



November 4, 2013 Meeting Book

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

## **Agenda**

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

**November 4, 2013 at 1:00 pm Schenectady, New York**

1. Call to Order
2. Approval of Commission Meeting Minutes for September 9, 2013
3. Report of Acting Executive Director
4. Rulemaking
  - a. Permanent adoption on Plasma Testing for Anabolic Steroid Rule
  - b. Permanent adoption on VLT Advertising
  - c. Proposed Rulemaking for Regulation of Shock Wave and Similar Therapies
  - d. Proposed Rulemaking for Thoroughbred Equine Drug Thresholds
  - e. Proposed Rulemaking for Harness Equine Drug Thresholds
  - f. Proposed Rulemaking for Account Wagering
  - g. Proposed Rulemaking on Penalties for Underage Gaming
5. Adjudication
  - a. In the Matter of Scott Anderson
  - b. In the Matter of David Cohen
  - c. In the Matter of Pierre Tomas
6. Award following Request for Proposal Market Research Regarding Alternative Approaches for the Future of Lottery in New York State
7. New/Old Business
8. Scheduling of Next Meeting
9. Adjourn

**ITEM 4a**



with the Commission's use of restricted time periods to control equine drugging in racing and is inconsistent with the regulatory scheme in New York. The RMTC also questioned the Commission-proposed threshold values. Several of the Commission's proposed thresholds reflect additional research conducted primarily at the University of Pennsylvania. This research, undertaken after several regulatory bodies suggested the RMTC thresholds required further study, was completed after the RMTC had concluded its research. The proposed thresholds are consistent with those adopted in other states and have been recommended by Dr. George A. Maylin, the longtime Director of the New York's Equine Drug Testing Program and an acknowledged industry expert on equine drug research and testing.

RMTC further recommended the Commission eliminate a reference to a brand name (Equipoise) of one steroid as the manufacturer discontinued the product. Commission staff and Dr. Maylin agree and such change has been incorporated.

Finally, RMTC recommended phasing out any permissive use of stanozolol. [REDACTED]

[REDACTED] The anabolic steroid rule restricts the administration of anabolic steroids to enhance race performance through laboratory testing of race-day samples. Some anabolic steroids are endogenous, so thresholds are required to distinguish the natural presence of these substances (boldenone, nandrolone and testosterone) from wrongful administrations. The fourth substance, stanozolol, persists at low concentration for many months after administration. This drug had been widely used in the past, and to prevent disruption of the racing careers of horses that lawfully had been given this drug, a permissible threshold concentration must be adopted. Given the use of these four steroids has continued to be permitted for the treatment of ill or injured race horses, it is necessary to phase out the use of stanozolol, both in New York and in other racing states, before adopting a "zero tolerance" approach in New York.

A copy of the August 28, 2013 notice in the New York State Register is attached, together with a copy of the RMTC letter and the proposed text of the rule.

attachments

cc: Robert Williams, Acting Executive Director  
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

**Section 4043.15 of 9 NYCRR is amended to read as follows:**

**§ 4043.15. Anabolic steroids.**

(a) [The use of one of four approved a]Anabolic steroids shall [be permitted] not be administered except that the following substances may be administered during permitted time frames and at concentrations that on race day are less than these thresholds [under the following conditions]:

(1) [Not to exceed the following permitted urine or plasma threshold concentrations:]

[ (i) 16 B-hydroxystanozolol (metabolite of stanozolol [Winstrol]) - 1 ng/ml in urine;]

[ (ii) Boldenone [(Equipoise) in male horses other than geldings,]: All horses may have less than 100 pg/ml (including free boldenone and boldenone liberated from its conjugates) [15 ng/ml in urine] in plasma;

(2) [(iii)] Nandrolone; [-]

[ (i) Female horses and geldings may have less than 100 pg/ml in plasma; and

[ (ii) Intact male horses may have less than [1 ng/ml in urine] 500 pg/ml in plasma.

(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.

(4) [(iv)] Testosterone:

[ (a) In geldings - 20 ng/ml in urine; and]

[ (b) In fillies and mares - 55 ng/ml in urine.]

[ (i) Female horses and geldings may have less than 100 pg/ml in plasma; and

[ (ii) Intact male horses may have less than 2,000 pg/ml in plasma.

(5) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

[(2)] (b) Any other anabolic steroids are prohibited to be administered.

[(3)] The presence of more than one of the above four approved anabolic steroids above the approved thresholds is not permitted.]

[(4)] (c) Post-race urine or plasma samples collected from intact males must be identified to the laboratory.

[(5)] (d) Any horse to which a[n] permissible anabolic steroid has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug[ in urine]. Once the concentration is below the designated plasma threshold, the horse is eligible to be removed from the list.

[(b)] (e) A violation of this section shall be considered a positive test within the meaning of this Part.

**Section 4120.12 of 9 NYCRR is amended to read as follows:**

**§ 4120.12. Anabolic steroids.**

(a) [The use of one of four approved a]Anabolic steroids shall [be permitted] not be administered except that the following substances may be administered during permitted time frames and at concentrations that on race day are less than these thresholds [under the following conditions]:

(1) [Not to exceed the following permitted urine or plasma threshold concentrations:]

[(i) 16 B-hydroxystanozolol (metabolite of stanozolol [Winstrol]) - 1 ng/ml in urine;]

[(ii) Boldenone [(Equipoise) in male horses other than geldings,]; All horses may have less than 100 pg/ml (including free boldenone and boldenone liberated from its conjugates) [15 ng/ml in urine] in plasma;

(2) [(iii)] Nandrolone; [-]

[(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

[(ii) Intact male horses may have less than [1 ng/ml in urine] 500 pg/ml in plasma.

(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.

(4) [(iv)] Testosterone:

[(a) In geldings - 20 ng/ml in urine; and]

[(b) In fillies and mares - 55 ng/ml in urine.]

[(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

[(ii) Intact male horses may have less than 2,000 pg/ml in plasma.

(5) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

[(2)] (b) Any other anabolic steroids are prohibited to be administered.

[(3) The presence of more than one of the above four approved anabolic steroids above the approved thresholds is not permitted.]

[(4)] (c) Post-race [urine or] plasma samples collected from intact males must be identified to the laboratory.

[(5)] (d) Any horse to which a[n] permissible anabolic steroid has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug[ in urine]. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

[(b)] (e) A violation of this section shall be considered a positive test within the meaning of this Part.

**Paragraph 9 of Subdivision (e) of Section 4120.2 of 9 NYCRR is amended to read as follows:**

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

\* \* \*

(9) hormones and non-anabolic steroids, [(e.g., [testosterone,] progesterone, estrogens, chorionic gonadotropin, glucocorticoids (e.g., Prednisolone, Depomedrol), [and anabolic steroids (e.g. Equipoise),] except in [conjunction with] joint [aspiration] injections as restricted in subdivision (i) of this section[; the use of anabolic steroids is governed by Rule 4120.12];

**Subdivision (i) of Section 4120.2 of 9 NYCRR is amended to read as follows:**

(i) In addition, a horse that has had a joint [aspirated (in conjunction) injected with a steroid [injection]] may not race for at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race.



**ITEM 4b**

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 24, 2013

**Re:** Rulemaking on Video Lottery Advertising Restrictions in Western New York  
(amendment to 9 NYCRR § 5116.6)

For Commission consideration is the adoption of the proposed rule to conform our rules to the Memorandum of Understanding by and between the Seneca Indian Nation and the State of New York. The Memorandum obliges the Commission to commence a rulemaking to prohibit the use of the terms “slots,” “slot machines,” and “casino” or “casinos” for marketing or other purposes by video lottery gaming device facilities or licensed agents of the State Lottery operating within the area west of State Route 14 from Sodus Point in the north to the New York-Pennsylvania border in the south. The Commission approved the proposal of the rule at its August 1, 2013 meeting.

A representative of the Seneca Nation of Indians submitted the only public comment in regard to the proposed rulemaking. While supportive of the purpose and intent of the proposed regulation, they suggested the text of the rule be revised to clarify that no video lottery agent based outside of the described geographic area could be permitted to market a video gaming facility within the described geographic area using the prohibited terminology. Staff agreed a clarification to address the concern was prudent and revised the proposed rule accordingly. A copy of the August 28, 2013 notice of proposed rulemaking in the New York State Register is attached, together with a copy of the letter from the Seneca Nation of Indians representative, a redline of the revised language and the proposed text of the rule.

[REDACTED]

attachments

cc: Robert Williams, Acting Executive Director  
James Nielsen, Acting Director, Division of Gaming  
Gardner Gurney, Acting Director, Division of Lottery

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

When New Yorkers Play Responsibly, We All Win.

**Redline showing changes to the proposal:**

**§ 5116.6. Advertising.**

(a) Advertising generally.

(1) The content or concept of all advertising and any advertisement shall be provided as prescribed by the commission.

(2) A video lottery gaming agent shall be responsible for all advertising and advertisements that are made by the agents or representatives of such video lottery gaming agent, regardless of whether the video lottery gaming agent participated directly in such advertising's development, preparation, placement or dissemination.

(3) Issuance of a video lottery gaming agent license pursuant to these regulations permits conducting video lottery gaming in a manner approved by the commission. Use of any name, logo or design owned by the commission or the video lottery gaming machine manufacturers without a valid license may constitute a violation of Federal and State copyright and trademark laws. Permitted use of the logo by a licensee must be in compliance with approved guidelines.

(b) Criteria governing advertising.

(1) Approved advertising criteria shall be published from time to time by the commission.

(2) The following practices shall be prohibited with respect to all advertisements:

(i) The use or statement of any information, representation, or description that contrasts or compares video lottery gaming agents or facilities with regard to total payout.

(ii) The failure to maintain any offer for the advertised period of availability or in a quantity sufficient to meet reasonably anticipated demand. Should anticipated demand be exceeded, items of equal or greater value may be substituted on notice to the commission.

(3) No video lottery agent [located] operating within the geographic area defined by:

(i) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York;

(ii) to the north, the border between New York and Canada;

(iii) to the south, the Pennsylvania border with New York; and

(iv) to the west, the border between New York and Canada and the border between Pennsylvania and New York,

is permitted, with respect to operations in such geographic area, to use the terms "slots," "slot machines," and "casino" or "casinos" for marketing or other purposes.

**Proposed text of the rule:**

**Section 5116.6 of Title 9 of the NYCRR is amended as follows:**

**§ 5116.6. Advertising.**

(a) Advertising generally.

(1) The content or concept of all advertising and any advertisement shall be provided as prescribed by the commission.

(2) A video lottery gaming agent shall be responsible for all advertising and advertisements that are made by the agents or representatives of such video lottery gaming agent, regardless of whether the video lottery gaming agent participated directly in such advertising's development, preparation, placement or dissemination.

(3) Issuance of a video lottery gaming agent license pursuant to these regulations permits conducting video lottery gaming in a manner approved by the commission. Use of any name, logo or design owned by the commission or the video lottery gaming machine manufacturers without a valid license may constitute a violation of Federal and State copyright and trademark laws. Permitted use of the logo by a licensee must be in compliance with approved guidelines.

(b) Criteria governing advertising.

(1) Approved advertising criteria shall be published from time to time by the commission.

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(i) The use or statement of any information, representation, or description that contrasts or compares video lottery gaming agents or facilities with regard to total payout.

(ii) The failure to maintain any offer for the advertised period of availability or in a quantity sufficient to meet reasonably anticipated demand. Should anticipated demand be exceeded, items of equal or greater value may be substituted on notice to the commission.

(3) No video lottery agent operating within the geographic area defined by:

(i) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York;

(ii) to the north, the border between New York and Canada;

(iii) to the south, the Pennsylvania border with New York; and

(iv) to the west, the border between New York and Canada and the border between Pennsylvania and New York,

is permitted, with respect to operations in such geographic area, to use the terms "slots," "slot machines," and "casino" or "casinos" for marketing or other purposes.

**ITEM 4c**



Following consideration of an Association of Racing Commissioners International, Inc. (“ARCI”) model rule and solicitation of industry comment, the N.Y.S. Racing and Wagering Board had formally proposed a similar rule in November 2012. Prior to publication as a rule proposal, it was determined that a substantive change was required. The ARCI model rule, as proposed by the Board, required out-of-state veterinarians to use equipment that was pre-approved by their state’s racing commission. There were no such rules, however, in most other racing states. Commission staff proposed a revision of the model rule at the July 2013 ARCI meeting in Saratoga Springs, but such proposal was tabled because of insufficient time at the ARCI Model Rules Committee meeting. The revision, which is included in this proposal, places a horse on the stewards’ list when treated out-of-state in a manner that violates whatever rule might be in place where the treatment was rendered to the horse, in addition to requiring the disclosure of such treatments and forbidding a horse to race or breeze for 10 days. The alternative, to exclude a horse from racing in New York once it had received one of these treatments in a jurisdiction that lacked an approval process, had the potential to reduce horses available to race in New York and penalize horsepersons who stable in a state that may not yet have adopted a permissible treatment regimen.

A copy of the letter seeking pre-proposal industry comment and the racetracks’ responses are attached, together with the text of the proposed new rule.

#### Attachments

cc: Robert Williams, Acting Executive Director  
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

**A new section 4043.14 is added to 9 NYCRR, as follows:**

**§ 4043.14. Restrictions on shock or pulse wave therapy.**

The use of extracorporeal shock wave therapy, radial pulse wave therapy or similar treatments shall not be permitted unless the following conditions are met:

(a) The use of extracorporeal shock wave therapy, radial pulse wave therapy or similar treatments within the State:

(1) is limited to veterinarians licensed to practice by the commission; and

(2) may only be performed with machines that are:

(i) registered with and approved for use by the commission; and

(ii) used at a pre-disclosed location that is approved by the commission.

(b) Any extracorporeal shock wave therapy, radial pulse wave therapy or similar machine, whether in operating condition or not, must be registered with and approved by the commission before such machine is brought onto or possessed on the grounds of a licensed race track.

(c) Trainers shall report all extracorporeal shock wave therapy, radial pulse wave therapy or similar treatments that are administered to horses trained by them, in a form and manner approved by the commission, no later than the day after the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. A horse that is so treated shall be added to a list of ineligible horses. Such list shall be kept in the race office and be made accessible to jockeys and their agents during normal business hours. The commission may share information from such list with other racing jurisdictions.

(d) A horse that receives any such treatment is not permitted to race or breeze for a minimum of 10 days following treatment.

(e) A horse that receives any such treatment without full compliance with this section and any similar rules in any other jurisdiction in which the horse was treated shall be placed on the stewards' list.

(f) Any person who violates this section may be subjected to a fine, exclusion from all New York racetracks, and the suspension or revocation of any occupational license held by such person.



# ITEM 4d

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 24, 2013

**Re:** Proposed Rulemaking for Thoroughbred Controlled Therapeutic Medications (24-drugs rules)  
(9 NYCRR, Part 4043, §§ 4043.2 and 4043.3)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

These 24 drugs were first identified by the Racing Medication and Testing Consortium (“RMTC”). They are meant to encompass those drugs whose beneficial effects are widely accepted, that provide a sufficient range of treatments to ensure good veterinary care and that can be regulated effectively by means of laboratory thresholds. RMTC’s recommendations have been reviewed, revised and adopted as a model rule by the Association of Racing Commissioners International, Inc. (“ARCI”). Commission staff has participated throughout this process and has generally supported these proposals with due regard to New York’s existing reliance on restricted time periods and other circumstances.

The primary amendment to the Commission’s existing rules is the creation of regulatory thresholds for each of these 24 drugs, together with a prohibition against finding in a race horse on race day any amount of any other drugs or medications that can affect the performance of the horse. A violation of these thresholds would constitute an automatic (“Per Se”) violation of the Commission’s equine drug rules. The adoption of these thresholds would simplify the process of proving the use of any substance to affect race performance. Currently, the Commission generally relies on the laboratory findings of its Equine Drug Testing Program and an expert opinion from Dr. George A. Maylin of the time of administration.

[REDACTED]

[REDACTED]

The current rules have a general restriction of any drug treatment within one week before a horse may race, but more than 63 drugs or categories of drugs (e.g., antihistamines) are permitted at various shorter time periods. In addition, the Commission has per se regulatory thresholds for anabolic steroids, lengthier

restricted time periods for some drugs (e.g., clenbuterol), and complete prohibitions of certain substances that seriously undermine racing integrity and have no permissible veterinary use on a racing horse.

[REDACTED]  
[REDACTED]  
[REDACTED] These increases will provide horsepersons with assurances that by complying with the Commission's restricted time periods such person shall not incur an equine drug positive. The new regulatory thresholds would not be violated by a trainer whose clinical administrations of these drugs fall outside of these new restricted time periods. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] This change would protect a horseperson from violating a new regulatory threshold and overcome the difficulty in fashioning a specific restricted time period that is posed by the lengthy persistence (over 99 days) of this particular drug in a race horse following an intramuscular administration.

During the consideration of changing restricted time periods, and based on research conducted or funded by RMTC, Commission staff also observed that the restricted time periods of some of these 24 drugs can be shortened. The proposed amendments would lessen the restricted time periods for dantrolene, detomidine, diclofenac, non-topical uses of DMSO and methocarbamol. Horsepersons who comply with these shorter time periods would still not exceed the proposed regulatory thresholds, which are intended produce a drug positive when the specific drug administrations that RMTC researched could still be efficacious.

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

These proposals were sent to persons and organizations on the Commission's Thoroughbred mailing list. No comments were received by the Commission. The original RMTC and ARCI proposals

Commissioners  
October 24, 2013  
Page 3

were actively supported by the New York Thoroughbred Horsemen's Association, the recognized thoroughbred horseperson's organization for trainers and owners who participate in racing at The New York Racing Association, Inc. race meetings.

A copy of the text of the proposed new and amended rules and the letter seeking pre-proposal thoroughbred industry comment are attached.

attachment

cc: Robert Williams, Acting Executive Director  
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

PROPOSED NEW AND AMENDED RULES, 9 NYCRR, PART 4043

**(1) Section 4043.3 (“Other prohibitions”) of 9 NYCRR would be renumbered Section 4043.13, and a new Section 4043.3 would be added to Part 4043 of 9 NYCRR, to read as follows:**

**Section 4043.3. Equine drug thresholds; per se**

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test:

(1) Acepromazine: 10 ng/ml HEPS in urine;

(2) Betamethasone: 10 pg/ml in plasma;

(3) Butorphanol:

(i) 300 ng/ml of total butorphanol in urine; or

(ii) 2 ng/ml of free butorphanol in plasma;

(4) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma;

(5) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in plasma;

(6) Detomidine:

(i) 1 ng/ml of any metabolite of detomidine in urine; or

(ii) any detomidine in plasma;

(7) Dexamethasone: 5 pg/ml in plasma;

(8) Diclofenac: 5 ng/ml in plasma;

(9) DMSO: 10 mcg/ml in plasma;

(10) Firocoxib: 20 ng/ml in plasma;

(11) Flunixin: 20 ng/ml in plasma;

(12) Furosemide: 100 ng/ml in plasma and a specific gravity of urine less than 1.010;

(13) Glycopyrrolate: 3 pg/ml in plasma;

(14) Ketoprofen: 10 ng/ml in plasma;

(15) Lidocaine: 20 pg/ml of total 3-hydroxylicocaine in plasma;

(16) Mepivacaine:

(i) 10 ng/ml of total hydroxymepivacaine in urine; or

(ii) any hydroxymepivacaine in plasma;

(17) Methocarbamol: 1 ng/ml in plasma;

(18) Methylprednisolone: 100 pg/ml in plasma;

(19) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;

(20) Phenylbutazone: 2 mcg/ml in plasma;

(21) Prednisolone: 1 ng/ml in plasma;

(22) Procaine penicillin: 25 ng/ml of procaine in plasma;

(23) Triamcinolone acetonide: 100 pg/ml in plasma; and

(24) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A horse shall have raced in violation of this section if the administration of any drug, or substance that by its nature exhibits drug-like actions or properties, that could affect a horse's organ systems and for which no threshold is set forth in subdivision (a) of this section, can be detected by laboratory tests conducted by or for the commission in a race-day urine or blood sample.

(c) A laboratory finding that a horse has not exceeded a threshold set forth in this section shall not constitute a defense to a violation of any other section of this subchapter.

**(2) Subdivision (d) of Section 4043.2 of 9 NYCRR would be repealed:**

[(d) The following non-steroidal anti-inflammatory drug may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete:

(1) flunixin.]

**(3) Paragraph (1) of subdivision (i) of Section 4043.2 would be amended as follows:**

(i) In addition, a horse may not race for the following periods of time:

(1) for at least five days following a systemic administration of [a corticosteroid] prednisolone or dexamethasone;

\*\*\*

**(4) A new subdivision (k) would be added to Section 4043.2 as follows:**

(k) A horse may not race after an administration of methylprednisolone acetate (*e.g.*, Depo Medrol) unless such horse

(1) subsequently tests below the threshold set forth in section 4043.3 of this Part for such drug in a test conducted by or for the commission at the sole expense of the trainer of the horse; and

(2) is released to race by the stewards.

**(5) A new subdivision (l) would be added to Section 4043.2 as follows:**

(l) A horse may race following the administration of a corticosteroid that is not specified in other subdivisions of this section only if:

(1) such administration occurs at least seven days before such race;

(2) the trainer of the horse discloses, in writing, such administration to the stewards before race day; and

(3) the administration of such corticosteroid cannot be detected by laboratory tests, conducted by or for the commission, in a race-day urine or blood sample.

**ITEM 4e**



Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** November 1, 2013

**Re:** Proposed Rulemaking for Standardbred Controlled Therapeutics (24-drugs rules)  
(9 NYCRR, Part 4120)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This proposal is related to a similar one for thoroughbred horses.

**RMTC/ARCI recommendations**

These 24 drugs were first identified by the Racing Medication and Testing Consortium (“RMTC”). They are meant to encompass those drugs whose beneficial effects are widely accepted, that provide a sufficient range of treatments to ensure good veterinary care and that can be regulated effectively by means of laboratory thresholds. RMTC’s recommendations have been reviewed, revised and adopted as a model rule by the Association of Racing Commissioners International, Inc. (“ARCI”). Commission staff has participated throughout this process and has generally supported these proposals with due regard to New York’s existing reliance on restricted time periods and other circumstances.

**The Gaming Commission’s proposal**

The primary amendment to the Commission’s existing rules is the creation of regulatory thresholds for each of these 24 drugs, together with a prohibition against finding in a race horse on race day any amount of any other drug or medication that can affect the performance of the horse. A violation of these thresholds would constitute an automatic (“Per Se”) violation of the Commission’s equine drug rules. The adoption of these thresholds would simplify the process of proving the use of any substance to affect race performance. Currently, the Commission regulates equine drug use with restricted time periods which typically require, in addition to laboratory findings by its Equine Drug Testing Program, an expert opinion from Dr. George A. Maylin of the inferred time of administration.

To continue to allow horsepersons to comply with the Commission's restricted time periods, as a method to ensure that such person shall not incur an equine drug positive, some existing New York restricted time periods must change. [REDACTED]

During its consideration of the 24-drug thresholds and New York's current restricted time periods, Commission staff also observed, based on the emergence of advanced plasma test methodologies, that the restricted time periods of some drugs can be shortened and recommends doing so for dantrolene, detomidine, diclofenac, non-topical uses of DMSO and methocarbamol. Horsepersons who comply with these shorter time periods would not exceed the proposed regulatory thresholds.

**Pre-proposal industry reaction**

These proposals were sent to persons and organizations on the Commission's standardbred mailing list. Unlike thoroughbred participants, significant concerns and opposition have been raised, both by the horsepersons' organizations at the New York racetracks and by their national organization, The United States Trotting Association, Inc. ("USTA"). The current Commission equine drug rules, except where justified by substantial differences between the breeds and racing practices, are identical for both breeds.

The primary focus of their comments has been on the different impact that the proposed regulations of clenbuterol and corticosteroids could have on standardbred racing, where horses race much more often (typically every seven days), and have far fewer breakdowns, compared to thoroughbred racing. Their comments highlight that, before progressing with rulemaking, for example, the Commission must consider the potential impacts of clenbuterol limitations given current standardbred practice.

Clenbuterol is an FDA-approved drug for veterinary treatment of respiratory ailments, a common affliction of race horses routinely confined to stalls. Staff believes that it has become an abused drug, however, because of its anabolic steroid properties, which have the potential to affect race horse health and performance. Albuterol is an alternative medication, but it has central nervous system effects and has not been fully researched.

Corticosteroids can accelerate the healing of damaged tissue (e.g., tendons and ligaments), but when used repeatedly are believed to cause degeneration of the same tissue and contribute to race horse lameness and catastrophic breakdowns, particularly in the less sturdy thoroughbred horses racing at higher speed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

■ copy of the text of the proposed new and amended rules, the letter seeking pre-proposal harness industry comment and the submitted comments are attached.

attachments

cc: Robert Williams, Acting Executive Director  
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

**PROPOSED NEW AND AMENDED RULES, 9 NYCRR, PART 4120**

**Proposal #1: Per Se Thresholds**

➤ A new Section 4120.3 would be added to read as follows:

**§ 4120.3. Equine drug thresholds; per se**

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test:

(1) Acepromazine: 10 ng/ml HEPS in urine;

(2) Butorphanol:

(i) 300 ng/ml of total butorphanol in urine; or

(ii) 2 ng/ml of free butorphanol in plasma;

(3) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in plasma;

(4) Detomidine:

(i) 1 ng/ml of any metabolite of detomidine in urine; or

(ii) any detomidine in plasma;

(5) Diclofenac: 5 ng/ml in plasma;

(6) Firocoxib: 20 ng/ml in plasma;

(7) Furosemide: 100 ng/ml in plasma and a specific gravity of urine less than 1.010;

(8) Glycopyrrolate: 3 pg/ml in plasma;

(9) Ketoprofen: 10 ng/ml in plasma;

(10) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;

(11) Mepivacaine:

(i) 10 ng/ml of total hydroxymepivacaine in urine; or

(ii) any hydroxymepivacaine in plasma;

(12) Methocarbamol: 1 ng/ml in plasma;

(13) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;

(14) Phenylbutazone: 2 mcg/ml in plasma;

(15) Procaine penicillin: 25 ng/ml of procaine in plasma; and

(16) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A laboratory finding that a horse has not exceeded a threshold set forth in this section shall not constitute a defense to a violation of any other section of this subchapter.

➤ **Section 4120.3 (“Other prohibitions”) would be renumbered Section 4120.18.**

➤ **Section 4120.2(h) would be renumbered Section 4120.2(o).**

## **Proposal #2: Clenbuterol\***

➤ **Paragraph (17) would be added to subdivision (a) of the new Section 4120.3 as follows:**

### **§ 4120.3. Equine drug thresholds; per se**

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test:

\*\*\*

(17) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma.

➤ **A new Subdivision (k) would be added to Section 4120.2 as follows:**

(k) A horse may not race for at least 14 days following an administration of clenbuterol.

➤ **Subdivision (g) of Section 4120.2 would be amended as follows:**

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

\*\*\*

[(5) clenbuterol;]

\*\*\*

---

\* As an element of this rulemaking, Commission staff recommends consideration of the potential impact of clenbuterol limitations given current Standardbred practice.

**Proposal #3: Betamethasone and Triamcinolone Acetonide**

- **Paragraphs (18) and (19) would be added to subdivision (a) the new Section 4120.3 as follows:**

**§ 4120.3. Equine drug thresholds; per se**

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test:

\*\*\*

(18) Betamethasone: 10 pg/ml in plasma;

(19) Triamcinolone acetonide: 100 pg/ml in plasma.

- **Paragraph (20) would be added to Subdivision (e) of Section 4120.2 as follows:**

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

\*\*\*

(20) notwithstanding paragraph (9) of this subdivision, the corticosteroids betamethasone and triamcinolone acetonide are not substances that are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

**Proposal #4: Dexamethasone and Prednisolone**

- **Paragraphs (20) and (21) would be added to subdivision (a) of the new Section 4120.3 of 9 NYCRR as follows:**

**§ 4120.3. Equine drug thresholds; per se**

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test:

\*\*\*

(20) Dexamethasone: 10 pg/ml in plasma;

(21) Prednisolone: 1 ng/ml in plasma.

➤ **Subdivision (e) of Section 4120.2 would be amended as follows:**

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

\*\*\*

(9) hormones and non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadotropin, glucocorticoids [(e.g., Prednisolone, Depomedrol)], except in joint injections as restricted in subdivision (i) of this section;

\*\*\*

(21) notwithstanding paragraph (9) of this subdivision, the corticosteroids dexamethasone and prednisolone are not substances that are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

*Note: this assumes the Commission shall have adopted on November 4, 2013, the proposed Anabolic Steroid rule amendments to 9 NYCRR 4120.2(e)(9).*

➤ **Subdivision (f) of Section 4120.2 would be amended as follows:**

(f) The following substances may be administered by any means until 72 hours before the scheduled post time of the race in which the horse is to compete:

\*\*\*

(9) dexamethasone.

(10) prednisolone.

**Proposal #5: Methylprednisolone Acetate (“Depo Medrol”)**

➤ **Paragraph (22) would be added to subdivision (a) of the new Section 4120.3 as follows:**

**§ 4120.3. Equine drug thresholds; per se**

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test:

\*\*\*

(22) Methylprednisolone: 100 pg/ml in plasma;

➤ **Subdivision (e) of Section 4120.2 would be amended as follows:**

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:



\*\*\*

(9) hormones and non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadotropin, glucocorticoids [(e.g., Prednisolone, Depomedrol)], except in joint injections as restricted in subdivision (i) of this section;

\*\*\*

(22) notwithstanding paragraph nine of this subdivision, the corticosteroids methylprednisolone acetate (e.g., Depo Medrol) are not substances that are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

*Note: this assumes the Commission shall have adopted on November 4, 2013, the proposed Anabolic Steroid rule amendments to 9 NYCRR 4120.2(e)(9).*

➤ **A new subdivision (l) would be added to Section 4120.2 as follows:**

(l) A horse may not race after an administration of methylprednisolone acetate (e.g., Depo Medrol) unless such horse subsequently tests negative, i.e., below the threshold established in section 4120.3 of this Part, for such drug in a test conducted by the commission at the sole expense of the trainer of the horse, and is released to race by the Presiding Judge.

**Proposal #6: Dantrolene, Detomidine, Diclofenac, and Methocarbamol**

➤ **Subdivision (e) of Section 4120.2 would be amended as follows:**

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

\*\*\*

(14) the following nonsteroidal anti-inflammatory drugs (NSAID's): [P]phenylbutazone (e.g., Butazolidin); diclofenac; [F]flunixin (e.g., Banamine); meclofenamic acid (e.g., Arquel); naproxon (e.g., Naprosyn, Equiproxen), and ketoprofen (e.g., Orudis);

\*\*\*

(20) dantrolene;

\*\*\*

(22) methocarbamol (e.g., Robaxin).

➤ **Subdivision (f) of Section 4120.2 would be amended as follows (with paragraphs re-numbered accordingly):**

(f) The following substances may be administered by any means until 72 hours before the scheduled post time of the race in which the horse is to compete:

(1) antihistamines;

[(2) dantrolene]

\*\*\*

[(4) methocarbamol (*e.g.*, Robaxin);]

\*\*\*

(11) detomidine.

➤ **Subdivision (g) of Section 4120.2 would be amended as follows:**

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

\*\*\*

[(6) detomidine;]

\*\*\*

**Proposal #7: DMSO (Dimethyl Sulfoxide)**

➤ **Paragraph (23) would be added to subdivision (a) of the new Section 4120.3 of 9 NYCRR as follows:**

**§ 4120.3. Additional Equine drug thresholds; per se**

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test:

\*\*\*

(23) DMSO: 10 mcg/ml in plasma.

➤ **Subdivision (a) of Section 4120.2 would be amended as follows:**

**§ 4120.2 Restricted use of drugs, medication and other substances.**

Drugs and medications are permitted to be used only in accordance with the following provisions.

(a) The following substances are permitted to be used at any time up to race time:

(1) topical applications (such as antiseptics, ointments, salves, [DMSO,] leg rubs, leg paints and liniments) which may contain antibiotics but do not contain benzocaine, DMSO, steroids or other drugs;

\*\*\*

➤ **Subdivision (e) of Section 4120.2 would be amended as follows:**

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

\*\*\*

(21) dimethyl sulfoxide (i.e., DMSO).

**Proposal #8: Firocoxib**

➤ **A new Subdivision (m) would be added to Section 4120.2 as follows:**

(m) A horse may not race for at least 14 days following an administration of firocoxib.

**Proposal #9: Flunixin**

➤ **Paragraph (24) would be added to subdivision (a) of the new Section 4120.3 of 9 NYCRR as follows:**

**§ 4120.3. Additional Equine drug thresholds; per se**

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test:

\*\*\*

(24) Flunixin: 20 ng/ml in plasma.

➤ **Subdivision (d) of Section 4120.2 of 9 NYCRR would be repealed:**

[(d) The following non-steroidal anti-inflammatory drug may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete:]

[(1) flunixin.]

## **Proposal #10: Other Drugs, Substances, and Corticosteroids**

- **Subdivision (c) would be added to the new Section 4120.3 as follows:**

### **§ 4120.3. Equine drug thresholds; per se**

\*\*\*

(c) A horse shall have raced in violation of this section if the administration of any drug, or substance that by its nature exhibits drug-like actions or properties, that could affect a horse's organ systems and for which no threshold is set forth in subdivision (a) of this section, can be detected by laboratory tests conducted by or for the commission in a race-day urine or blood sample.

- **A new subdivision (n) would be added to Section 4120.2 as follows:**

(n) A horse may race following the administration of a corticosteroid that is not specifically identified in other subdivisions of this section only if:

(1) the trainer of the horse discloses, in writing, such administration to the judges before race day; and

(2) the administration of such corticosteroid cannot be detected by laboratory tests, conducted by or for the commission, in a race-day urine or blood sample.

**ITEM 4f**

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 23, 2013

**Re:** Proposed Rulemaking for Account Wagering  
(9 NYCRR, Part 4500, §§ 4500.1 through 4500.23)

[REDACTED]

The State Legislature has made substantial statutory changes to account wagering, a form of pari-mutuel wagering in which a person establishes an account with an entity licensed by the Commission and places bets, using the funds in such account, through instructions by telephone or other electronic media, to place wagers. These changes take effect on January 1, 2014. The new laws permit the Commission, however, to accept license applications from prospective account wagering licensees beginning on October 1, 2013. *See* L. 2013, c. 174, §§ 46 and 47.

Many of the Commission's existing telephone and account wagering rules are equally valid for the new statutory landscape. New rules are necessary, however, for a newly recognized form of wagering entity, the multi-jurisdictional account wagering provider ("MAW"): For a statutory \$20,000 application fee that each MAW must pay for its license; for a new account wagering license, applicable to all account wagering facilities (i.e., MAWs, New York racetracks and regional off-track betting corporations); for a new regulatory \$2,000 fee that each account wagering license applicant must pay; and to conform to other statutory changes (e.g., the definitions of various terms, empowering the Commission to conduct investigations and inspections of books, records and facilities). The account wagering license application fee is required by statute to be non-refundable, and the \$2,000 amount proposed is based on a reasonable estimate of the cost to administer the application process by Commission staff.

This proposal is being sent to relevant persons and organizations on the Commission's mailing list. We will alert you to any pre-proposal comments received.

Copies of the text of the proposed new rule and the new legislation are attached.

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

**When New Yorkers Play Responsibly, We All Win.**

Commissioners  
October 23, 2013  
Page 2

attachments

cc: Robert Williams, Acting Executive Director  
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

**Part 4500 of 9 NYCRR is amended to read as follows:**

**Subchapter G. Internet and Telephone Account Wagering**

**PART 4500**

**Internet and Telephone Account Wagering**

**§ 4500.1. Definitions and general provisions.**

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

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

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

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

(d) *Account wagering* means a form of pari-mutuel wagering in which [an individual deposits money in] a person establishes an account with an [authorized pari-mutuel wagering entity to be used for pari-mutuel wagering authorized by law to be conducted by the authorized pari-mutuel wagering entity] account wagering licensee and subsequently communicates, by telephone or other electronic media, instructions concerning the funds in such account and wagers to be placed on the account holder's behalf.

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

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

(g) [*Authorized pari-mutuel wagering entity* means a corporation or association that is duly licensed by the commission or holds a franchise to conduct pari-mutuel wagering and simulcasting activity] Account wagering licensee means a racing association or corporation, franchised corporation, regional off-track betting corporation or commission-approved multi-jurisdictional account wagering provider that has been licensed by the commission to offer account wagering.

(h) *Commission* means the New York State Gaming Commission.

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



(j) Multi-jurisdictional account wagering provider means a business entity, domiciled in a jurisdiction other than New York, that does not operate in this State either a simulcast facility that is open to the public or a licensed or franchised racetrack, but that is licensed by such other jurisdiction to offer pari-mutuel account wagering on simulcasts and other races such provider offers in its wagering menu to persons located in or outside of such jurisdiction.

(k) Official means a representative(s) of the commission.

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

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

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

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

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

[(p)] (q) Wagering device means a device enabling the placing of wagers.

#### § 4500.2. Licensing [A]account wagering [services, general].

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

(a) Prior commission approval is granted for the account wagering system[;] that shall be conducted in accordance with a written plan of operation submitted by such license and approved by the commission. Such plan of operation shall include, at a minimum:

(1) systems of processing wagers;

(2) internal controls for account wagering;

(3) appropriate totalisator and accounting contracts that will safeguard the transmission of wagering data;

(4) system security that includes but is not limited to the use of access encryption and firewalls;

(5) account wagering rules; and

(6) a recording for each transaction on a system separate from the totalisator system.

(b) Accounts are restricted for wagering and related purposes only[;] .

(c) Account wagers that are accepted by a New York racing association, racing corporation or franchised corporation are deemed for distribution purposes to be on-track wagers [for those] of such wagering entities [licensed or franchised pursuant to Articles II, III or IV and Section 1007 of the Racing, Pari-Mutuel Wagering and Breeding Law, and are deemed to be] and not simulcast wagers [for those licensed pursuant to Sections 1008 or 1009 of the Racing, Pari-Mutuel Wagering and Breeding Law].

(d) The commission has duly licensed the account wagering provider.

(1) The account wagering provider must be licensed annually by the commission to provide both simulcast wagering and account wagering services.

(2) Applications for annual licenses for simulcast and account wagering shall be made in a form and manner approved by the commission.

(3) The applicant must submit the application fees with its simulcast and account wagering license applications:

(i) Simulcast license fee. Each applicant shall pay an annual simulcast application fee of \$500 for a licensed or franchised racetrack, \$500 per simulcast facility for a regional off-track betting corporation and \$20,000 for a multi-jurisdictional account wagering provider. If the commission does not issue a simulcast license or approve a given facility, then the related application fee shall be refunded.

(ii) Account wagering license fee. Each applicant shall pay a non-refundable annual account wagering application fee of \$2,000.

(iii) An application for any license may be denied if the applicant has failed or refuses to pay the required application and investigation fees.

(e) In considering an application for a license, the application shall be reviewed and licenses shall be issued in accordance with the standards set forth in section 307(5)(a) of the Racing, Pari-Mutuel Wagering and Breeding Law, which standards shall be applicable to the applicant and its related individuals and entities described in such law.

(f) Pending final determination of any question, the commission may issue a temporary license upon such terms and conditions as it may deem necessary, desirable or proper to effectuate the provisions of the Racing, Pari-Mutuel Wagering and Breeding Law and this Part.

(g) The refusal to issue a license shall be subject to appeal in accordance with the provisions of Part 4550 of this Chapter.

**[§ 4500.3. Approval of account wagering.]**

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

[(a) Systems of processing wagers.]

[(b) Internal controls for account wagering.]

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

[(d) Account wagering rules.]

[(e) Provide for a recording for each transaction on a system separate from the totalisator system.]

**§ 4500.3. Multi-jurisdictional account wagering providers; additional provisions**

A multi-jurisdictional account wagering provider shall be licensed only under the following additional terms and conditions:

(a) The multi-jurisdictional account wagering provider is licensed by the state in which it is located and, if required, by each state in which it operates.

(b) The character and the background of the multi-jurisdictional account wagering provider is such that granting the applications for each license is in the public interest and the best interest of honest horse racing.

(c) The multi-jurisdictional account wagering provider shall engage the services of an independent third party to perform identity and verification services with respect to the establishment of wagering accounts for persons who are residents of the State of New York.

(d) The multi-jurisdictional account wagering provider shall allow the commission and its designees access to the provider's premises to investigate and conduct inspections and to place such expert accountants and other persons as the commission may deem necessary to ensure compliance with the rules and regulations of the commission:

(1) The commission may at a reasonable time on any date enter the premises of a multi-jurisdictional account wagering provider to conduct an examination and analysis of its books, records and other property, including but not limited to its:

(i) written books and records and its computer systems and records, to verify its accounting records and business practices;

(ii) written and computerized records and operational systems on its computers; and

(iii) facilities, with complete access including to all of its equipment, activities, structures and other property.

(2) Such examination and analysis by the commission may include a forensic review by accountants of such provider's financial books and operational records and may be repeated to investigate possible material changes in relation to alterations or renewals of such provider's licensing status.

(3) The commission may initiate any such investigation and inspection at random, for cause, or as determined by an executive official or commissioner of the commission. The commission shall notify the multi-jurisdictional account wagering provider before arriving to conduct an investigation or inspection, and upon arriving the commission's agents, employees and designees shall provide identification and notice to such provider that the investigation and inspection is conducted pursuant to this Section.

(4) Such provider shall immediately assist any such investigation and inspection by providing full and timely disclosure of all requested information and full access to all facilities, books, records and other property, including but not limited to computers, equipment, structures, bank records, financial books and records, wagering records, wagering account holder information and such other documents and information as may reasonably be requested by the person or persons conducting the investigation and inspection. The

disclosure of such records and information by such provider shall not constitute a waiver of any trade secret or other confidentiality rights of such provider.

(e) The multi-jurisdictional account wagering provider shall be qualified to do business in New York State and shall maintain such status in good standing throughout the license period. The commission may issue a temporary license to a multi-jurisdictional account wagering provider that is not yet registered to do business in New York State, provided that such applicant has agreed to take promptly those steps necessary to qualify to do business in New York State and to maintain such status in good standing throughout the license period, pending final determination of such provider's license applications by the commission.

(f) Multi-jurisdictional account wagering providers shall pay, in a form and manner approved by the commission, a market origin fee equal to five percent on each wager accepted from New York residents. Such payments shall be due on a monthly basis. Each multi-jurisdictional account wagering provider shall make the required payments to the market origin account on or before the fifth business day of each month to cover its payments due for the period of the preceding calendar month. In addition, with the payment that is due in April of each year, such provider shall be submit a report under oath recapitulating such provider's required payments for the past 12 months (i.e., the State fiscal year of April through March), together with such other information as the commission may require. A penalty of five percent and interest at the rate of one percent per month from the date the report is required to be filed to the date of the payment shall be payable in case any payments required by this subdivision are not paid when due. If the commission determines that any moneys received under this subdivision were paid in error, then the commission may cause the same to be refunded without interest out of any collected moneys, provided an application for such refund is filed with the commission within one year from the time the erroneous payment was made. The commission shall pay into the racing regulation account, under the joint custody of the comptroller and the commission, the total amount of the fee collected pursuant to this section.

(g) Each individual who participates in the New York operations of the multi-jurisdictional account wagering provider, or who participates in such provider's affairs as a director, officer, or manager, must have received an occupational license from the commission.

#### **§ 4500.4. Establishment of an account.**

(a) Accounts shall be used for wagering and related purposes only.

(b) Account wagering licensees [Authorized pari-mutuel wagering entities] may establish[/open] accounts for individuals provided the following minimum requirements are met:

(1) An account holder shall be a natural person 18 years of age or older.

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

(3) Account holders shall provide their age, principal residential address, mailing address (if different), phone number, social security number and date of birth.

(4) [Application shall be signed attesting to its accuracy.] The account holder must have completed an application in a form and manner approved by the commission and submitted it together with a certification, or other proof, of age and residency. Such form shall include the address of the principal residence of the prospective account holder and a statement that a false statement made in regard to an application may subject the applicant to prosecution. The account wagering licensee may accept or reject an application

after receipt and review of the application and certification, or other proof, of age and residency for compliance with this section. In the case of an online application, the applicant shall provide an electronic signature to attest to the accuracy of the information provided. *Electronic signature* shall mean an electronic sound, symbol, or process[,] that is attached to or logically associated with an electronic record and is executed or adopted by a person with the intent to sign the record.

(5) Except in the case of an online application, the name of each new account holder will be confirmed in accordance with the Federal Government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of Homeland Security Employment Verification Form I-9). A copy of each properly validated credential will be maintained with the appropriate account application. A copy of a social security card is not required to be maintained at the time of the application if the number is verified with a credit reporting agency and such report is maintained with the account application. In the case of an online application, the [pari-mutuel wagering entity] account wagering licensee shall verify the applicant's identity using, at a minimum, the name, address, social security number and date of birth of the applicant through a credit reporting agency, public database, or similarly reliable sources as provided for in the plan of operation. If there is a discrepancy between the minimum information submitted and the information provided by the electronic verification described above or if no information on the applicant is available from such electronic verification, then the [pari-mutuel wagering entity] account wagering licensee shall not open the account and shall require verification through the Federal Government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of Homeland Security Employment Verification Form I-9). In addition, a multi-jurisdictional account wagering provider shall utilize the services of an independent third party to perform identity and verification services with respect to establishing an account for any person who is a resident of the State of New York.

(6) The a[A]ccount is not assignable or otherwise [non-]transferable.

(7) The [authorized pari-mutuel wagering entity] account wagering licensee shall issue a card or other document representative of the account.

(8) The [authorized pari-mutuel wagering entity] account wagering licensee shall provide to the account holder rules governing the conduct of account wagering.

(9) The [authorized pari-mutuel wagering entity] account wagering licensee shall notify the account holder whenever rules have changed and provide a copy of such changes.

(10) The [authorized pari-mutuel wagering entity] account wagering licensee may require a minimum balance consistent with their internal controls.

(11) Bank account number and other necessary information if the account holder desires to make electronic fund transfers.

[(b)] (c) Bearer Accounts.

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

(i) The account can [only] be used only in person through a teller or self-service machine at a duly approved location, and

(ii) The account cannot be used for internet and telephone wagering.

(2) The [authorized pari-mutuel entity] account wagering licensee shall issue [a] an account card (or other document representative of such account) and personal identification number (“PIN”) for each bearer account.

(3) The [authorized pari-mutuel entity] account wagering licensee may establish guidelines for the expiration of such accounts consistent with its approved plan of operation.

(4) A wager placed through a bearer account cannot be cancelled once the account holder has accepted it and it has been processed by the [authorized pari-mutuel wagering entity] account wagering licensee.

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

(i) Withdrawals shall be made only in person [and may be paid in cash to the] by the person bearing the account card (or other document [issued in paragraph (2) of this subdivision and after] representative of such account), upon verification of the PIN, at a facility approved by the commission.

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

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

(iv) Accounts shall [only] be closed only in person by the account holder by presenting the account card [issued] (or other document representative of such account) and after verification of the PIN or pursuant to other applicable provisions of the law.

#### **§ 4500.5. Official address.**

The address listed on the account wagering application is deemed the account holder's official address for purposes of this section. The [authorized pari-mutuel wagering entity] account wagering licensee shall use the official address for all mailings, including notices, checks, withdrawal slips, account statements and other correspondence.

#### **§ 4500.6. Changes to account information.**

The [authorized pari-mutuel wagering entity] account wagering licensee shall provide a method for the account wagering holder to make official changes to his or her account information. The method shall include the name, date, address, and social security number, account wagering identification number, PIN and signature.

#### **§ 4500.7. Right to refuse an account.**

(a) The [authorized pari-mutuel wagering entity] account wagering licensee may exclude anyone from opening an account based on business judgment.

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

(1) known or reputed bookmakers;

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

(3) a known fugitive from justice; and

(4) persons on the entity's self-exclusion list.

#### **§ 4500.8. Segregation of funds.**

The [authorized pari-mutuel wagering entity] account wagering licensee shall, upon receipt of money from account holders and related winning wagers, deposit such money within 72 hours in a segregated bank account, kept and maintained by the [authorized pari-mutuel wagering entity] account wagering licensee until appropriately distributed.

#### **§ 4500.9. Conduct of wagering.**

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

(b) The [authorized pari-mutuel wagering entity] account wagering licensee may accept account wagers via any wired or wireless communications device, including but not limited to wireline telephones, wireless telephones, and the internet subject to applicable laws, rules and [the] its approved plan of operation.

(c) The account wagering licensee shall not permit any person other than the person in whose name an account has been established may issue wagering instructions relating to that account or otherwise engage in wagering transactions relating to that account.

(d) The [authorized pari-mutuel wagering entity] account wagering licensee shall:

(1) R[r]equire the account holder to provide the account wagering identification number and PIN before an account wager is accepted.

(2) C[c]onfirm all account wagering transactions before acceptance of an account wager.

(3) V[v]erify that the account has sufficient funds to pay for the wager. No wager or portion of wager shall be accepted if the account fails to have sufficient funds to cover the wager.

(4) D[d]ebit the total amount of the wager from the account immediately after verifying wager.

(5) N[n]ot accept any account wager if the recording devices are inoperable.

(e) The account wagering licensee may permit an account wager to be cancelled before post time but after it has accepted and processed such wager, subject to the following limitation: For wagers over \$500 in win, place, show pools on any betting entry, and for wagers over \$50 on any one combination in multiple, exotic or super-exotic pools, the account holder's request to cancel shall be referred to such licensee's management. Management shall refuse any cancellation that may cause substantial altering of odds, prices or betting totals, and will certify in writing to the commission to its finding either allowing or rejecting such request.

#### **§ 4500.10. Record of wager; pari-mutuel tickets.**

For purposes of this section, all wagers placed through the account wagering system are deemed pari-mutuel tickets and are subject to all rules and laws governing pari-mutuel tickets.

#### **§ 4500.11. Withdrawals and other debits to accounts.**

(a) [Excepting] For all accounts except bearer accounts, withdrawals may be made [by completing a request for withdrawal in accordance with procedures set forth in a plan of operation approved by the commission. The

request for withdrawal shall include, at a minimum:] from the account wagering account, consistent with the plan of operation, by only the following means:

- (1) [the account holder's name,] a check made payable to the account holder and sent to the official address of the account holder,
  - (2) [account identification number,] an electronic transfer to an account held by the verified account holder,  
or
  - (3) [account holder's signature, (except for electronic fund transfers) and] a withdrawal in person by the account holder, upon presenting verifiable personal and account identification information, at a facility approved by the commission.
- [(4) date the request for withdrawal was made.]

[(b) Fund transfers may be made via alternate means pursuant to an approved plan of operation.]

[(c)] (b) Withdrawals can be for all or any portion of the account holder's balance.

[(d)] (c) The [authorized pari-mutuel wagering entity] account wagering licensee shall process all requests for withdrawals made via mail within five business days of receiving the request. All other requests for withdrawals shall be processed immediately. If the request is incomplete or required information is missing, the [authorized pari-mutuel wagering entity] account wagering licensee must notify the account holder of the required information as soon as possible.

[(e)] (d) If the account does not contain sufficient funds to cover the requested withdrawal, the [authorized pari-mutuel wagering entity] account wagering licensee shall release the remaining funds and notify the account holder.

#### **§ 5300.12. Credits to accounts**

(a) [Deposits to existing accounts may be made by an account holder in the form of cash, cash equivalent, check, or other method as specified in the plan of operation.] The account holder's deposits to the wagering account shall be submitted by the account holder to the account wagering licensee and shall be in the form of one of the following:

- (1) cash given to the account wagering licensee;
- (2) check, money order, negotiable order of withdrawal, or wire or electronic transfer, payable and remitted to the account wagering licensee; or
- (3) charges made to an account holder's debit or credit card upon the account holder's direct and personal instruction, which instruction may be given by telephone communication or other electronic means to the account wagering licensee or its agent by the account holder if the use of the card has been approved by the account wagering licensee.

(b) Deposits shall be credited to the account promptly after receipt and verification of funds.

(c) Funds from winning wagers shall be credited to the account immediately after a race is declared official. [However, f] Funds from winning wagers subject to Internal Revenue Service reporting requirements, however,



shall be held and not available for use until compliance with applicable Internal Revenue Service reporting requirements.

(d) Credits for other transactions are [only] permitted only to the extent of the approved plan of operation.

#### **§ 4500.13. Account statements.**

(a) The [authorized pari-mutuel wagering entity] account wagering licensee shall no less than once per calendar month make available a statement to each account holder detailing the month's beginning and ending balances and each debit and credit by date.

(b) Upon written demand, the [authorized pari-mutuel wagering entity] account wagering licensee shall make available to the account holder any monthly statement from the current or the previous calendar year.

(c) Upon written demand, the [authorized pari-mutuel wagering entity] account wagering licensee shall make available to the account holder a statement beginning on the last day of the prior period through the date of written demand.

#### **§ 4500.14. Recordkeeping.**

(a) The [authorized pari-mutuel wagering entity] account wagering licensee shall [maintain a] keep a system of accounts that will maintain a separate record of revenues and an accounting of costs relative to the operation of the wagering provider. This shall include a correct and complete record of every deposit, withdrawal, wager, winning payoff and other credit and debit[s] to [an] each wagering account for a period of three years. In addition, the account wagering licensee shall keep such records segregated by its operations involving wagering accounts held by residents of New York State.

(b) The [authorized pari-mutuel wagering entity] account wagering licensee shall ensure that wagers are accepted only at designated telephone numbers and account wagering centers.

(c) The [authorized pari-mutuel wagering entity] account wagering licensee shall record account wagering accounts as a separate liability on its books and records.

#### **§ 4500.15. Confidentiality of accounts.**

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

#### **§ 4500.16. Closing of accounts.**

Excepting bearer accounts, accounts may be closed at the request of an account holder made in-person or by mail or other method consistent with the plan of operation. For those requests made by mail, [authorized pari-mutuel wagering entities] account wagering licensees shall mail to the account holder's official address or send via electronic funds transfer to the account specified in the account wagering application all funds within five business days of receiving such request. All other requests shall be processed immediately.

#### **§ 4500.17. Dormant accounts.**

Dormant accounts shall be treated as abandoned property pursuant to section three hundred of the Abandoned Property Law. *Dormant account* means an account wagering account held by an account wagering licensee in which there has been no wagering activity for three years. [The authorized pari-mutuel wagering entity shall

deactivate all accounts if there is no account wagering activity during a period of 36 consecutive months. All monies in such dormant accounts shall be distributed in accordance with section 1012 of the Racing, Pari-Mutuel Wagering and Breeding Law.]

**§ 4500.18. Surcharge.**

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

**§ 4500.19. Vouchers.**

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

- (a) Vouchers are not accounts or account wagers for purposes of this section.
- (b) Vouchers may only be used to place wagers in-person and only pursuant to an approved plan of operation.

**§ 4500.20. Reports to commission.**

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

Total handle bet through the account wagering system;

- (a) Total handle segregated by telephone, internet and other means;
- (b) Total handle segregated by track;
- (c) The beginning number of accounts, total accounts opened and closed and the ending number of accounts;
- (d) Any other report as may be prescribed by the commission.

**§ 4500.21. Yearly audit.**

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

**§ 4500.22. Disputes/complaints/adjustments.**

(a) Subject to applicable laws, customer disputes concerning account transactions shall be addressed by the mutuel department supervisor, or such other pari-mutuel supervisor as may be designated by the [authorized pari-mutuel wagering entity's] account wagering licensee's management. Such designation must be in writing. The mutuel department supervisor or appropriate designee shall approve all final resolutions of account disputes. Documentation of all disputes and final resolutions shall be maintained by the [authorized pari-mutuel wagering entity] account wagering licensee for a period of three years from the end of the year the dispute was resolved.

(b) Disputed transactions that lead to an adjustment shall be audited by internal audit within 30 days of the adjustment.

**§ 4500.23. Cooperation with officials.**

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

**NEW LEGISLATION (L. 2013, c. 174, §§ 46 and 47)**

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

\* \* \*

**Section 46.** Section 1012 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, subdivision 4-b as added by chapter 402 of the laws of 2011 and subdivision 5 as amended by section 10 of part U of chapter 59 of the laws of 2013, is amended to read as follows:

Section 1012. [Telephone accounts and telephone] Account wagering. [Any regional off-track betting corporation, and any franchised corporation, harness, thoroughbred, quarter horse racing association or corporation licensed to conduct pari-mutuel racing may maintain telephone betting accounts for wagers placed on races and special events offered by such corporation or association.] Racing associations and corporations, franchised corporations, off-track betting corporations and multi-jurisdictional account wagering providers may apply to the commission to be licensed to offer account wagering.

1. Racing associations and corporations, franchised corporations, off-track betting corporations and multi-jurisdictional account wagering providers may form partnerships, joint ventures, or any other affiliations or contractual arrangement in order to further the purposes of this section. Multi-jurisdictional account wagering providers involved in such joint affiliations or contractual arrangements shall follow the same distributional policy with respect to retained commissions as their in-state affiliate or contractual partner.

2. The commission shall promulgate rules and regulations to license and regulate all phases of account wagering.

3. The commission shall specify a non-refundable application fee which shall be paid by each applicant for an account wagering license or renewal thereof.

4. Account wagering licensees shall utilize personal identification numbers and such other technologies as the commission may specify to assure that only the account holder has access to the advance deposit wagering account.

5. Account wagering licensees shall provide for: a. withdrawals from the wagering account only by means of a check made payable to the account holder and sent to the address of the account holder or by means of an electronic transfer to an account held by the verified account holder or b. that the account holder may withdraw funds from the wagering account at a facility approved by the commission by presenting verifiable personal and account identification information.

6. Account wagering licensees may engage in interstate wagering transactions only where there is compliance with chapter fifty-seven of title fifteen of the United States code, commonly referred to as the "interstate horse racing act".

7. The account holder's deposits to the wagering account shall be submitted by the account holder to the account wagering licensee and shall be in the form of one of the following: a. cash given to the account wagering licensee; b. check, money order, negotiable order of withdrawal, or wire or electronic transfer, payable and remitted to the account wagering licensee; or c. charges made to an account holder's debit or credit card upon the account holder's direct and personal instruction, which instruction may be given by telephone

communication or other electronic means to the account wagering licensee or its agent by the account holder if the use of the card has been approved by the account wagering licensee.

8. a. Each wager shall be in the name of a natural person and shall not be in the name of any beneficiary, custodian, joint trust, corporation, partnership or other organization or entity.

b. A wagering account may be established by a person completing an application form approved by the commission and submitting it together with a certification, or other proof, of age and residency. Such form shall include the address of the principal residence of the prospective account holder and a statement that a false statement made in regard to an application may subject the applicant to prosecution.

c. The prospective account holder shall submit the completed application to the account wagering licensee. The account wagering licensee may accept or reject an application after receipt and review of the application and certification, or other proof, of age and residency for compliance with this section.

d. No person other than the person in whose name an account has been established may issue wagering instructions relating to that account or otherwise engage in wagering transactions relating to that account.

9. A wagering account shall not be assignable or otherwise transferable.

10. Except as otherwise provided in this article or in regulations which the commission may adopt pursuant thereto, all account wagers shall be final and no wager shall be canceled by the account holder at any time after the wager has been accepted by the account wagering licensee.

11. Dormant accounts shall be treated as abandoned property pursuant to section three hundred of the abandoned property law.

12. Account wagering providers must possess appropriate totalizator and accounting controls that will safeguard the transmission of wagering data and will keep a system of accounts which will maintain a separate record of revenues and an accounting of costs relative to the operation of the wagering provider.

13. Wagers placed with the account wagering providers shall result in the combination of all wagers placed with such provider with the wagering pools at the host track so as to produce common pari-mutuel betting pools for the calculation of odds and the determination of payouts from such pools, which payout shall be the same for all winning tickets, irrespective of whether a wager is placed at a host track or at an account wagering provider.

14. Any [regional off-track betting corporation and any franchised corporation, harness, thoroughbred, quarter horse racing association or corporation licensed to conduct pari-mutuel racing] account wagering licensee may require a minimum account balance in an amount to be determined by such entity.

[2.] 15. a. Any regional off-track betting corporation may suspend collection of the surcharge imposed under section five hundred thirty-two of this chapter on winning wagers placed in [telephone] wagering accounts maintained by such regional corporation.

b. In a city of one million or more any regional off-track betting corporation, with the approval of the mayor of such city, may suspend collection of the surcharge imposed under section five hundred thirty-two of this chapter in winning wagers placed in [telephone] wagering accounts maintained by such regional corporation.

[3. Any telephone account maintained by a regional off-track betting corporation, franchised corporation, harness, thoroughbred, quarter horse association or corporation, with inactivity for a period of three years shall be forfeited and paid to the commissioner of taxation and finance. Such amounts when collected shall be paid by the commissioner of taxation and finance into the general fund of the state treasury.]

[4.] 16. The maintenance and operation of such [telephone] wagering accounts provided for in this section shall be subject to rules and regulations of the [state racing and wagering board] commission. The [board] commission shall include in such regulation a requirement that [telephone] wagering account information pertaining to surcharge and nonsurcharge [telephone] wagering accounts shall be separately reported.

[4-a.] 17. For the purposes of this section, "telephone [betting] wagering accounts" [and "telephone wagering"] shall mean and include all those wagers which utilize any wired or wireless communications device, including but not limited to wireline telephones, wireless telephones [,] and the internet [,] to transmit the placement of wagers on races and special events offered by any regional off-track betting corporation, and any harness, thoroughbred, quarter horse racing association or corporation licensed or franchised to conduct pari-mutuel racing in [New York] this state.

[4-b.] 18. Every racing association, off-track betting corporation, franchised corporation, harness, thoroughbred, quarter horse racing association or corporation or other entity licensed or franchised in this state to conduct pari-mutuel racing and wagering, or authorized to conduct races within the state, which operates [an account] a wagering [platform] account for the acceptance of wagers, shall locate the call center where such wagers are received within the state of New York.

[5. The provisions of this section shall expire and be of no further force and effect after June thirtieth, two thousand fourteen.]

**Section 47.** The racing, pari-mutuel wagering and breeding law is amended by adding a new section 1012-a to read as follows:

Section 1012-a. Multi-jurisdictional account wagering providers. A multi-jurisdictional account wagering provider shall only be licensed under the following conditions:

1. the multi-jurisdictional account wagering provider is licensed by the state in which it is located and, if required, by each state in which it operates;
2. the character and the background of the multi-jurisdictional account wagering provider is such that granting the applications for a license is in the public interest and the best interest of honest horse racing;
3. the multi-jurisdictional account wagering provider shall utilize the services of an independent third party to perform identity and verification services with respect to the establishment of wagering accounts for persons who are residents of the state of New York;
4. the commission shall be allowed access to the premises of the multi-jurisdictional account wagering provider to visit, investigate and, place such expert accountants and other persons it deems necessary for the purpose of insuring compliance with the rules and regulations of the commission;
5. if not already registered, the multi-jurisdictional account wagering provider shall agree promptly to take those steps necessary to qualify to do business in New York state, and to maintain such status in good standing throughout the license period;

6. multi-jurisdictional account wagering providers shall pay a market origin fee equal to five per centum on each wager accepted from New York residents. Multi-jurisdictional account wagering providers shall make the required payments to the market origin account on or before the fifth business day of each month and such required payments shall cover payments due for the period of the preceding calendar month; provided, however, that such payments required to be made on April fifteenth shall be accompanied by a report under oath, showing the total of all such payments, together with such other information as the commission may require. A penalty of five per centum and interest at the rate of one per centum per month from the date the report is required to be filed to the date the payment shall be payable in case any payments required by this subdivision are paid when due. If the commission determines that any moneys received under this subdivision were paid in error, the commission may cause the same to be refunded without interest out of any moneys collected thereunder, provided an application therefor is filed with the commission within one year from the time the erroneous payment was made. The commission shall pay into the racing regulation account, under the joint custody of the comptroller and the commission, the total amount of the fee collected pursuant to this section.

**Section 48.** Subdivision 2 of section 1017 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, is amended to read as follows:

2. a. Maintenance of effort. Any off-track betting corporation which engages in accepting wagers on the simulcasts of thoroughbred races from out-of-state or out-of-country as permitted under subdivision one of this section shall submit to the [board] commission, for its approval, a schedule of payments to be made in any year or portion thereof, that such off-track corporation engages in nighttime thoroughbred simulcasting. In order to be approved by the [board] commission, the payment schedule shall be identical to the actual payments and distributions of such payments to tracks and purses made by such off-track corporation pursuant to the provisions of section one thousand fifteen of this article during the year two thousand two, as derived from out-of-state harness races displayed after 6:00 P.M. If approved by the [board] commission, such scheduled payments shall be made from revenues derived from any simulcasting conducted pursuant to this section and section one thousand fifteen of this article.

b. Additional payments. During each calendar year, to the extent, and at such time in the event, that aggregate statewide wagering handle after 7:30 P.M. on out-of-state and out-of-country thoroughbred races exceeds one hundred million dollars, each off-track betting corporation conducting such simulcasting shall pay to its regional harness track or tracks, an amount equal to two percent of its proportionate share of such excess handle. In any region where there are two or more regional harness tracks, such two percent shall be divided between or among the tracks in a proportion equal to the proportion of handle on live harness races conducted at such tracks during the preceding calendar year. Fifty percent of the sum received by each track pursuant to this paragraph shall be used exclusively for increasing purses, stakes and prizes at that regional harness track. For the purpose of determining whether such aggregate statewide handle exceeds one hundred million dollars, all wagering on such thoroughbred races accepted by licensed multi-jurisdictional account wagering providers from customers within New York state shall be excluded.

ITEM 4g





**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 31, 2013

**Re:** Proposed Rulemaking for Underage Play  
(9 NYCRR §§ 4000.39, 4122.6, 4404.10, 4602.1, 4622.2, 4622.3, 5001.27, 5007.5, 5007.13, 5013.3, 5117.1 and 5117.2)

The Responsible Play Partnership recommends that the Commission propose new rules regulating consequences for Commission licensees, agents and other regulated parties who violate prohibitions on underage play.

The Responsible Play Partnership is a standing collaboration between the Commission, the Office of Alcohol and Substance Abuse Services and the New York Council on Problem Gambling to address problem gambling issues and awareness in New York State. The Commission spearheaded the Responsible Play Partnership in February 2013 as the first major initiative of its existence and in recognition of the impending changing scope of gaming in New York State. Similar to state enforcement efforts that prevent alcoholic beverage sales to underage buyers, the Responsible Play Partnership plans to help to enforce the age restriction laws for gaming. Violations could result in fines, suspensions or revocation of an entity's license to participate or provide such services in New York, depending on the number of violations at a location.

Staff proposes a graduated penalty structure for the Commission's consideration, as follows:

<b>Violation</b>	<b>Racetrack, OTB &amp; Teletheater</b>	<b>VLT</b>	<b>Unescorted minors on VLT Gaming floor</b>	<b>Lottery Retailer, Charitable Gaming Licensee and EZ Bet Location</b>
First	\$1,000	\$5,000	\$1,000	Written Warning
Second	\$5,000	\$20,000	\$5,000	\$500
Third	\$10,000	\$25,000	\$10,000	\$1,000
Additional	\$25,000 and possible further action (including revocation of track license or withdrawal of approval of OTB plan of operation)	\$25,000 and possible further action (including revocation of key employee license)	\$25,000 and possible further action (including revocation of key employee license)	Possible further action (including suspension or revocation of license or withdrawal of approval of OTB plan of operation)

This proposal is being sent to relevant persons and organizations on the Commission's mailing list. We will alert you to any pre-proposal comments received.

The text of the proposed new rules is attached.

attachment

cc: Robert Williams, Acting Executive Director  
Gardner Gurney, Acting Director, Division of Lottery  
Stacy Harvey, Acting Director, Division of Charitable Gaming  
Jim Nielsen, Acting Director, Division of Gaming  
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

**Title 9 of the NYCRR is amended as follows:**

➤ **For thoroughbred tracks:**

**§ 4003.39. Betting by minors.**

(a) No licensed association or corporation shall permit any person who is actually or apparently under 18 years of age to bet at the race meetings of such association or corporation.

(b) The commission shall penalize a track operator found to have violated subdivision (a) 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 or subsequent violation within one year of a violation, a fine of \$25,000 and, in addition, such further action as the commission may deem appropriate, which may include without limitation suspension or revocation of any license or privilege to operate or manage a track in this State.

➤ **For harness tracks:**

**§ 4122.6. Betting by minors.**

(a) No licensed association or corporation shall permit any person who is actually or apparently under 18 years of age to bet at such association or corporation's race meetings.

(b) The commission shall penalize a track operator found to have violated subdivision (a) 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 or subsequent violation within one year of a violation, a fine of \$25,000 and, in addition, such further action as the commission may deem appropriate, which may include without limitation suspension or revocation of any license or privilege to operate or manage a track in this State.

➤ **For off-track betting facilities:**

**§ 4404.10. Betting by a person under the age of 18.**

(a) (1) No corporation shall permit any [A] person who is [less than] actually or apparently under 18 years of age [shall not] to enter a branch office[, and shall not]. For purposes of this paragraph, a branch office shall not include a simulcast theater, as defined in section 1009 of the Racing, Pari-Mutuel Wagering and Breeding Law, nor a branch office managed by an entity other than the corporation (commonly referred to as an EZ Bet location, a Quick Bet location or a similar name).

(2) No corporation shall permit any person who is actually or apparently under 18 years of age to place a bet at any branch office directly for himself or herself or for or through another person.

(b) The commission shall penalize a corporation found to have violated paragraph (1) of subdivision (a) of this section or paragraph (2) of subdivision (a) of this section with respect to a simulcast theater, as defined in section 1009 of the Racing, Pari-Mutuel Wagering and Breeding Law, 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 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 revocation of approval of the corporation's plan of operation.

(c) The commission shall penalize an entity that operates a branch office that is other than a corporation (commonly referred to as an EZ Bet location or similar name) found to have violated paragraph (2) of subdivision (a) of this section, as follows:

(1) For a first violation, a written warning of such violation;

(2) For a second violation within one year of a violation, a fine of \$500;

(3) For a third violation within one year of a violation, a fine of \$1,000; and

(4) For a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the corporation's plan of operation with respect to such branch office.

➤ **For charitable raffles:**

**§ 4602.1. Form for application.**

\* \* \*

(b) Notwithstanding the licensing requirements set forth in this Part, an authorized organization that has met the self-determination requirements of subdivision (c) section 4601.1(c) of this Subchapter may conduct a raffle without complying with such licensing requirements, provided that such organization shall derive net proceeds from raffles in an amount less than \$5,000 during the conduct of one raffle and shall derive net proceeds from raffles in an amount less than \$20,000 during one calendar year.

(1) No person under the age of eighteen shall be permitted to play, operate or assist in any raffle conducted pursuant to subdivision (b) of this section.

(2) Raffles conducted pursuant to subdivision (b) of this section shall [only] be conducted only within a municipality in which the authorized organization is domiciled that has passed a local law, ordinance or resolution in accordance with Sections 187 and 188 of the General Municipal Law approving the conduct of games of chance that are located within the county or contiguous to the county in which the organization is domiciled.

(3) The commission shall penalize a licensee found to have violated paragraph (1) of this subdivision as follows:

(i) For a first violation, a written warning of such violation;

(ii) For a second violation within one year of a violation, a fine of \$500;

(iii) For a third violation within one year of a violation, a fine of \$1,000; and

(iv) For a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to conduct raffles in this State.

➤ **For charitable games of chance:**

**§ 4622.2. Minors.**

(a) Persons under 18 years of age may be permitted to attend games of chance license periods at the discretion of the games of chance licensee, but shall not be allowed to participate in the operation or play of any game or games of chance.

(b) One or more signs restricting participation of persons under 18 years of age shall be prominently displayed in each playing area.

(c) The commission shall penalize a licensee found to have violated subdivision (a) of this section as follows:

(1) For a first violation, a written warning of such violation;

(2) For a second violation within one year of a violation, a fine of \$500;

(3) For a third violation within one year of a violation, a fine of \$1,000; and

(4) For a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to conduct games of chance in this State.

**§ 4622.3. Restriction on participation.**

(a) No person shall assist in the management of games of chance except a bona fide member of the licensee. No person shall assist in the operation of games of chance except a bona fide member of the licensee or a bona fide member of an organization which is an auxiliary or an affiliate of the licensee. [No person under the age of 18 years shall be permitted to assist in the conduct of games of chance or participate in the play of any game or games of chance.] For the purpose of the sale of tickets for the game of raffle, the term "operate" shall not include the sale of such tickets by any person with a blood relationship or affinity with a member of an authorized organization licensed to conduct a raffle. Nonmembers may assist the licensee in any activity other than managing or operating games of chance.

(b) No person under the age of 18 years shall be permitted to assist in the conduct of games of chance or participate in the play of any game or games of chance.

(c) The commission shall penalize a licensee found to have violated subdivision (b) of this section according to the penalties set forth in subdivision (c) of section 4622.2 of this Part.

➤ **For traditional lottery:**

**§ 5001.27. Ticket sales.**

\* \* \*

(c) (1) No ticket shall be sold to any person under the age of 18 but this shall not prohibit the purchase of a ticket for the purpose of making a gift by a person 18 years of age or older to a person less than that age.

(2) The commission shall penalize a licensee found to have violated paragraph (1) of this subdivision as follows:

(i) For a first violation, a written warning of such violation;

(ii) For a second violation within one year of a violation, a fine of \$500;

(iii) For a third violation within one year of a violation, a fine of \$1,000; and

(iv) For a fourth violation or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of any license or privilege to sell lottery tickets.

**§ 5007.5. Play characteristics and restrictions.**

(a) (1) Mega Millions tickets may only be sold to persons 18 years of age or older.

(2) The commission shall penalize a licensee found to have violated paragraph (1) of this subdivision according to the provisions of paragraph (2) of subdivision (c) of section 5001.27 of this Chapter.

**§ 5007.13. Powerball.**

\* \* \*

(f) Play Characteristics and Restrictions.

(1) (i) A Powerball ticket may only be sold to a person 18 years of age or older.

(ii) The commission shall penalize a licensee found to have violated subparagraph (i) of this paragraph according to the provisions of paragraph (2) of subdivision (c) of section 5001.27 of this Chapter.

**§ 5013.3. Ticket sales.**

\* \* \*

(d) (1) No person shall sell a Quick Draw ticket to a person under the age of 18 years. No person under the age of 21 years may purchase a Quick Draw ticket on the premises of a licensee who holds a license issued pursuant to the Alcoholic Beverage Control Law to sell alcoholic beverages for consumption on the premises.

(2) The commission shall penalize a licensee found to have violated paragraph (1) of this subdivision according to the provisions of paragraph (2) of subdivision (c) of section 5001.27 of this Chapter.

➤ **For video lottery gaming:**

**§ 5117.1. Underage gaming violations.**

(a) No video lottery gaming agent, representative, licensed employee or contractor thereof, shall allow, permit or suffer any person under the age of 18 years (*underage person*) to:

(1) Participate as a player at any game in a video lottery gaming facility;

(2) Receive any complimentary service(s) or item(s) as a result of, or in anticipation of, such person's gaming activity.

(3) [Loiter or remain] Be present on the gaming floor without the escort of a licensed gaming facility employee and for longer than [reasonably] necessary [for a legitimate non-gaming purpose or] to reach a destination that is not on the gaming floor.

(b) To insure compliance with this section, each video lottery gaming agent shall post appropriate security personnel at the entrances to the video lottery gaming facility.

(c) Each violation of any of the provisions of subdivision (a) of this section as to a single underage person shall be considered a separate and distinct violation [subject to the penalties that may be imposed by the commission as set forth in these regulations].

(1) The commission shall penalize a licensee found to have violated paragraph (1) of subdivision (a) of this section as follows:

(i) For a first violation, a fine of \$5,000;

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

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

(iv) 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.

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

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

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

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

(iv) 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.

(d) Each employee and representative of a video lottery gaming agent shall have an affirmative obligation to ensure that no underage person engages in any of the activities listed in subdivision (a) of this section. In addition to any penalty that may be imposed by the commission against the video lottery gaming agent, each employee or representative of a video lottery gaming agent who violates any provision of this section may be held jointly or severally liable for any such violation.

(e) The prohibition against underage gaming shall be prominently displayed by the video lottery gaming agent at the video lottery gaming facility, including on each video lottery terminal.

#### **§ 5117.2. Underage gaming violations—affirmative defenses.**

(a) No video lottery gaming agent, representative, or employee thereof shall be liable for any underage gaming violation if such person can establish to a fair preponderance of the evidence at a hearing held pursuant to these regulations an affirmative defense in a manner set forth below.

(b) For purposes of establishing an affirmative defense to an underage gaming violation, the video lottery gaming agent, representative or employee thereof must show that it verified the underage patron's identification



and such identification indicated that the underage patron was of lawful age. Additionally, the underage patron must have produced one of the following:

(c) A photographic driver's license issued by the laws of a state or other government that appears on the face of the license to be valid for such person in all respects; or

(d) A photographic identification card or a similar card issued pursuant to the laws of a state or the Federal government that appears on the face of the card to be valid for such person in all respects.

# ITEM 5a

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 21, 2013

**Re:** Matter of Scott P. Anderson

The Commission denied Scott P. Anderson's application for an occupational license as a mutuel clerk on March 28, 2013. Mr. Anderson appealed. He was served with a Notice of Hearing and failed to appear at the hearing on August 20, 2013 before Hearing Officer Charles Diamond. The Hearing Officer's report and recommendations were delivered to the Commission Secretary on October 16, 2013. This matter is now ready for final agency determination by the Commissioners.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ITEM 5b**

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 21, 2013

**Re:** Matter of David Cohen

The State Steward at Aqueduct suspended jockey David Cohen for seven days for careless riding in a race on April 13, 2013, in violation of Commission rule 4035.2(d). Mr. Cohen appealed. Hearing Officer Charles Diamond conducted a hearing on August 15, 2013. The Hearing Officer's report and recommendations were delivered to the Commission Secretary on October 2, 2013. This matter is now ready for final agency determination by the Commissioners.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ITEM 5c**

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 21, 2013

**Re:** Matter of Pierre Tomas

The State Steward at Belmont Park suspended apprentice jockey Pierre Tomas for seven days for careless riding in a race on May 4, 2013, in violation of Commission rule 4035.2(d). Mr. Tomas appealed. Hearing Officer Charles Diamond conducted a hearing on August 15, 2013. The Hearing Officer's report and recommendations were delivered to the Commission Secretary on October 1, 2013. This matter is now ready for final agency determination by the Commissioners.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# ITEM 6



## MEMORANDUM

**DATE:** October 24, 2013

**TO:** Robert Williams, Acting Executive Director

**FROM:** Evaluation Committee

**SUBJECT:** Recommendation of Award: Market Research Regarding Alternative Approaches for the Future of Lottery in New York State

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The Evaluation Committee (the "Committee") recommends that the Gaming Commission (the "Commission"), Division of the Lottery (the "Lottery"), award a contract to ██████████ for the Market Research Regarding Alternative Approaches for the Future of Lottery in New York State. ██████████ meets the requirements set forth in the Request for Proposal (the "RFP"), released by the Commission on September 13, 2013 and the Committee has determined that ██████████ possesses the necessary experience and staffing to meet the defined deliverable as well as subsequent consulting needs of the Lottery.

As provided in the RFP, ██████████ will be expected to take all steps necessary to develop a comprehensive Business Plan that will address alternative approaches for the Division of the Lottery under either outcome (pass/fail) of the casino referendum. The Business Plan shall include, but not be limited to, the following:

- Description of specific business strategic opportunities, paths or actions the Commission may take, including timelines.
- Identification of estimated, relational, revenue opportunities under each opportunity, path, or action, for a five-year period.
- Provide estimated administrative costs to implement each path.
- Discussion of which aspects of each, opportunity, path, or actionable items are best suited to operation by the Commission and recommendations for use of outside vendors.
- Projection of staff size that will be required of the Commission and/or Division of Lottery, to implement the options.
- Identification and discussion of the competition that will be encountered depending on opportunities, paths, or actions selected by the Commission.

The term of the contract will include a period of 45 days following November 5, 2013, Election Day, and shall continue for a period of two (2) years throughout which time the Commission may enlist the services of the Consultant for other engagements and on an hourly basis.



### The Procurement and Award Process

#### **Notice of Procurement:**

Notice of this procurement opportunity was provided in the New York State Contract Reporter; on the Public Gaming Research Institute website; and on the Commission's website where the RFP could be accessed. In addition, email notice was provided to 16 potential bidders directing them to the Commission's website.

#### **Procurement Schedule:**

RFP Issued	September 13, 2013
First Vendors' Questions Due by 4:00 pm	September 19, 2013
Commission Responses to Questions	September 24, 2013
Vendor Proposals Due by 4:00 pm	October 7, 2013
Apparent Winning Proposal Designated	October 23, 2013

#### **Minimum Qualifications:**

Have at least three (3) years demonstrated experience in work similar to that required under this RFP.

Have demonstrated knowledge and understanding of lottery player reaction to changes in wagering opportunities within a jurisdiction or surrounding jurisdictions.

Have knowledge and experience building and/or implementing strategic business plan alternatives specifically related to discretionary dollar spending of consumers.

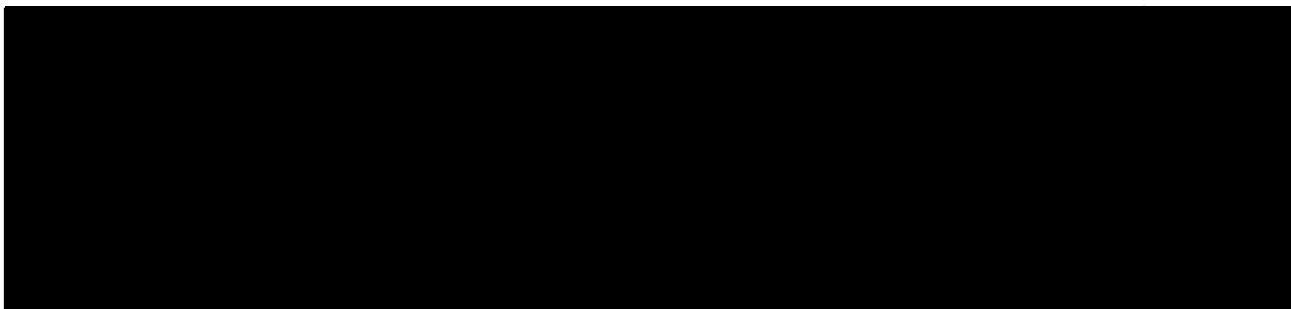
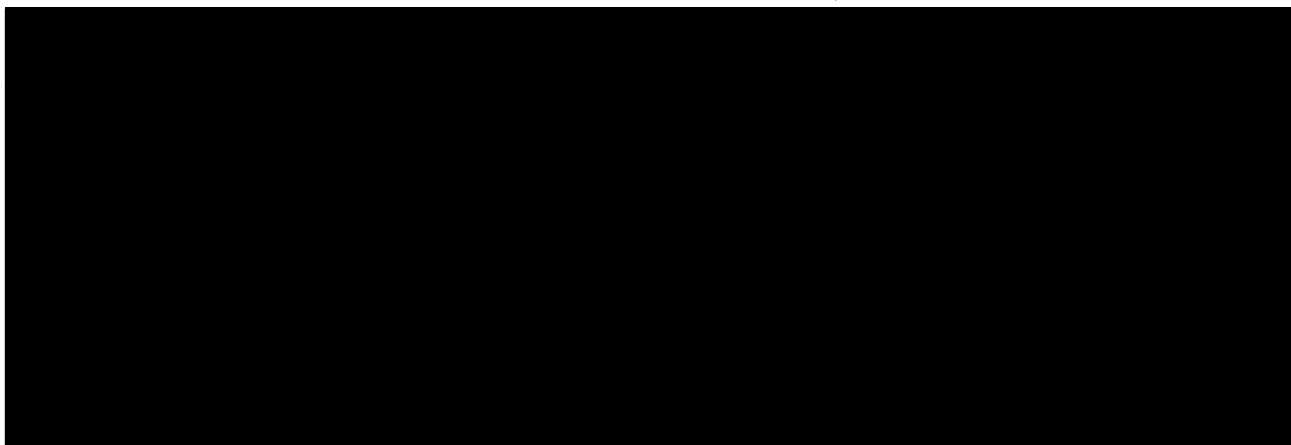


Have experience evaluating the sales and profit results of business decisions where the upside or downside potential is in excess of \$250 million in profit.

Have demonstrated knowledge and understanding of product and marketing opportunities within the lottery industry.

Not hold an existing license or direct contract under the New York Lottery, the Commission or any of its Divisions, Bureaus or offices.

**Receipt of Proposals:**



**Evaluation Committee:**

The evaluation was conducted by an Evaluation Committee consisting of 5 members of the Commission's staff:

Gardner Gurney, Chair	Acting Director, Division of Lottery
Jim Nielsen	Acting Director, Division of Gaming
Frank Roddy	Administrative Officer, Finance
Dana Idema	Director of Advertising, Division of Lottery
Julie Barker	Associate Attorney, Legal

Gail Thorpe and Debbie Martino of the Commission's Finance Office served as Contracting Officer and alternate Contracting Officer for the procurement process.

**Evaluation Methodology:**

Consensus scoring methodology was selected to score the technical proposal and was based on a pre-determined weighted scoring system. The weighted scoring system provides numerical scores that represent the Committee’s assessments of the technical merits of the Proposal.

Prior to receipt of the Proposals an Evaluation Instrument was developed by the Contracting Officer for use by the Committee. That document was used throughout the evaluation process and contains the worksheets used to record and calculate the scores. The Instrument is included with this report as Attachment 1.

**Award – Best Value:**

In accordance with Section 163(h) of the State Finance Law: “Best Value means the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis.”

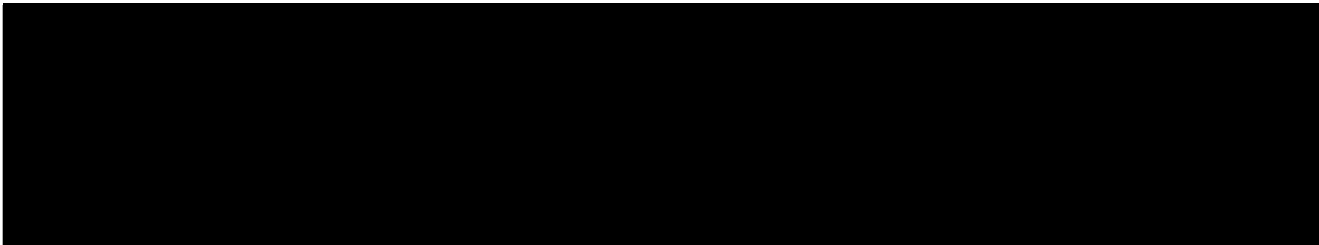
As provided in the RFP, “In determination of awards, the qualifications of the bidder, the conformity with the specifications of services to be supplied and the performance and delivery terms will be considered.”

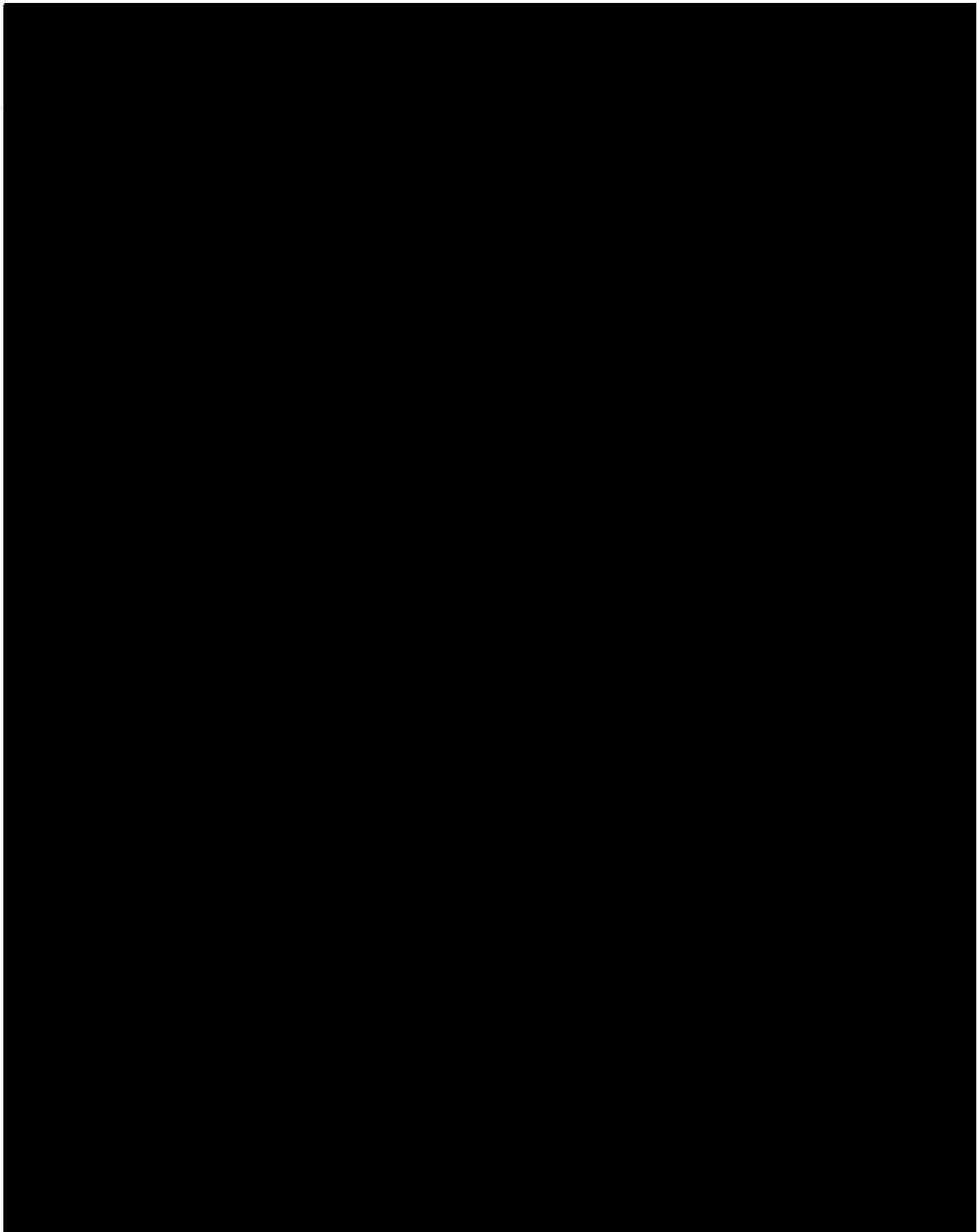
**Evaluation Criteria:**

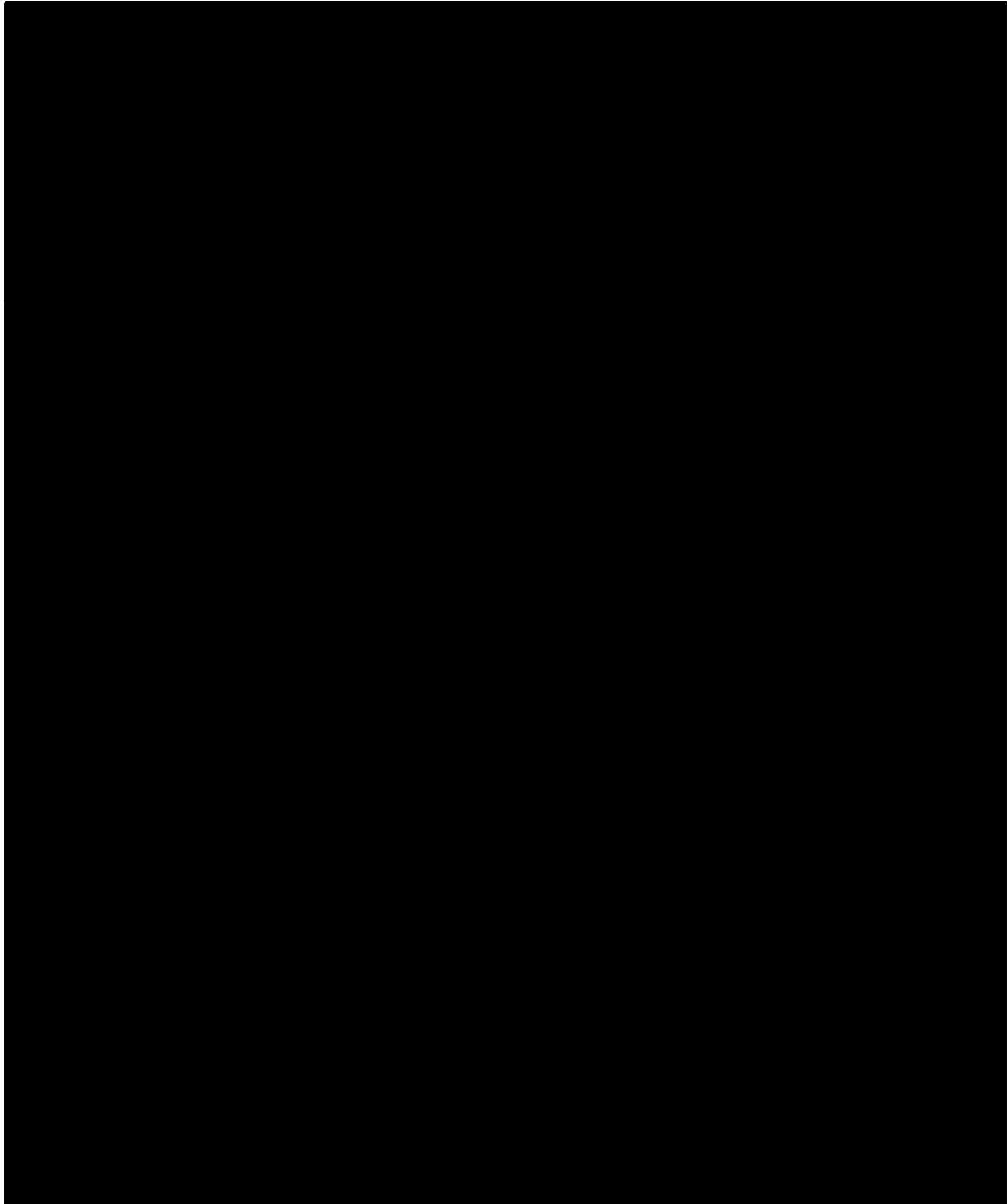
The technical portion of the evaluation was equal to 75% of the total points. The following components, as reflected in Part 5 of the RFP, were evaluated to determine the technical merit of the Proposal:

- Experience of Vendor’s Organization (35)
- Project Management & Staffing (25)
- Work Plan (15)

The Pricing portion of the evaluation was equal to 25% of the total points. The price for the Proposal was determined using the Pricing Proposal Scoring Summary – Exhibit 4 of the Instrument.








Vendor Responsibility

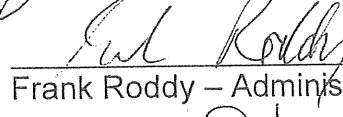


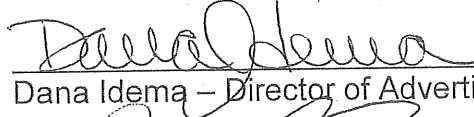
**Recommendation and Signatures**

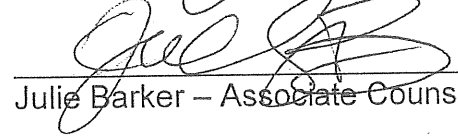
By signature below, the Committee recommends award of the contract to [REDACTED]

  
\_\_\_\_\_  
Gardner Gurney – Acting Director, Division of Lottery

  
\_\_\_\_\_  
Jim Nielsen – Acting Director, Division of Gaming

  
\_\_\_\_\_  
Frank Roddy – Administrative Officer, Finance

  
\_\_\_\_\_  
Dana Idema – Director of Advertising, Division of Lottery

  
\_\_\_\_\_  
Julie Barker – Associate Counsel, Legal

10/31/13  
Dated

**Approval of Award Recommendation**

  
\_\_\_\_\_  
Robert Williams – Acting Executive Director of the Gaming Commission

October 31, 2013  
Dated



# ITEM 7

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 31, 2013

**Re:** Delegation of Authority

The Commission adopted Resolution No. 3-2013, which is attached, at its initial meeting on June 26, 2013 in regard to administration of the Commission. Several Commissioners expressed a desire for a subsequent resolution that would address matters of delegation of authority in more expansive terms. In response to that request, the attached Resolution No. 5-2013 is offered for the Commission's consideration.

attachment

cc: Robert Williams, Acting Executive Director

RESOLUTION

Administration of the Gaming Commission

No. 3 – 2013

*Whereas*, the New York State Gaming Commission is and shall be governed by Commissioners, who set the policy and direction of the Commission, including by appropriate revisions of any and all policies of the former Division of Lottery and Racing and Wagering Board, and

*Whereas*, the responsibility for the implementation of such policies, and for the conduct of the administrative affairs of the Commission pursuant to Section 103(1) of the Racing, Pari-Mutuel Wagering and Breeding Law, is and shall be exercised by the Executive Director of the Commission, and

*Whereas*, the appropriate delegation and supervision of such responsibilities within the Commission has been and shall be organized and conducted by the Acting Executive Director of the Commission, and

*Whereas*, the Commissioners shall faithfully fulfill all of their non-delegable duties and responsibilities pursuant to statutory law and rule;

NOW, therefore, it is

*Resolved*, That all final agency action in regard to rule-making and adjudicatory proceedings, as defined in the State Administrative Procedure Act, shall be exercised by the Commissioners;

*Resolved*, That the policies and directives of the Commissioners, and the conduct of the administrative affairs of the Commission, shall be effectuated by the Acting Executive Director of the Commission, including through appropriate delegation and supervision of such responsibilities as determined by the Acting Executive Director; and

*Resolved*, That the Acting Executive Director of the Commission shall regularly report to the Commissioners in regard to the foregoing matters.

Dated: New York, New York  
June 26, 2013

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Kristen M. Buckley  
Acting Secretary, New York State Gaming Commission