the operation of a gaming facility licensee shall be:

(1) prepared and maintained in a complete, accurate and legible form. Electronic data shall be stored in a format that ensures readability, without regard to whether



the technology or software that created or maintained such data has become obsolete;

(2) retained in a secure location in the gaming facility that is equipped with a fire suppression system or at another location approved pursuant to subdivision (d) of this section;

(3) made available for inspection by the commission and the commission's designees during all hours of operation;

(4) organized and indexed in a manner to provide immediate accessibility to the commission and the commission's designees; and

(5) destroyed only after expiration of the minimum retention period specified in subdivision (c), except that the commission may, upon the written request of a gaming facility licensee and for good cause shown, permit destruction at an earlier date.

(c) Unless otherwise authorized by Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Subchapter, all original books, records and documents shall be retained in accordance with a retention schedule annually issued by the commission. Nothing herein shall be construed as relieving a gaming facility licensee from meeting any obligation to maintain any book, record, or document required by any other Federal, state or local; governmental body authority, or agency.

(d) The commission may approve, upon the written request of a gaming facility licensee, a location outside the gaming facility to store original books, records and documents. Such request shall include the following:

(1) a detailed description of the proposed location, including security and fire suppression systems; and

(2) the procedures under which the commission and the commission's designees will be able to gain access to the retained original books, records and documents.

(e) The commission may approve, upon the written request of a gaming facility licensee a microfilm, microfiche or other suitable media system for the copying and storage of original books, records and documents. Such request shall include representations in regard to the:

(1) processing, preservation and maintenance methods that will be employed to ensure that the books, records and documents are available in a format that makes such material readily available for review and copying;

(2) inspection and quality control methods that will be employed to ensure that microfilm, microfiche or other media, when displayed on a reader or viewer or reproduced on paper, exhibits a high degree of legibility and readability;



(3) availability of a reader or printer for use by the commission and the commission's designee at such licensed facility or other location approved by the commission and the readiness with which the books, records or documents being stored on microfilm, microfiche or other media can be located, read and reproduced; and

(4) availability of a detailed index of all microforms or other stored data maintained and arranged in a manner to permit the immediate location of any particular book, record or document.

§ 5313.11. Key control.

(a) Any key that is considered sensitive and is required to be controlled and maintained and any corresponding locking device shall be approved by the commission. Such keys shall be legally duplicated only by the manufacturer, or the manufacturer's designee, and shall be capable of unlocking the locking device on no more than one type of secure box, compartment or location used or maintained within the gaming facility. Nothing in this subdivision shall preclude the commission from exempting a type of secure box, compartment or location from the requirements of this subdivision upon a determination that the security of such box, compartment or location would not otherwise be compromised.

(b) As approved by the commission, sensitive keys shall include, without limitation, the following:

(1) table drop box contents keys;

(2) table drop box release keys;

(3) table drop box trolley keys;

(4) slot machine keys;

(5) count room entrance keys;

(6) locations housing a computer that controls a progressive payout wager system for table games offering a progressive payout wager;

(7) storage cabinets or trolleys for unattached table drop boxes;

(8) float keys; and

(9) pit podium keys.

(c) A gaming facility licensee shall establish key control procedures for any sensitive key as approved by the commission. Such procedures shall provide for, at a minimum, the following:

- (1) the maintenance of perpetual inventory records and the physical inventory of all sensitive keys by an independent department;
- (2) the requisitioning of keys and locking devices from vendors; and
- (3) the security and restrictions that control access to keys, whether manually or through an electronic system, and records and reports generated or prepared.

§ 5313.12. Facial recognition.

The commission may require a gaming facility licensee to install security and surveillance equipment where any chips, tokens, tickets, electronic cards or similar objects can be redeemed for cash, whether by a gaming employee or by electronic means, that must capture, for law enforcement purposes, facial feature pattern characteristics, including a computerized facial image. Such system must be able to compare a photograph or image of one or more persons to live or recorded video in order to determine if such person is or has been in the facility.

§ 5313.13. License plate recognition.

The commission may require a gaming facility licensee to install security and surveillance equipment in garages and parking lots to capture a vehicle license plate. Such system must be able to include the time, color image and the vehicle's license plate number.

§ 5313.14. Limitation on certain financial access.

(a) Automated teller machines shall be prohibited from accepting electronic benefit cards, debit cards or similar negotiable instruments issued by the State or political subdivisions of the State for the purpose of accessing temporary public assistance, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1338(2).

(b) An automated teller machine shall have a label on the top and front that displays a unique identification number. Each such label shall have a color combination approved by the commission that is easily visible to the gaming facility's surveillance department and that may not be easily removed. The label on the top of each automated teller machine shall be at least 1½ inches by 5½ inches and the label on the front of each automated teller machine shall be at least 1 inch by 2½ inches.

(c) A gaming facility may use an automated teller machine that also contains an automated gaming voucher redemption machine, an automated coupon redemption machine or bill breaker, provided that such machine complies with the requirements in regard to such gaming facility's automated gaming voucher and coupon redemption machine accounting controls.



(d) The use of credit cards, debit cards, similar devices and instruments described in subdivision (a) of this section are prohibited in slot machines or at table games, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1338(3).

(e) The proximity of an automated teller machine to a slot machine or table game that is on a gaming floor is subject to the following limitations:

(1) no automated teller machine may be placed closer than five feet to a slot machine or table game; and

(2) there may be no more than one automated teller machine for every 100 slot machines and table game seats.

(f) Exclusive of transaction fees or surcharges, the maximum amount that a player may withdraw from an account by using an automated teller machine located on a gaming floor shall be no more than \$3,500 per calendar day.

(g) No gaming facility is permitted to cash a paycheck from a patron, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1338(4).

PART 5314

Surveillance

Section

- 5314.1 Surveillance plan of operation; approval; plan amendment
- 5314.2 Surveillance department establishment; independence; physical characteristics; employee restrictions; training
- 5314.3 Surveillance room access, required logs
- 5314.4 Required equipment; capabilities
- 5314.5 Required surveillance
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- 5314.7 Surveillance records retention

§ 5314.1. Surveillance plan of operation; approval; plan amendment.

(a) A gaming facility licensee shall not be permitted to commence operations until the commission has approved in writing such licensee’s surveillance plan of operation. Such plan shall be submitted for commission review no later than 60 days prior to the expected date of issuance of such gaming facility’s operation certificate.

(b) A surveillance plan of operation shall detail the:

(1) surveillance system and equipment used;

(2) placement of all surveillance equipment in the gaming facility; and

(3) staffing necessary to provide for the continuous monitoring of activities inside and outside the licensed facility taking into account the size and layout of the facility as well as the number and location of gaming devices on the gaming floor.

Such plan also shall address any planned shutdown of the surveillance system and any equipment failure that affects the surveillance room or any other equipment that may hinder the appropriate execution of surveillance functions and provide for an emergency contact listing with telephone numbers for persons required to be notified of any such event.

(c) The commission shall review a gaming facility's surveillance plan of operation and approve such plan if such plan is consistent with this Subchapter.

(d) A gaming facility licensee shall not alter or amend its surveillance plan of operation unless the commission has first approved in writing such alteration or amendment. A gaming facility licensee seeking to alter or amend its surveillance plan shall submit proposed alterations or amendments to such surveillance plan to the commission not less than seven days before the desired alteration or amendment would take effect. All requests for a plan alteration or amendment shall include:

- (1) details of the change, including the floor plan;
- (2) reason for the change; and
- (3) expected results of the change.

(e) In the event of an emergency, a gaming facility licensee may deviate from such licensee's approved surveillance plan of operation. In such instance, such gaming facility licensee shall notify the commission promptly that an emergency exists before deviation from the surveillance plan, then shall, as soon as practicable, submit a written description to the commission of the emergency and the circumstances necessitating the emergency deviation. As soon as the circumstances necessitating the emergency deviation abate, the gaming facility licensee shall resume compliance with the approved surveillance plan of operation. If the emergency does not abate, the gaming facility licensee shall seek, as soon as practicable, an amendment to its surveillance plan of operation.

(f) The commission shall have full access to, but not be capable of overriding, a gaming facility licensee's surveillance system and the transmissions therein. Each member of a gaming facility's surveillance department shall comply with any commission request to:

- (1) use, as necessary, any surveillance monitoring room in the gaming facility;
- (2) display on the monitors in the monitoring room any event capable of being monitored by the surveillance system; and



(3) make a video and, if applicable, audio recording of, and take a still photograph of, any event capable of being monitored by the surveillance system.

§ 5314.2. Surveillance department establishment; independence; physical characteristics; employee restrictions; training.

(a) Each gaming facility licensee shall establish and maintain a surveillance department, independent of all other departments at such gaming facility, which shall be responsible for the clandestine monitoring and recording of certain activities inside and outside the gaming facility.

(b) A surveillance monitoring room, or rooms, shall be located within a gaming facility. Such room or rooms shall be staffed continuously by employees who shall at all times monitor activities inside and outside the gaming facility, including those enumerated in section 5314.5 of this Part.

(c) A surveillance monitoring room shall:

(1) contain such equipment and supplies as necessary to undertake the required surveillance activities, taking into consideration current developments in electronic and computer technology, for the effective performance of the activities to be conducted therein including, without limitation:

(i) a communication system capable of monitoring all gaming facility security department activities; and

(ii) a view-only terminal allowing access to the computerized monitoring systems used by the gaming facility licensee in monitoring and management of its gaming operations;

(2) be connected to all gaming facility alarm systems, which may provide a visible, audible or combination signal; provided, however, that any robbery or other emergency-type alarm shall be perceptually distinguishable from all non-emergency alarm types in a manner approved by the commission;

(3) contain a library consisting of photographs that

(i) are no more than four years old, of all current employees of the licensee; and

(ii) represent patrons on any self-exclusion or excluded persons list;

(4) contain and have readily accessible to all surveillance room employees an updated operational blueprint depicting all areas of the gaming facility and elsewhere in the gaming facility where surveillance coverage is available.

(5) be equipped with telephones connected to the gaming facility licensee's general telephone system and at least one direct outside line independent of the general telephone system; and

(6) be equipped with radio communication connectivity with the security department.

(d) A gaming facility licensee shall require surveillance and security employees to undergo annual incident management training administered by a certified trainer in cooperation with law enforcement and the local fire department. Such training shall be geared to prepare surveillance and security employees on proper procedures to follow in the event of a fire, robbery attempt, bomb threat, terrorist activity, medical emergency or other major occurrence. Such training shall be geared to instruct gaming facility employees in all of the following:

(1) incident management procedures;

(2) incident management notifications and communications to, for example, police, fire, ambulance and hospitals;

(3) securing facility records;

(4) securing the facility;

(5) evacuation; and

(6) fire and medical emergencies.

(e) No former gaming facility licensee surveillance department employee shall accept employment

(1) in another capacity within the same gaming facility; or

(2) within any other gaming facility whose surveillance department is under the operational control of the same person who controlled the surveillance department in which such employee had been employed previously,

unless one year has passed since such former employee worked in such surveillance department.

(f) A current or former surveillance department employee may petition the commission for a waiver of a restriction set forth in subdivision (e) of this section and permission to be employed in a particular position. The commission may grant or deny the waiver upon consideration of factors including, but not limited to:

(1) whether the former surveillance department employee will be employed in a department or area of operation that the surveillance department monitors;

(2) whether the surveillance and security systems of the licensee will be jeopardized or compromised by the employment of the former surveillance department employee in the particular position; and

(3) whether the former surveillance department employee's knowledge of the procedures of the surveillance department would facilitate the commission by any individual of irregularities or illegal acts or the concealment of any actions, errors or omissions.

§ 5314.3. Surveillance room access, required logs.

(a) Entrances to the monitoring room or rooms shall not be visible from the gaming area. Access by gaming facility licensee employees to a monitoring room or any other designated area capable of receiving a surveillance transmission shall be prescribed by the gaming facility's system of internal controls, as approved by the commission.

(b) Any person, other than a commission representative, who enters any monitoring room or designated area related to surveillance and is not a surveillance department employee shall sign a monitoring room entry log upon entering the restricted area. The monitoring room entry log shall be kept in the monitoring room and maintained in a book with bound numbered pages that cannot be removed readily.

(c) The entry log book shall include, at a minimum, the:

(1) date and time of entering into the monitoring room or designated area;

(2) entering person's name and his or her department or affiliation;

(3) reason for entering the monitoring room or designated area;

(4) name of the surveillance department employee authorizing the person's entry into the monitoring room or designated area; and

(5) date and time of exiting the monitoring room or designated area.

(d) Each gaming facility licensee shall maintain a daily surveillance log in an electronic format that has an audit function that prevents modification of information after the information has been entered into the system. Such daily surveillance log shall:

(1) be maintained continuously by surveillance employees;

(2) be changed with each shift change of employees;

(3) be chronological; and

(4) contain, at a minimum, all of the following information:



- (i) the date and time of each log entry;
 - (ii) the identity of the employee making the log entry;
 - (iii) a summary of the activity recorded;
 - (iv) whether the activity was monitored; and
 - (v) disposition of the recording, if any.
- (e) All daily surveillance log entries shall contain the following information, unless otherwise directed in writing by the commission:
- (1) the identity of any surveillance room employee each time any such person enters or exits the surveillance room and the reason for such entry or departure;
 - (2) the notification of any maintenance or repair of any gaming device or money-handling equipment;
 - (3) live table drop box exchanges;
 - (4) electronic gaming device drop bucket exchanges;
 - (5) transfers of cash, chips, tokens, cards or dice;
 - (6) any detention or questioning of patrons or employees by the security department, including the identity of the patrons or employees and the security department employees involved;
 - (7) the beginning, end and any interruptions of the soft count;
 - (8) an observed violation of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Subchapter or of the gaming facility licensee's internal control procedures;
 - (9) suspected criminal activity;
 - (10) malfunction or repair of surveillance equipment;
 - (11) an emergency activity;
 - (12) surveillance conducted on anyone or any activity that appears unusual, irregular or illegal or appears to violate Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Subchapter;
 - (13) surveillance conducted at the request of the gaming facility licensee, an employee of the gaming facility licensee, a commission representative or the New York State police;

(14) other notations deemed necessary by surveillance room employees or the commission to ensure compliance with Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter.

§ 5314.4. Required equipment; capabilities.

The surveillance system shall include, at a minimum, the following:

(a) A surveillance system shall include light-sensitive cameras with lenses of sufficient magnification to allow the reading of information on, at a minimum, gaming chips, plaques, playing cards, dice, tiles, slot machine reel symbols, slot machine credit meters and employee credentials. Such cameras shall have 360-degree-pan, tilt and zoom capabilities, without camera stops, that allow effective and clandestine monitoring in detail and from various vantage points. A gaming facility licensee may use either an analog or digital video recording format, so long as the format selected incorporates current technology with regard to secure system access, video cameras, monitors, recorders, video printers, switches, selectors and other ancillary equipment and provides for surveillance of activities inside and outside the gaming facility.

(b) A surveillance system shall include video recording equipment that, at a minimum, shall:

(1) permit the preservation and viewing of a clear copy of the transmission produced by any camera connected to the surveillance system;

(2) be capable of superimposing the time and date of the transmission on each recording made by the video recording equipment; and

(3) enable the operator to identify and locate, through the use of a meter, counter or other device or method, a particular event that was recorded.

(c) A surveillance system shall be capable of recording media, which shall be replaced immediately upon the manifestation of any significant degradation in the quality of the images or sound, if applicable, recorded thereon.

(d) A surveillance system shall have audio capability in the soft-count room;

(e) A surveillance system shall have an emergency power system that can be used to operate the surveillance system in the event of a power failure, such power system to be tested at least annually, or more frequently if a test is failed; and

(f) A gaming facility shall implement a preventive maintenance program, executed by technicians subject to the direction and control of the director of surveillance, that ensures that the entire surveillance system is maintained in proper working order and that transparent covers over surveillance system cameras are cleaned in accordance with a routine maintenance schedule. In the event that preventive maintenance to be performed by a technician assigned to another department is required on an emergency



basis, the surveillance department shall have priority with respect to staffing resources of such other department to ensure the efficacy of the surveillance system.

(g) Routine maintenance of surveillance equipment must be completed in one of the following ways:

(1) without compromising any of the surveillance coverage provided by the surveillance system; or

(2) according to a plan subject to the review and approval of the commission.

§ 5314.5. Required surveillance.

(a) Each gaming facility licensee shall provide surveillance of the following locations and activities:

(1) gaming conducted at each table game and the activities in the gaming pits;

(2) gaming conducted at the slot machines;

(3) operations conducted at and in the cashiers' cage, any satellite cage and each office ancillary thereto;

(4) operations conducted at and in the slot booths;

(5) operations conducted at automated coupon-redemption machines;

(6) count processes conducted in the count rooms;

(7) movement and storage of cash, gaming chips and plaques, drop boxes, bill validator boxes, slot cash storage boxes, slot drop boxes and slot drop buckets;

(8) entrances and exits to the gaming facility, count rooms and any other location required by the commission;

(9) equipment designated by the commission in conjunction with the operation of an electronic-transfer credit system, a gaming-voucher system and a slot-monitoring system approved to conduct manual slot payouts;

(10) operation of automated jackpot-payout machines, gaming-voucher-redemption machines, gaming-voucher systems and electronic-transfer credit systems;

(11) all table games;

(12) gaming facility licensee's parking garages, driveways and valet parking areas; and

(13) all other areas as that the commission may designate.



(b) Whenever a gaming facility licensee replaces or modifies a gaming device on the gaming floor or other restricted areas, the surveillance department shall conduct an inspection as to the sufficiency of surveillance coverage. For those replacements or modifications that impact surveillance coverage, the director of the surveillance department shall prepare and submit to the commission prior to implementation a written certification attesting that the inspection was conducted and the surveillance coverage is sufficient.

§ 5314.6. Required recording.

A surveillance system shall be required to record, during the times and in the manner indicated below, all transmissions from cameras used to observe the following locations, persons or transactions:

- (a) all table games, whether active or inactive;
- (b) all activities conducted inside the cage, count room and satellites;
- (c) each simulcast and keno window that is open for business;
- (d) such main bank areas where gross revenue functions are performed;
- (e) the collection of drop boxes, slot drop boxes and slot cash storage boxes and the count of the contents therein;
- (f) any armored car collection or delivery of cash for which security escort or surveillance coverage is required;
- (g) the inspection and distribution of gaming equipment to gaming pits;
- (h) the retrieval of gaming equipment from gaming pits at the end of the gaming day and their delivery to the location designated and approved for inspection, cancellation, destruction or, if applicable, reuse;
- (i) each transaction conducted at a kiosk, automated bill breaker, voucher/coupon redemption and jackpot payout machine, as well as each replenishment or other servicing of any such machines; and
- (j) the entrances and exits to the gaming facility, count rooms and all other locations as the commission may require in writing.

§ 5314.7. Surveillance records retention.

(a) A recording of routine activity shall contain a date-and-time reading and shall be retained for not less than 14 days. All activity in the cage and count rooms shall be retained for not less than 21 days. The commission may, in its discretion, order a longer retention period for a particularly identified recording.



(b) A visual or audio recording of detention or questioning of a detained patron or employee shall be provided immediately to the commission upon request. Such recording shall contain a date-and-time reading and shall be labelled with all of the following:

- (1) the date and time the recording was made;
- (2) the identities of the surveillance department employee or employees responsible for the monitoring; and
- (3) the identity of the surveillance department employee who provides such recording media and the time and date of delivery to the commission. Such recording shall be retained for not less than 14 days after the original recording is provided to the commission.

(c) An original recording of a violation of internal controls or criminal activity shall be provided immediately to the commission. A copy of such recording shall be retained for not less than 90 days after the original is provided to the commission. Such recording shall contain a date-and-time reading and be marked with all of the following:

- (1) the date and time the recording was made;
- (2) the identity of the surveillance department employee or employees responsible for the monitoring; and
- (3) the identity of the surveillance department employee who provided to the commission the media from the recorder.

PARTS 5315-17

[Reserved]

PART 5318

Independent Testing Laboratories

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

§ 5318.1. Use of independent testing laboratories.

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

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

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

§ 5318.2. Licensing of independent testing laboratories.

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

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

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

- (1) games and game variations;
- (2) gaming devices and gaming device modifications;
- (3) gaming-associated equipment and gaming-associated equipment modifications;
- (4) cashless-wagering systems and cashless-wagering system modifications;
- (5) inter-casino linked systems and inter-casino linked system modifications;

- (6) mobile-gaming systems and mobile-gaming system modifications;
- (7) interactive-gaming systems and interactive-gaming-system modifications; and
- (8) any other category of testing and certification that the commission may deem appropriate.

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

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

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

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

- (1) shall not have a financial or other interest, direct or otherwise, in a licensed manufacturer, distributor, or operator of any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto;
- (2) shall not participate, consult or otherwise be involved in the design, development, programming or manufacture of any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto;
- (3) shall not have any other interest in or involvement with a licensed manufacturer, distributor or operator of games or gaming devices that could cause the independent testing laboratory to act in a manner that is not impartial; and

The restrictions set forth in paragraphs (1) and (2) of this subdivision do not limit an independent testing laboratory or its owners, managers, supervisory personnel and employees from providing consulting services to a licensed manufacturer, distributor or operator of games or gaming devices, provided that such services do not directly or



indirectly indicate, suggest or imply how to design, develop, program or manufacture a game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any components thereof or modification thereto.

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

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

§ 5318.4. Notification and reporting requirements.

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

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

(2) engages in any transaction with a licensed independent testing laboratory that such manufacturer, distributor or operator is using, has used or intends to use to inspect or certify a game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto, for use by a licensed gaming facility, in which the licensed independent testing laboratory is required to participate, consult or otherwise be involved in the design, development, programming or manufacture of such items. This restriction does not limit a licensed manufacturer, distributor or operator of games or gaming devices from engaging such licensed independent testing laboratory to provide consulting services, provided that such services do not directly or indirectly indicate, suggest or imply how to design, develop, program or manufacture such items.

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

§ 5318.5. Conduct and operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) no independent testing laboratory employee who was employed by, or performed any work for, a licensed manufacturer, distributor or operator of games or gaming devices within one year prior to such person's date of employment with such

independent testing laboratory shall be permitted to inspect or certify any game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system, or any component thereof or modification thereto for use in a licensed gaming facility, with which such person had any involvement whatsoever while employed by such licensed manufacturer, distributor or operator of games or gaming devices.

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

§ 5318.6. Testing and certification results.

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

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

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

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

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

(5) the date the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or modification thereto was submitted to the licensed independent testing laboratory for certification;

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

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

(8) the part and version number or numbers of the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system,



mobile-gaming system or interactive-gaming system or any component thereof or modification thereto submitted for certification;

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

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

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

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

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

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

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

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

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

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

(c) The commission may add, modify or remove conditions following the initial gaming device approval as necessary to ensure the integrity of the game, gaming device, gaming-associated equipment, cashless-wagering system, inter-casino linked system, mobile-gaming system or interactive-gaming system or any component thereof or



modification thereto and the effective administration of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law.

PARTS 5319-24

[Reserved]

PART 5325

Problem Gambling Prevention and Outreach

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

§ 5325.1. Purpose, scope and applicability.

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

§ 5325.2. Problem gambling plan.

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

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

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



- (iii) procedures for compliance with the self-exclusion program set forth in Part 5326 of this Subchapter;
 - (iv) procedures to identify patrons and employees exhibiting suspected or known problem gambling behavior;
 - (v) procedures to limit or prevent loyalty and other rewards and marketing programs for patrons exhibiting suspected or known problem gambling behavior;
 - (vi) procedures for providing information to individuals and responding to patron/employee requests for information in regard to the self-exclusion program and any community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat or monitor problem gamblers and to counsel family members;
 - (vii) the provision of printed material to educate patrons and employees about problem gambling and to inform them about the self-exclusion program set forth in Part 5326 of this Subchapter and treatment services available to problem gamblers and their families. The gaming facility licensee shall provide examples of the materials to be used as part of its problem gambling plan, including brochures and other printed material and a description of how the material will be disseminated;
 - (viii) advertising and other marketing and outreach to educate the general public about problem gambling and the self-exclusion program set forth in Part 5326 of this Subchapter;
 - (ix) an employee training program as set forth in section 5325.3 of this Part, including sample training materials to be used and a plan for periodic reinforcement training and a certification process established by the gaming facility applicant to verify that each employee has completed the training required by the plan;
 - (x) procedures to prevent underage gambling;
 - (xi) procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling; and
 - (xii) a signage plan containing information on gambling treatment and on the self-exclusion program set forth in Part 5326 of this Subchapter. The gaming facility licensee shall provide examples of the language and graphics to be used on the signs as part of the problem gambling plan. Additionally, the signage plan shall include posting of signs on appropriate languages other than English, depending upon the patron demographics in a facility.
- (4) a list of community, public and private treatment services, gamblers anonymous programs and similar treatment therapy programs designed to prevent, treat, or



monitor problem gamblers and to counsel family members and procedures for making such list available upon request; and

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

(c) Each gaming facility licensee shall submit to the commission for review and approval any amendments to such gaming facility licensee's problem gambling plan at least 30 days prior to the intended implementation of such amendment. The gaming facility licensee may implement a proposed amendment on the 30th calendar day following the filing of such amendment with the commission, unless the commission provides notice pursuant to subdivision (d) of this section objecting to such amendment.

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

(1) specify the nature of the objection and, when possible, an acceptable alternative; and

(2) direct that such amendment not be implemented.

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

§ 5325.3. Employee training program.

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

(1) characteristics and symptoms of problem gambling behavior;

(2) the relationship of problem gambling to other addictive behavior;

(3) techniques to be used when problem gambling is suspected or identified;

(4) techniques to be used to discuss problem gambling with patrons and advise patrons in regard to community, public and private treatment services;

(5) procedures designed to prevent serving alcohol to visibly intoxicated patrons;

(6) procedures designed to prevent persons from gambling after having been determined to be visibly intoxicated;



- (7) procedures for the dissemination of written materials to patrons explaining the self-exclusion program as set forth in Part 5326 of this Subchapter;
 - (8) procedures for removing an excluded person, as defined in section 5300.1 of this Subchapter, an underage individual or a person on the self-exclusion list from a gaming facility, including, if necessary, procedures that include obtaining the assistance of appropriate law enforcement personnel;
 - (9) procedures to prevent an excluded person or a person on the self-exclusion list from being mailed any advertisement, promotion or other target mailing as soon as practicable after receiving notice from the commission that the person has been placed on the excluded person or self-exclusion list;
 - (10) procedures to prevent an individual under 21 years of age from receiving any advertisement, promotion or other target mailing;
 - (11) procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from directly accessing or receiving complimentary services, or other like benefits; and
 - (12) procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from cashing checks or vouchers that require ID on gaming facility premises.
- (b) Training and training materials shall be reviewed annually to be updated, if applicable, to include new or revised information on responsible and problem gambling or empirical research.
 - (c) Training for employees shall be conducted by a person with specialized knowledge, skill, training and experience in responsible gaming training programs as part of the employee's orientation.
 - (d) Employees who have received training shall be acknowledged by the gaming facility licensee upon completion of training.
 - (e) Employees are required to receive periodic reinforcement training at no less than once every 12 months, starting with the year following the year in which the employee was hired. The gaming facility licensee shall retain a record of the date of the reinforcement trainings.
 - (f) Employees shall report suspected or identified problem gamblers to a designated casino key employee or other designated supervisory employee.
 - (g) Gaming facility licensees may collaborate with a person with specialized knowledge, skill, training and experience in responsible gaming employee training programs to develop an in-house or Internet-based employee training program to provide the training and reinforcement training required under this Part.



§ 5325.4. Reports.

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

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

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

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

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

(4) additional information including:

(i) the number of underage individuals who were denied access to the gaming floor;

(ii) the number of self-excluded individuals who were discovered on the gaming floor at the gaming facility;

(iii) the number of signs within the gaming facility that contain the approved problem gambling statement and helpline number; and

(iv) a summary of any additional employee training, problem gambling related conferences or problem gambling awareness events conducted by the gaming facility licensee or in which employees of the gaming facility licensee participated.

§ 5325.5. Signage.

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

(a) within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by the commission;



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

§ 5325.6. Advertising.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

PART 5326

Self-Exclusion

Section

- 5326.1 Request for self-exclusion
- 5326.2 Self-exclusion list
- 5326.3 Duties of gaming facility licensees
- 5326.4 Removal from self-exclusion list
- 5326.5 Exceptions for individuals on the self-exclusion list
- 5326.6 Disclosure of information related to persons on the self-exclusion list



§ 5326.1. Request for self-exclusion.

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

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

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

(1) name, including any aliases or nicknames;

(2) date of birth;

(3) address of current residence;

(4) telephone number;

(5) social security number, when voluntarily provided in accordance with section seven of the Privacy Act of 1974 (5 U.S.C. § 552a) or Article 6-A of the N.Y. Public Officers Law (Personal Privacy Protection Law);

(6) height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person; and

(7) a copy of a current government-issued photo identification such as a driver’s license or passport.

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

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

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



- (1) one year;
- (2) five years; or
- (3) lifetime.

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

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

- (i) the processing or enforcement of the self-exclusion request;
- (ii) the failure of a gaming facility licensee to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person;
- (iii) permitting a self-excluded person to engage in gaming activity in a gaming facility while on the list of self-excluded persons; and
- (iv) disclosure of the information contained in the self-exclusion request or list, except for a willfully unlawful disclosure of such information; and

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

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

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



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

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

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

§ 5326.2. Self-exclusion list.

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

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

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

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



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

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

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

§ 5326.3. Duties of gaming facility licensees.

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

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

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

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

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

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

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

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



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

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

(1) specify the nature of the objection and, when possible, an acceptable alternative;
and

(2) direct that the amendments not be implemented until approved by the commission.

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

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

§ 5326.4. Removal from self-exclusion list.

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

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

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

(a) the individual is carrying out the duties of employment or incidental activities related to employment;



(b) the gaming facility licensee's security department has received prior notice, unless it was impracticable to have done so;

(c) access to the gaming floor or areas off the gaming floor where gaming activity is conducted is limited to the time necessary to complete the individual's assigned duties; and

(d) the individual does not otherwise engage in gaming activities.

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

(a) Information furnished to or obtained by the commission pursuant to this Part shall be deemed confidential and not be disclosed as disclosure would constitute an unwarranted invasion of personal privacy under the provisions of the Public Officers Law section 89(2);

(b) The commission may periodically release to the public demographics and general information in regard to the self-exclusion list, such as the total number of persons on the list, gender breakdown and age range.

(c) The commission may make selected data available, upon request, for the limited purpose of assisting in the proper administration of responsible gaming programs.