

Rob: New York State Racing, Pari-Mutuel Wagering and Breeding Law Section 102 provides the New York State Gaming Commission shall consist of seven members appointed by the Governor by and with the advice and consent of the Senate. Four members being confirmed by the New York State Senate are necessary to afford the Commission an ability to establish quorum and undertake action. This present meeting of the Gaming Commission is now called to order. Ms. Secretary, will you please call the role?

Ms. Secretary: John Crotty.

John Crotty: Here.

Ms. Secretary: Peter Moschetti.

Peter Moschetti: Here.

Ms. Secretary: John Poklemba.

John Poklemba: Here.

Ms. Secretary: Barry Sample.

Barry Sample: Here.

Ms. Secretary: Jerry Skurnik.

Jerry Skurnik: Here.

Ms. Secretary: Todd Snyder.

Rob: Mr. Snyder has indicated that he was conflicted with today's meeting date and thus, cannot attend. Ms. Secretary, will we please have the record reflect that a quorum of qualified members is present; thus, enabling the transaction of business?

Chairman Sample is recovering from illness today and has requested that Commissioner Poklemba preside over today's meeting. Unless there is an objection, Commissioner Poklemba.

Comm. Poklemba: Thank you, Rob. Minutes of the Commission meeting conducted on January 28, 2019 have been provided to the members in advance. At this time, I'd like to ask the members if there are any edits, corrections, or amendments. Hearing none, Ms. Secretary, please let the record reflect that the minutes were accepted.

Next, we'll move to rulemaking. New York State Racing Pari-Mutuel Wagering and Breeding Law Section 104.19 authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. In that regard, the Commission will, from time to time, promulgate rules and rule amendments pursuant to the State Administrative Procedure Act.

Today, we have four items for consideration. Rob, will you please outline the first item?

Rob:

Certainly. For Commission consideration is the adoption of proposed consolidated and amended regulations for self-exclusion from gaming activities. Recall that the Commission previously authorized a version of these rules, which never advanced through the rule-making process before staff sought to expand the proposal. We note that three comments were received before a public comment period for that proposal was formally initiated.

As you may also recollect, there are different self-exclusion rules applying to different forms of gaming in New York. This proposal would centralize Commission self-exclusion policies and make self-exclusion universal through the various forms of gaming Statewide rather than limit it to one form of gambling or another.

Two comments were received – one from the New York Racing Association, Inc., and the other from Churchill Downs Technology Initiatives Company; an advance deposit wagering operator that is licensed to offer pari-mutuel wagering in New York on horseraces. Churchill Downs Technology advocated that keeping the current self-exclusion regime in place. Churchill Downs Technology Stated that they wished to maintain their own self-exclusion list and did not want to share the names of self-excluded patrons. Churchill Downs Technology also asserted that the proposal was required – that the proposal to require multi-jurisdictional account wagering providers to permit customers to place betting limits, as New York tracks and off-track betting corporations are currently required to do, would be unduly burdensome and different from how Churchill Downs Technology presently operates. Staff believes the effectiveness of the program would be diminished if a New York resident could self-exclude from one platform and not be barred from others.

The NYRA comment, which was not timely submitted, indicated that they were in agreement with the purpose of the rulemaking but sought clarification regarding one provision. Specifically, NYRA had noted that they maintain many promotional email lists targeted to customers and potential customers. Historically, when individuals sign up for these emails, many fail to provide complete identifying information.

Accordingly, NYRA raised concern that it would be difficult to ensure that all self-excluded individuals do not receive promotional emails. NYRA was also concerned that despite best efforts, a self-excluded person might receive a targeted advertisement.

The NYRA comment also noted the difficulty – hold on a second here. I’m skipping something here.

With respect to the comments received for the incomplete rulemaking, comments were received from Rivers Casino in Schenectady and a collective representing all State off-track betting corporations. Rivers asked that the Commission administer the intake of requests for self-exclusion rather than facility staff. Staff believes that the effectiveness of the program would be best served by having the flexibility to require facility staff perform the necessary intake procedures. The proposal before you right now – before the commissioners – does not incorporate this earlier Rivers request.

The off-track betting corporations collectively wrote twice; the first, requesting that the Commission not promptly implement the Statewide self-exclusion policy so they could consider how to best implement the new procedures, and the second with more specific concerns. The OTBs had asked that each OTB be considered as a single facility so that branch offices would not need to have trained staff, that out-of-State advance deposit wagering providers be subject to the same requirements as in-State providers, that the provision requiring a self-excluding person to be advised they may be subject to arrest for trespassing, provide an exception for restaurants that partner with OTBs, and whether the confidentiality provisions in the rule conflict with the need for facilities to have access to a Statewide list.

The OTBs also noted that onsite training of employees would be costly and questioned, “Who would provide the training materials?” and that requiring a notarized self-exclusion form might discourage participation. They also questioned whether self-excluded individuals could withdraw funds from their account wagering accounts.

Finally, the OTBs suggested that self-excluding patrons should remain on the list until they affirmatively request removal at the end of the limited time period for which they selected. Staff believes that each of the OTB concerns were either addressed adequately or should not be embraced.

With respect to which party would undertake exclusion, staff believes to maximize the effectiveness of the Statewide program, each facility should handle intake of self-excluded persons. Under existing rules, each OTB facility now handles OTB-specific exclusions. The extension of the

exclusion Statewide would not impose any materially different burden on OTB staff.

As to whether self-exclusion forms should be notarized, staff believes that notarization is an important protection to ensure that the proper person be excluded. The regulatory requirement to notify a self-excluding person of the potential for trespass culpability is a protection to ensure that the person understands the decision's potential consequences.

As for the training material, the proposed rules contemplate facilities develop their own materials and submit them to the Commission for review and approval. There is no requirement that training be conducted onsite.

With respect to confidentiality, such provisions are intended to ensure that public disclosure of excluded persons, which could inhibit participation in the program, is prohibited.

To enforce the exclusion program, all entities must, by necessity, have access to the names and identities of individuals on the self-exclusion list. The Commission will maintain the Statewide list, aggregating intake/input from the various covered gaming operators.

Concerning the exclusion timeframe, staff notes that the exclusion remains only for so long that the person has agreed. If the person intended to agree to a longer-term of exclusion, the person has such options at the time of entering the exclusion program.

Finally, as to advance deposit wagering, customers would be able to withdraw the amounts in their accounts at the time of their self-exclusion and the new proposed rules do apply to the multi-jurisdictional licensees.

Staff recommends that the Commission adopt these proposed rulemaking.

Rob: Commissioners, any questions on the adoption of the proposed self-exclusion and casino advertising rule?

Unidentified Male: None.

Rob: Hearing none, may I have a motion to adopt this rule?

Unidentified Male: So moved.

Unidentified Male: Second.

Rob: Any discussion on the motion? All in favor?

Multiple speakers: Aye.

Rob: The motion carries. I do want to note that March is National Problem Gambling Awareness Month; thus, the adoption of this rule is timely. Next item?

Unidentified Male: For Commission consideration is adoption of regulations to authorize courier services as a new category of lottery licensing. A licensed courier would take requests from a registered, age-verified individual within the State through a computer or mobile device to purchase lottery-drawn game tickets and then, purchase requested tickets from a licensed New York Lottery sales agent as the customer's agent. A licensed courier would also be able to validate and deliver certain winning tickets to the customer.

Four comments were received; one each from the New York Association of Convenience Stores, the New York State Association of Service Stations and Repair Stations, NJ Lotto, LLC, and Jackpocket, Inc. The New York Association of Convenience Stores – or NYACS, as the organization is more commonly referred – expressed significant concern. NYACS questioned the Commission's statutory authorization and effective of the proposed age identification process, cannibalization concerns, and suggested that the proposed rulemaking was bringing the lottery into uncharted areas regarding fees, tickets, licensing standards, and various miscellaneous issues.

With respect to the Commission's statutory authorization, New York Tax Law Section 1604, which defines the powers and duties of the lottery division, is extraordinarily broad. The provisions afford the division the power and duty to operate and administer the lottery within the State and to promulgate rules and regulations concerning the establishment and operation thereof.

Tax Law Section 1605E authorizes the Commission to license a wide variety of entities beyond lottery sales agents.

And to the efficacy of the proposed age identification process, staff believes that the current age verification technology is sufficient to confirm the patron's age. Staff notes that age verification technology is presently used in a variety of Commission-regulated contexts, including the lottery subscription program, horseracing advance deposit wagering, and although not gambling, interactive fantasy sports activity. The proposed regulation will also allow the Commission to require use of industry standards as such standards evolve.

NYACS noted that there was no provision in the law for a criminal

penalty for a lottery courier transacting with a minor. Well, Tax Law Section 1610 provides that the sale or offer of a lottery ticket to a minor by a lottery sales agent is a misdemeanor. This, NYACS characterized, results in a double standard. While the Commission lacks criminal jurisdiction, we note that there are a variety of legal theories under which criminal culpability could attach to a courier that knowingly or willfully permits the underage purchase of lottery tickets. Staff also notes that under such a situation, the courier would be subject to license suspension and revocation.

As to the issue of sales cannibalization, staff notes that the courier must purchase a lottery ticket from a licensed lottery sales agent; thus, by definition, there can be no diminished aggregate sales. Given that the courier model is designed to appeal to a potential customer base that prefers to purchase goods and services through nontraditional means and those not currently purchasing lottery products in person at a sales agent, staff anticipates sales will be incremental.

Finally, NYACS also suggested that the proposed rulemaking was bringing the lottery into uncharted areas regarding fees, tickets, licensing standards, and various miscellaneous issues.

As for the online sales, staff notes that the proposed regulations do not authorize the online sale of lottery products.

As for issues relative to digital tickets, staff notes that the proposed regulations do not authorize the online sale of lottery products and that the proposed definition of a lottery ticket was amended to be consistent with how the lottery represents purchase tickets and the lottery subscription program, and is consistent with State Tax Law Section 1609A, which provides that lottery tickets are to be in such a form as the Commission directs.

NYACS also objected to the proposed regulation allowing a courier service to charge a convenience charge to customers. NYACS argued that the extra fee is not authorized by statute and would constitute a reselling of the purchased lottery ticket at an increased face value. Staff notes that the proposed regulations made clear that a licensed courier would be acting as the agent of their patrons and that the courier's fee was required to be reasonable as a protection to the customer and to the public perception of the lottery.

As to new licensing standards, NYACS questioned why the regulations do not require a courier service to demonstrate its ability to increase lottery sales as sales agent licensees must do. As detailed, licensed couriers and licensed sales agents perform different functions. Thus, the premise that

the license standard should be identical is not justified. The proposed courier regulations require a wide variety of submissions that are not applicable to sales agents such as the submission and review of business plans, financial controls, technical standards, and internal controls. Staff does, however, note that licensed couriers would be subject to the same grounds for license suspension as sales agents.

As to the miscellaneous concerns, NYACS questioned whether the courier services would be subject to State and local sales taxes. Suggested that couriers be required to indemnify sales agents from whom they purchase lottery tickets in addition to indemnifying the State. Also, questioned whether couriers should be permitted to present multiple smaller winnings, questioned whether the statutory prohibition on this lottery sales agent from engaging in a business as lottery sales agents would apply to courier services, as well.

With respect to the courier services being subject to State and local sales taxes, staff notes that New York State Division of Taxation and Finance Tax Bulletin ST-838 Shipping and Delivery Charges provides that if the product or service being sold is not taxable, any charge to the customer for shipping or delivery is also not taxable.

As to agent indemnification, staff notes that the proposed indemnification requirement was designed to mitigate potential defense costs or liability to the State associated with the acts or omissions of the licensed courier in regard to their relationship with their customers. In short, the State wishes to ensure that it not be held responsible to potential lottery customers for the actions or inactions of the licensed courier service and the performance of the courier service's obligations to the courier customers. Staff notes that there is no similar risk for a licensed sales agent because the sales agent's only interaction with a lottery courier would involve the lottery courier's purchase of lottery tickets.

With respect to the inquiry regarding whether couriers should be permitted to present multiple smaller winning tickets, staff notes that the \$600 price payment threshold was established to enable the Commission to enforce offset provisions in the New York Tax Law and to enforce IRS revenue code. A prizewinner must submit identification information to a lottery representative directly in order to enable the Commission to enforce those laws. Further, any licensed sales agent has the option of referring a customer to the nearest lottery customer service center to process prizewinner transactions if an unreasonable amount of cash is required for lottery price payouts.

Finally, NYACS questioned about whether the statutory prohibition on the lottery sales agent from engaging in a business exclusively as a lottery

sales agent would apply to couriers. Staff notes that a licensed courier service would not be subject to that statutory provision as the lottery courier is not a licensed lottery sales agent and thus, would not be engaging in business exclusively as a sales agent.

The New York State Association of Service Stations and Repair Shops also expressed several concerns. Specifically, service stations questioned the Commission's statutory authorization, the efficacy of the age identification process, and whether the language regarding tickets was to take a step towards online sales. Most of those issues raised by the service stations were also addressed in the context of discussion relative to NYACS earlier. While the proposed language regarding tickets was not intended to take a step forward towards online sales, staff would like to remind the interested parties that in the 2005 case, *Dalton v Pataki*, the Court of Appeals found that transactions which involved electronic lottery tickets qualified as the purchase of tickets and wrote that, "It is of no constitutional significance that the tickets are electronic instead of paper. The particular methods of conducting a lottery are subject to change over time."

NJ Lotto, Inc., an entity not to be confused with the New York or New Jersey Lottery, also submitted comments suggested various revisions to the proposed regulations. First, NJ Lotto suggested that a provision be established – or a provision establishing that a licensed courier service is the merchant of record for the lottery was appropriate. Staff believes that this suggestion misunderstands the contemplated role of a courier service. Under Commission theory, a courier service would not be the merchant for the lottery. Rather, the courier service would provide a service to lottery customers on behalf of such customers, not on behalf of the New York Lottery. Therefore, the suggested amendment would be inappropriate.

NJ Lotto also suggested that the regulations eliminate a provision that allows daily courier customer request limits to be set by the Commission since there is no such purchase limit on in-person sales. NJ Lotto did, however, support a provision that requires a courier service to include a feature that allows a customer to establish a daily request limit. Staff believes that given this new form of purchase, the establishment of a limit is an appropriate control for responsible play.

NJ Lotto also suggested that the proposed regulation requiring that courier service maintain insurance to the Commission's satisfaction be modified and limited to specific policies. Staff believes that the flexibility to determine the appropriate insurance types and limits as needs and circumstances dictate is appropriate and better protects the State and interested parties.

With respect to the proposal regarding the requirement for network, NJ Lotto suggested language changes to clarify that a customer must be located in New York when the actual ticket is purchase and not at the time the request is fulfilled. Staff agrees that a clarifying amendment would improve the rule and notes that the change does not constitute a material change to the proposal that would necessitate a revised rule – proposed rulemaking.

NJ Lotto also expressed concern that the proposed regulations be a GL location requirement. Staff believes they misunderstand the intent of the language. The GL location requirement is designed to provide another option for a customer to purchase tickets when the deadline has passed to request a ticket through courier services. The regulations provide for a cutoff time after which requests for courier services for a drawing may not be made. The cutoff requirement is designed to manage expectations for the requesting customer by establishing a time period between the request and the actual drawing for the fulfilling of the ticket purchase and processing. When the courier cutoff time passes, there may still be time for the potential lottery customer to visit a licensed lottery sales agent and make the purchase directly. The proposed regulation requires the licensed courier to provide the potential lottery customer with a location of nearby licensed lottery sales agent. This requirement would benefit potential lottery customers and licensed lottery sales agents.

NJ Lotto also objected to the proposed requirement that a courier service notify customers of a winning ticket of the amount of the prize within one hour of the Commission's publication of the winning numbers and prize amounts. NJ Lotto argued that the one-hour time is insufficient to verify the information and provide notification as New Jersey regulations require notification simply to be within 24 hours. Staff consulted with several potential courier licensees when developing the proposed regulations and received no objections to the one-hour notification requirement; therefore, we believe that the notification is feasible within that timeframe.

NJ Lotto also suggested that the Commission eliminate a cash payment option, indicating that there are safety risks associated with the transport of cash. Staff notes that the proposed regulations do not impose a requirement for a lottery courier service to transport cash to a customer and believes that a lottery customer should have the option of obtaining their lower-level prizes and cash from the courier service if that's their preference.

NJ Lotto also suggested a proposed regulation regarding service charges be limited per request rather than per ticket was unreasonable given the duties required of the courier to satisfy the request. Staff believes that a

per-ticket charge would imply the resale of a lottery ticket at a prize other than its face value, which is prohibited by Tax Law Section 1609A and Commission Rule 5001.29A. Staff believes the fees for courier services should be separated from a per-ticket price to comply with existing law.

Finally, staff also notes that NJ Lotto suggested numerous wording and phrasing changes. Staff disagreed that such changes were appropriate or necessary.

The Commission also received a comment from Jackpocket, Inc., the potential lottery courier licensee. Jackpocket fully supported the proposed regulation. Staff recommends that the Commission adopt this proposed rulemaking with the non-substantive technical amendments discussed and set forth in the materials within your packet.

Unidentified Male: Commissioners, any questions on the adoption of the regulation of courier services?

Unidentified Male: There was one. What happens in the instance where an out-of-state person wants to put a series of lottery bets in on a specific set of numbers and they do, and for some reason, the courier service doesn't place the bet?

Unidentified Male: Well, an out-of-state person wouldn't be able to do that. You have to be in-state in order to place the wager.

Unidentified Male: Okay. Someone who utilized the courier service places the – wants to place a bet on numbers 1, 2, 3, 4, 5, 6 with the Powerball one. It doesn't get placed. What occurs in that instance?

Unidentified Male: Their relationship would be contractual with the lottery service – or courier service.

Ed: And furthermore, the regulations would require the courier service to make explicit to the potential customer that the ticket is not obtained until actually purchased from a licensed lottery sales agent. So, at that point, the customer would only have a request to the courier but not an actual ticket.

Unidentified Male: And there's confirming requirements, aren't there Ed? Relative to when a transaction occurs?

Ed: Yes, yes. So, [interruption] you would get a receipt back from the courier and only when you get that receipt back that the ticket's been purchased would you know that [interruption]...

Unidentified Male: Would it be in effect, okay.

Unidentified Male: And then, the second one is they seem to be arguing back and forth in there about registered agents. How does that work? You know, some industrious person could have both licenses, right? If you grant the license for a courier service, you could also have already been a lottery provider, right?

Unidentified Male: That could be an independent license, that's correct.

Unidentified Male: And what do we think about that?

Unidentified Male: It's open market competition. That would be fair and equitable.

Unidentified Male: So, they would have both.

Unidentified Male: Sure could.

Unidentified Male: Yeah.

Unidentified Male: Correct.

Unidentified Male: They would have to satisfy the standard, the normal standards that [interruption]...

Unidentified Male: For licensing.

Unidentified Male: ... for a lottery sales agent licensing, right.

Unidentified Male: Okay.

Unidentified Male: Any other questions? May I have a motion to adopt this rule?

Unidentified Male: So moved.

Unidentified Male: Second?

Multiple speakers: Second.

Unidentified Male: Any other discussion on the motion? All in favor?

Multiple speakers: Aye.

Unidentified Male: The motion carries. Next item?

Rob: For Commission consideration is the adoption of revised proposed rules for gaming facility fees and payments. The new proposed rule addresses procedures for the annual license fees for machines and tables, procedures

about transmitting payments to the Commission, rules for overdue payments, rules for regulatory investigative fees and costs, rules for regulation – or regulatory cost assessment – and procedures for the distribution of taxes to counties.

Recall that the initial proposed rulemaking was published in September, 2018. During that public comment period, two comments were received that resulted in substantive changes to the proposal, necessitating a revised proposed rulemaking and corresponding additional public comment period. The new public comment period expired on March 4 of this year. Only one public comment from that period was received.

Rivers Casino in Schenectady did not comment regarding specific rule language but rather responded to the Commission’s assessment of comment language published in the September 19 State Registrar. There, the Commission noted that the regulatory costs contemplated by the proposed rule were not those covered by the \$1,000,000 investigative fee required by the New York Racing, Pari-Mutuel Wagering and Breeding Law Section 1316.8.

Rivers’ present comment observed that in addition to the \$1,000,000 initial investigative fee, they also paid \$50,000,000 in a license fee to further defray the costs of processing and investigation. Rivers observed that to charge additional money for investigations would be inappropriate. Staff disagrees, noting that the language of the proposed rule is intended to provide a mechanism to recover regulatory costs incurred prior to the opening of the facilities. Staff also notes that the \$50,000,000 license fee referenced was collected for the privilege of conducting casino gambling and was distributed long ago in accordance with the requirements of State Finance Law Section 97NNNN. The regulatory costs contemplated by the proposal are not costs already covered by Statute of Regulation. Staff recommends that the Commission adopt the revised proposed rulemaking.

Unidentified Male: Thank you, Rob. Commissioners, any questions on the adoption of revised proposed rules for gaming facility fees and payments? Hearing none, may I have a motion to adopt this rule?

Unidentified Male: So moved.

Unidentified Male: Second?

Unidentified Male: Second.

Unidentified Male: All in favor?

Multiple speakers: Aye.

Unidentified Male: The motion carries. Next item?

Rob: For Commission consideration is the adoption of a rule that sets for standards for housing maintained on the grounds of certain racetracks. The proposed rule would provide, among other things, standards for building and residential rooms, sanitary, water, garbage removal and pest control, and is generally modeled after the New York Department of Health's Migrant Farm Worker Housing regulations.

As previously mentioned when the rule was first proposed, staff from the New York State Department of Health and the New York State Department of Labor provided significant input in the development and refinement of this proposal. Two comments were received – one from the New York Thoroughbred Horsemen's Association, the other from NYRA. The Horsemen commended the rulemaking proposal and recommended supplementing this proposal with additional provisions, including a requirement that a NYTHA representative be permitted to advocate on behalf of backstretch workers facing revocation of housing privileges; the establishment of a minimum level of personnel charged with overseeing housing; the prohibition of smoking in backstretch housing; the creation of a streamlined, transparent, and modern system for submitting and tracking housing maintenance requests; and requiring the installation of air conditioning in all sleeping areas. NYTHA indicated that these issues would normally be addressed in a new agreement between the Horsemen's organization and the racetrack. However, as the Federal Interstate Horseracing Act in 1978 exempts NYRA from having to enter into such a contract, NYTHA believes the best manner of address would be through a Commission regulation.

Staff notes that the NYTHA suggestions would supplement the proposed rulemaking and not supplant any of the content and also, best considered in a future rulemaking.

NYRA also provided a comment generally supportive of the rulemaking itself. Staff recommends that the Commission authorize the proposal of this rulemaking.

Unidentified Male: Thanks again, Rob. Commissioners, any questions on the adoption [interruption] of rules to govern standards for backstretch housing and related facilities? Hearing none, may I have a motion to adopt this rule?

Multiple speakers: So moved.

Unidentified Male: Second?

Unidentified Male: Second.

Unidentified Male: Any discussion on the motion?

John: Staff should be complimented for their hard work they did.

Unidentified Male: Thank you, John. All in favor?

Multiple speakers: Aye.

Unidentified Male: Opposed? I'd also like to take this opportunity to thank Chairman Sample for taking the lead in this matter after personally visiting the facilities. And I'd like to add to John's comment about the staff also visiting facilities and doing a great job in putting together these regulations, which were adopted today. On behalf of the whole Commission, I want to thank Rob, Ed, and the rest of the staff for doing a great job here.

Unidentified Male: We appreciate that, thank you.

Unidentified Male: Next item?

Rob: Next item on the agenda regards two commercial casino licensees – Montreign Operating Company, LLC, doing business as Resorts World Catskills, submitted a written petition on February 14, 2019 seeking to reduce the number of their operational slot assets below the minimum detailed with an Exhibit 1 of their gaming facility license. While the request also seeks a reduction in the number of table game assets, that request does not implicate their gaming facility license number. The stated purpose of this petition is to remove underperforming slot and table game assets and maximize the efficiency of asset utilization and patron opportunity without negative effects on the patron experience, facility employment, or State revenue.

An evaluation of the request was undertaken by the Division of Gaming, which considered the effect of the petitioned levels on capital investment made, facility employment, and revenues to the State. They also considered the enhancing of facility stability, the elimination of inefficiencies, reduction in operating expenses, and the potential effect on the patron experience. Staff found that the capital investment made exceeded that which was required, that slot utilization data illustrated an overabundance of slot assets exposed for play, that proposed reduction of slot assets would have no negative impact on State gaming tax revenues, and that there would be no negative impact on the employment levels.

Accordingly, staff recommends approval of an amended gaming facility license Exhibit 1, Item 5, to reflect the requested minimum slot assets of

1,600, tables of 102, and poker tables of 16; conditioned on the monthly submission of various written reports detailing, among other things, the results of the proposed floor amendments and that such reports list relevant data including slot utilization percentages, win-per-unit-per-day, and changes in measurable efficiencies gained as a result of the proposed floor amendment.

If approved, staff also seeks authority to conform the operating certificate issued to Montreign Operating Company to the new license conditions.

Unidentified Male: Commissioners, any questions on the consideration of gambling facility license amendment for Montreign Operating Company, LLC, as outlined by Mr. Williams? Hearing none, may I have a motion to approve the license amendment as proposed and to conform the operating certificate to such amendment?

Unidentified Male: So moved.

Unidentified Male: Second?

Unidentified Male: Second.

Unidentified Male: Any discussion on the motion? All in favor?

Multiple speakers: Aye.

Unidentified Male: The motion carries. Next items?

Rob: Tioga Downs Racetrack, LLC, doing business as Tioga Downs Casino Racing and Entertainment submitted a written petition on March 6, 2019 seeking to reduce the number of their operational slot and table assets below the minimum number detailed within Exhibit 1 of their gaming facility license.

The stated purpose of the petition was to remove underperforming slot and table game assets and maximize the efficiency of asset utilization and patron opportunity without negative effects on the patron experience, facility employment, or state revenue. And evaluation of this request was also undertaken by the Division of Gaming, which considered the effect of the petition levels on capital investment made, facility employment, and revenues to the State. Additional considerations of enhancing facility stability, eliminating inefficiencies, reducing operating expenses, and the potential impact on the patron experience were also undertaken. Staff found that the capital investment to meet that required, that the slot utilization data illustrated an overabundance of slot assets exposed for play and that the proposed reduction of slot assets would have no negative

impact on State Gaming Tax revenue. And that there would be similarly no negative impact on the employment levels.

Staff similarly found an overabundance of table assets exposed for play and holds that an asset reduction would likewise have no effect on State revenue or facility employment.

Accordingly, staff recommends approval of an amended gaming facility license Exhibit 1, Item 5, to reflect the requested minimum slot assets of 892 and table assets of 34, conditioned on the monthly submission of various written reports detailing, among other things, the results of the proposed floor amendments and that such reports list relevant data including slot utilization percentages, win per unit per day, and changes in measurable efficiencies gained as a result of the proposed floor amendment.

If approved, staff also seeks authority to conform the operating certificate issued to Tioga Downs Racetrack, LLC, to the new license conditions.

Unidentified Male: Commissioners, any questions on the consideration of facility license amendment for Tioga Downs Racetrack, LLC, as outlined by Mr. Williams? Hearing none, may I have a motion to approve the license amendment as proposed and to conform the operating certificate to such amendment?

Unidentified Male: So moved.

Unidentified Male: Second?

Unidentified Male: Second.

Unidentified Male: All in favor?

Multiple speakers: Aye.

Unidentified Male: Opposed? The motion carries. Next item?

Rob: Next item on business schedule regards adjudications and today we have two for consideration. On April 23, 2018, the Bureau of Licensing denied the application of Carl F. Conti, Jr. for a license to participate in harness racing as a trainer-driver citing New York Racing, Pari-Mutuel Wagering and Breeding Law Sections 309.2 and 910 and Commission Rule 4101.24. Section 309.2 sets for the standard of character and general fitness such as the participation of the person in harness horserace meets will be consistent with the public interest, convenience and necessity, and with the best interest of racing, generally. While Section 910 provides all license

denial suspensions and revocations imposed by the pertinent racing and gambling authorities of the other jurisdictions shall be recognized and enforced by the Commission unless the applicant shows cause as to why such penalty should not be enforced against the applicant in the state.

Mr. Conti's New Jersey licenses were revoked permanently in 2003 upon a finding there of five blood gas drug violations within a four-and-a-half year period between 1997 and 2001. Mr. Conti requests that a hearing, which was conducted on September 28, 2018, the hearing officer submitted a report to the Commission Secretary recommending that the Commission's license denial be upheld. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Officers Law Section 108.1.

Unidentified Male: Thank you, Rob. The Commission duly deliberated and considered this matter and determined, upon a vote of 5 to 0, to sustain the hearing officer's report and recommends. Next item?

Rob: On July 10, 2018, the Bureau of Licensing denied the application of Philip Pappas for a gaming employee registration as a gaming tables – table game dealer at Rivers Casino in Schenectady, citing New York Racing, Pari-Mutuel Wagering and Breeding Law Sections 1318.1A and 1318.1C, which provide that the applicant must prove qualification by clear and convincing evidence and disqualification on the grounds of the conviction of an applicant of any offense in any jurisdiction, which is, or would be, a felony or other crime involving public integrity, embezzlement, theft, fraud, or perjury.

Mr. Pappas requested a hearing, which was conducted on November 20, 2018. The hearing officer submitted a report to the Commission's Secretary recommending that the Commission's registration denial be upheld. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Officers Law Section 108.1.

Unidentified Male: The Commission duly deliberated and considered this matter and determined upon a vote of 5 to 0 to sustain the hearing officer's report and recommendation.

Next is old business. Does anyone have any additional old business to consider? Hearing none, we'll move onto new business. Although we have no items scheduled as new business, does anyone have any other new business to consider?

John Crotty: There is one item I'd like to bring up.

Unidentified Male: Commissioner Crotty.

John Crotty: California, over the last hundred days or so, has had a problem at Santa Anita where they had a number of equine fatalities – 22, I think, in the end. Is that the number, Rob? I think it was 22 in a relatively short period of time. In reaction to that, amongst other things, the head of the Stronach Group, or the Santa Anita Stronach Group, Belinda Stronach, along with the horse owners, put out a series of proposals and recommendations they're looking to implement at their tracks.

It would make sense for the New York State Gaming Commission to look at the number of proposals she put out to determine – or that they put out – to determine which of these we are currently doing, which of these we are not doing, and what makes sense to look at as an overall regulatory scheme.

Unidentified Male: Thank you, Commissioner Crotty. Mr. Williams?

Mr. Williams: We can do that. We'll certainly do that.

John Crotty: Okay, great. We'll look forward to seeing what that looks like.

Unidentified Male: Thank you, Commissioner Crotty. Any other new items that anyone wishes to discuss? The last item would be our next meeting, which would've been on April 22, 2019 but due to some conflicts, we're proposing that we move to April 29. So, if you can just let the Commission staff know of your availability, appreciate it.

If there's nothing else, then, the meeting...

[END OF AUDIO]