



MEETING AGENDA
APRIL 25, 2016

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF FEBRUARY 29, 2016
3. REPORT OF EXECUTIVE DIRECTOR
4. RULEMAKING
 - A. ADOPTION: SGC-07-16-00001-P USE OF CELLULAR TELEPHONES AND ELECTRONIC COMMUNICATION DEVICES IN THE PADDOCK
 - B. ADOPTION: SGC-07-16-00011-P THOROUGHBRED PICK-FOUR, PICK-FIVE AND PICK-SIX WAGERS
 - C. PROPOSED CASINO RULEMAKING: CONDUCT AND OPERATION OF GAMING
 - D. PROPOSED CASINO RULEMAKING: SURVEILLANCE
 - E. PROPOSED RULEMAKING: VOIDABLE CLAIMS
5. ADJUDICATIONS
 - A. IN THE MATTER OF JEROME PALUMBO
 - B. IN THE MATTER OF STOP AND SHOP DELI
6. OLD BUSINESS/NEW BUSINESS
7. SCHEDULING OF NEXT MEETING
8. ADJOURNMENT

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**NEW YORK STATE
GAMING COMMISSION**

MINUTES

MEETING of FEBRUARY 29, 2016

NEW YORK, NEW YORK

A meeting of the Commission was conducted in New York, New York.

1. Call to Order

Executive Director Robert Williams called the meeting to order at 1:08 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Commissioners John Crotty, Peter Moschetti, John Poklemba, Barry Sample and Todd Snyder. Commissioner Moschetti was unanimously elected as presiding officer for the meeting.

2. Consideration of the Minutes from January 26, 2016

The Commission considered previously circulated draft minutes of the meeting conducted on January 26, 2016. The minutes were accepted as circulated.

3. Report of the Executive Director

Executive Director Williams provided a brief report on construction status of the three commercial casino licensees. Williams and Director of Education and Community Relations Carolyn Hapeman provided a presentation regarding National Problem Gambling Awareness Month and the Commission responsible gambling efforts.

4. Rulemaking

a. Adoption: SGC-52-15-00005-P, Lottery Subscription Program

The Commission considered adoption of proposed rules regarding the Lottery Subscription Program which updates the subscription program by allowing the use of newer technologies and addresses limitations imposed by older, outdated processes.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

b. **Adoption: SGC-52-15-00006-P, Lottery Prize Payment**

The Commission considered adoption of a proposed regulation in relation to Lottery Prize Payment which adds flexibility in the manner in which lottery prize payments are made, simplifies payments and affords alternative means of payment.

ON A MOTION BY: Commissioner Snyder
APPROVED: 5-0

c. **Adoption: SGC-46-15-00007-P, Requirement of Specific Minimum Penalties for Certain Multiple Medication Violations**

The Commission considered adoption of a rule to ban the use of stanozolol, discontinuing its permissive presence at threshold amounts.

ON A MOTION BY: Commissioner Sample
APPROVED: 5-0

d. **Adoption: SGC-52-15-00008-P, Suspension and Revocation of a Lottery Agent's License**

The Commission considered adoption of rules regarding the Suspension and Revocation of a Lottery Agent's License which requires an agent to achieve a certain level of sales or face suspension or revocation of its sales agent license.

ON A MOTION BY: Commissioner Snyder
APPROVED: 5-0

e. **Adoption: SGC-01-16-00006-EP, Plan of Operation for the Jockey Injury Compensation Fund**

The Commission considered adoption of proposed rules regarding the Plan of Operation for the Jockey Injury Compensation Fund. The rules create a standing structure for the imposition of a default subsequent-year assessment plan in the event the JICF fails to meet the statutory deadline for plan submission and approval.

ON A MOTION BY: Commissioner Poklemba
APPROVED: 5-0

f. Proposed: Problem Gaming Prevention and Outreach

The Commission considered proposing a rule prescribing the contents of a problem gambling plan that each gaming facility license applicant must submit for Commission approval.

ON A MOTION BY: Commissioner Snyder
APPROVED: 5-0

g. Proposed: Self-Exclusion

The Commission considered proposal of rules that sets forth a process by which a person can request to be excluded from participation in commercial casino gaming activities.

ON A MOTION BY: Commissioner Sample
APPROVED: 5-0

5. Adjudications

a. In the Matter of Joseph D'Agostino. The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 5-0 vote, to sustain the Hearing Officer's recommendation upholding a \$500 fine following the licensee's failure to conduct himself in a forthright and gentlemanly manner and for conduct detrimental to the best interests of racing.

b. In the Matter of Beautyinthepulpit

The Commission announced the owner of Beautyinthepulpit withdrew his appeal of a stewards' ruling, thus mooted consideration of the matter.

6. Old Business/New Business

No old or new business was offered for discussion.

7. Scheduling of Next Meeting

It was announced that the next meeting date would be March 28, 2016.

8. Adjournment

The meeting was adjourned at 1:51 p.m.

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Gaming Commission

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www.gaming.ny.gov

John A. Crotty, Commissioner
Peter J. Moschetti, Jr., Commissioner
John J. Poklemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: April 18, 2016

Re: Adoption of Proposed Rulemaking for Use of Cellular Telephones in Harness Paddocks (9 NYCRR § 4104.14)

For Commission consideration is the adoption of a rule permitting the use of cellular telephones or other electronic communication devices in a designated area of a harness racing paddock or receiving barn. The rule had been adopted twice on an experimental basis, once for one year expiring on February 15, 2013 and again for one year expiring on August 21, 2014.

The Commission, at its June 14, 2014 meeting, authorized removing the expiration date from the rule, making the rule permanent. The proposal was published in the February 17, 2016 *State Register*. A copy of that notice is attached. The public comment period ended on April 4, 2016. No public comments were received.

[REDACTED]

attachment

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

Action taken: Amendment of section 597.3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 17-0301, 17-0303, 17-0501, 17-1743, 27-1301, 37-0101 through 37-0107 and 40-0101 through 40-0121

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: The New York State Department of Health (DOH) has requested that the New York State Department of Environmental Conservation (DEC) list perfluorooctanoic acid (PFOA), CAS number 335-67-1, as a hazardous substance under 6 NYCRR Part 597. Due to its environmental presence, persistence and toxicity, the improper treatment, storage, transport, and disposal of PFOA pose a threat to public health in New York State.

There is also a substantial concern across the globe regarding the human toxicity of PFOA. The United States Environmental Protection Agency, the United States Agency for Toxic Substances and Disease Registry, Health Canada, the European Food Safety Authority, the European Chemical Agency, and the States of New Jersey, Minnesota, and Maine have all conducted comprehensive evaluations of the human health effects of PFOA. These evaluations show associations between PFOA exposure and an increased risk for several health effects.

In light of the public health concerns associated with PFOA it is essential to list it as a hazardous substance under 6 NYCRR Part 597, making it a hazardous waste pursuant to ECL Section 27-1301, in order to enable DEC to expend funds from the Hazardous Waste Remedial Fund to clean up the contaminate where it poses a significant public health threat. For example the Town of Hoosick is currently experiencing exposure to elevated levels of PFOA. This emergency regulation will provide DEC with authority to take immediate action to protect the public health. Furthermore, to the extent elevated levels of PFOA are identified elsewhere in the state, DEC needs the authority to act expeditiously to protect public health.

Subject: Chemical Bulk Storage (CBS).

Purpose: To amend section 597.3 of the CBS regulations to add perfluorooctanoic acid (CAS number 335-67-1) to Table 1 and Table 2.

Text of emergency rule: Section 597.3 is amended to add perfluorooctanoic acid (CAS number 335-67-1) to Table 1 and Table 2.

Substance Added to Part 597 Table 1

CASRN	Substance	RQ Air	RQ Land/ Water	Notes
335-67-1	Perfluorooctanoic acid	1	1	

Substance Added to Part 597 Table 2

CASRN	Substance	RQ Air	RQ Land/ Water	Notes
335-67-1	Perfluorooctanoic acid	1	1	

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 25, 2016.

Text of rule and any required statements and analyses may be obtained from: Andrew English, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020, (518) 402-9553, email: derweb@dec.ny.gov

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Environmental Conservation publishes a new notice of proposed rule making in the *NYS Register*.

Regulations Governing the Recreational Harvest of Winter Flounder

I.D. No.	Proposed	Expiration Date
ENV-04-15-000006-P	January 28, 2015	January 28, 2016

New York State Gaming Commission

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Use of Cellular Telephones and Electronic Communication Devices in the Paddock

I.D. No. SGC-07-16-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of section 4104.14 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(1), (19) and 301(1)

Subject: Use of cellular telephones and electronic communication devices in the paddock.

Purpose: To allow cellular telephones and other communication devices in designated areas of a harness race track paddock.

Text of proposed rule: Subdivision (c) of 4104.14 of Title 9E NYCRR is deleted as follows:

4104.14. Use of cellular telephones and electronic communication devices.

The use of cellular telephones or any other electronic communication device, including devices that are capable of sending or receiving text messages or e-mails, by any person while in the paddock or receiving barn is restricted to use in an area designated by the Paddock Judge.

(a) Notwithstanding the provisions of Rule 4104.11, a sign shall be posted prominently at the entrance of the paddock or receiving barn stating that the use of a cellular telephone or an electronic communication device by any person while in the paddock is restricted to an area designated by the Paddock Judge, and identified by a sign that reads "Designated Cell Telephone Area."

(b) Nothing contained in this rule shall diminish the right of any track to adopt or implement more restrictive procedures concerning the use of cellular telephones and other electronic devices.

[(c) This section shall continue for one year after the date that it goes into effect.]

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

(a) Statutory authority. Racing, Pari-Mutuel Wagering and Breeding Law sections 104(1), 104(19) and 301(1). Section 104(1) of the Racing, Pari-Mutuel Wagering and Breeding Law grants the Gaming Commission general jurisdiction over all gaming activities within the state and over the corporations, associations and person engaged therein. Section 104(19) grants the Gaming Commission the authority to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 301(1) grants the Gaming Commission the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly.

(b) Legislative objectives. To enable the Gaming Commission to ensure that all gaming activity conducted in this state will be of the highest integrity, credibility and quality.

(c) Needs and benefits. This rule is needed to permit trainers, drivers, owners and groom the ability to communicate fully while in the paddock area.

Paddock personnel will be able to communicate during the long period of time they are required to remain in the paddock. Commission Rule 4104.8(a) requires trainers and/or assistant trainers to report to the paddock at least one hour prior to post time. A driver, trainer or groom, once admitted to the paddock may not leave the paddock until the horse to which he or she is assigned shall have completed its race, returned to the paddock, and the race is declared official. If these persons have multiple horses racing, they may be required to spend many hours in the paddock. During that time, they may need to make and receive telephone calls and electronic messages.

The cell phone paddock rule, 9 NYCRR § 4104.14, was adopted originally on January 30, 2012 and included subdivision (c), which stated that "this section shall continue for one year after the date that it goes into effect," allowing the rule to be implemented on a trial basis. The Gaming Commission re-adopted the rule on August 6, 2013. The Gaming Commission, with this proposal, intends to omit the sunset clause and make the rule permanent.

(d) Costs. There are no projected costs to regulated persons or state and local governments associated with the adoption of this rule. The elimination of subdivision (c) will reduce agency costs to the Gaming Commission by eliminating the need to prepare and submit a rulemaking package to continue experimentation with the rule. State and local governments are not affected by this rule.

(e) Paperwork. There will be no new paperwork created by this amendment. Adoption of the amendment will reduce the paperwork required for annual re-adoption of Section 4104.14 by the Gaming Commission.

(f) Local government mandates. Because the Gaming Commission is solely responsible for the regulations of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

(g) Duplication. There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the amendment of Section 4104.14.

(h) Alternative approaches. No alternative approaches were considered for this rulemaking because it was previously implemented in January 2012 and August 2013 on an experimental basis and there were no problems encountered with the rule.

(i) Federal standards. There are no federal standards for pari-mutuel wagering on harness races in New York State.

(j) Compliance schedule. The rule would be effective immediately upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment re-adopts a rule that was originally adopted on January 31, 2012 and re-adopted on August 6, 2013 which allows the use of cellular telephones and electronic communications devices within the paddock or receiving barn at a licensed harness race track. This amendment is different from the January 2012 and August 2013 adoption in that it removes an annual sunset clause, removing the need for the Gaming Commission to re-adopt the rule every year. The rule proposal requires Paddock Judges, who are employees of the New York State Gaming Commission, to designate areas where track personnel may use their cellular telephones or electronic communication devices, prominently post signs regarding the restricted use of cell phones in the paddock and other signs that identify the cellular phone use area. This rule has been in effect at New York State harness racetracks since January 2012 and will not add any new requirements. Consequently, the rule does not adversely affect small business, local governments, jobs nor rural areas. This amendment will not have an impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Thoroughbred Pick-Four, Pick-Five and Pick-Six Wagers

I.D. No. SGC-07-16-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 4011.23 and 4011.26; renumbering of section 4011.24 to 4011.23; and addition of section 4011.25 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Thoroughbred pick-four, pick-five and pick-six wagers.

Purpose: To standardize and improve the pick-four, pick-five and pick-six wagers in thoroughbred racing.

Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov>) Section 4011.23. Pick-six pools.

This section is renumbered as § 4011.26, changes in style are made,

new subdivisions (b), (c), (d), (e), (i), (k), (n) (o), (p) and (x) are added and other amendments are made, often to conform the structure of the section to the sections governing the pick-four and pick-five rules. A new subdivision (a) defines the wager and requires written approval from the commission concerning scheduling of pick-six contests, the designation of the method used and the amount of any cap to be set on the carryover. The subdivision also requires that any changes to the approved pick-six format require prior approval from the commission. A new subdivision (b) sets forth that the pick-six wager is separate from other types of wagers. A new subdivision (c) prohibits the re-sale of pick-six tickets. A new subdivision (d) requires the clear designation of which races are part of pick-six wagering. A new subdivision (e) requires a distinguishing design for pick-six tickets. A new subdivision (f) (formerly subdivision (g)) provides that should a programmed starter be scratched or declared a nonstarter in any pick-six race before the start of the first pick-six race, affected bettors may select another betting interest or cancel the wager before the start of the first pick-six race, or else a designated horse will be substituted for the scratched or nonstarting horse. In the new subdivision (g) (formerly subdivision (b)), the amendments make it possible for a bettor to win the major pool, by correctly selecting the winner in all six races, when there has been a surface transfer from turf in more than one of the pick-six races. The amendment allows for as many as three surface transfer races, which are deemed a win for all bettors ("all win"), when the bettor correctly selects all the other races. In subdivision (h), if a designated race is cancelled for pari-mutuel wagering before the first pick-six race is made official, then the pick-six wagers are deemed cancelled and the gross pool will be refunded to the bettors. A new subdivision (i) is added for when there are surface transfers in one or more designated races in the pick-six pool. The former subdivision (f) is redesignated as subdivision (j). A new subdivision (k) is added in regard to carryovers. The former subdivision (d) is redesignated as subdivision (l) and stylistic changes are made. The former subdivision (e) is redesignated as subdivision (m) and stylistic changes are made. A new subdivision (n) concerns suspension of pick-six wagering, with the prior approval of the commission. A new subdivision (o) concerns prohibition of display of will-pays. A new subdivision (p) concerns distribution occurrences not encompassed within the explicit provisions of section 4011.26. The former subdivision (j) is redesignated as subdivision (q) and stylistic changes are made. The former subdivision (n) is redesignated as subdivision (r) and stylistic changes are made. The former subdivision (o) is deleted, as the substance of it is superseded by the new subdivision (p). The former subdivision (m) is redesignated as subdivision (s) and stylistic changes are made. The former subdivision (l) is redesignated as subdivision (t) and stylistic changes are made. The former subdivision (q) is redesignated as subdivision (u) and stylistic changes are made. The former subdivision (k) is redesignated as subdivision (v) and stylistic changes are made. The former subdivision (i) is redesignated as subdivision (w) and stylistic changes are made. The new subdivision (x) requires the track to make copies of section 4011.26 available to the public free of charge in the public betting area of the track.

Section 4011.24. WIN-3. This section is renumbered as § 4011.23.

Section 4011.25. Pick-five pools.

A new section 4011.25 is added, called pick-five pools. The section was reserved. The provisions for this wager are generally consistent with those for pick-six pools except that there is no minor pool. The pick-five requires a bettor to select the winner of five designated races. Provisions are made for dead heats, final or other designated distributions at a race meeting, scratched horses, cancelled races and surface transfers. The retention rate for the pick-five pool is 15 percent.

Section 4011.26. Pick-four pools.

This section is renumbered as § 4011.24, changes in style are made, new subdivisions (h), (i), (p) and (r) are added and other amendments are made. Subdivision (a) defines the wager and requires written approval from the commission concerning scheduling of pick-four contests and the designation of the method used. The subdivision also provides that any changes to the approved pick-six format require prior approval from the commission. Stylistic changes are made in subdivisions (b), (c), (d) and (e). In subdivision (f), the designated substitute wager, should a betting entry or field be scratched from a pick-four race, when there is a tie among remaining horses for most money wagered on the horse in the win pool, is defined as the horse among those tied that has the lowest program number rather than on which the most money is wagered in the place pool. Also, an affected bettor is authorized to choose between cancelling a wager or selecting another horse when a horse selected to win a designated race is scratched before the first race of the pick-four, and otherwise the wager for such race is construed as a bet on a different horse, determined by rule, for such race. Stylistic changes are made in subdivision (g) and paragraph (5) is redesignated as a new subdivision (i) and amended to specify that bettors who select the winners in the greatest number of races run on the originally scheduled surface will share the net pool when there is a surface change in one or more of the designated races in the pick-four, and if there



Gaming Commission

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John A. Crotty, Commissioner
Peter J. Moschetti, Jr., Commissioner
John J. Poklemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: April 19, 2016

Re: Adoption of Proposed Rulemaking for Pick-Four, Pick-Five and Pick-Six Pools (9 NYCRR §§ 4011.23, 4011.24, 4011.25 and 4011.26).

For Commission consideration is the adoption of proposed revisions to the Commission's pari-mutuel wagering rules in regard to the pick-four, pick-five and pick-six pools on thoroughbred horse races. The proposals would make such wagers consistent by eliminating discrepancies that arose when such wagers were authorized over a period of many years. The proposal also sets forth rules for pick-five pool wagering into Commission regulations.

The Commission proposed this rulemaking on September 24, 2015. The Commission's Division of Horse Racing and Pari-Mutuel Wagering formulated the proposals in consultation with The New York Racing Association, Inc. ("NYRA"), which supports the proposals. The proposal was published in the February 17, 2016 *State Register*. A copy of that notice is attached. The public comment period ended on April 4, 2016. NYRA submitted a comment supporting the adoption of the rules and requested that the changes be effective on July 22, 2016, which is the start of the Saratoga meet, in order to allow for appropriate testing of the totalisator system to prepare for the rules changes.

The text of the proposed rules is attached.

[REDACTED]

attachment

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

Section 4011.24 (WIN-3) is renumbered as section 4011.23.

§ [4011.26. Pick four pools] 4011.24. Pick-four pools.

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

(b) The [pick four] pick-four is not a parlay and has no connection or relation to the other betting pools for the respective races. The [pick four] pick-four pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, quinella, [triple] trifecta, superfecta or other wagering pool.

(c) Resale of [pick four] pick-four tickets from one individual to another is prohibited, shall be grounds for ejection, and may be deemed illegal gambling.

(d) Races in which [pick four] pick-four pools shall be conducted shall be clearly designated in the program and racing cards issued by the corporation.

(e) The design of the [pick four] pick-four tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(f) *Scratched horses and nonstarters.* At any time after wagering begins on the [pick four] pick-four pool, should an entire betting entry or field be scratched or declared a nonstarter in any [pick four] pick-four race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the [pick four] pick-four pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the track in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field [upon which the most wagering money has been registered at the track in the place pool at the close of place pool betting for that race] with the lowest program number shall be designated.) Wagers in the [pick four] pick-four pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except at tracks with totalisator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), in which case, the wagers upon scratched constituent horses will be deemed wagers upon the “designated horse” in such race]. In case no starter remains representing any betting entry or field, wagers upon such entry or field shall be deemed wagers upon the “designated horse” in the race affected by the scratch. Should the balance of a betting entry or field race as a [nonbetting] non-betting starter for purposes of other pari-mutuel pools, as provided in sections 4009.20 and 4009.21 of this Article, wagers upon such entry or field shall be deemed wagers upon the “designated horse” for such race. Should a programmed starter be scratched or declared a nonstarter in any pick-four race prior to the start of the first leg, [the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg] affected bettors may select another betting interest if the wager can be canceled and a replacement wager issued prior to the start of the first race of the pick-four, or obtain a cancellation of the wager prior to the start of the first race of the pick-four. If neither option is exercised, wagers upon such scratched or declared nonstarter shall be deemed wagers upon the “designated horse” for such race.

(g) *Failure to select a winning combination.* If neither subdivision (h) nor subdivision (i) of this section applies:

(1) If no [pick four] pick-four ticket is sold combining the winners of the four pick four races, all [pick four] pick-four tickets designating three winners shall be considered winning tickets and the net pool distributed equally to holders of [said] such tickets.

(2) If no [pick four] pick-four ticket is sold combining the winners of three such races, all [pick four] pick-four tickets designating two winners shall be considered winning tickets and the net pool distributed equally to holders of [said] such tickets.

(3) If no [pick four] pick-four ticket is sold combining the winners of two such races, all [pick four] pick-four tickets designating one winner shall be considered winning tickets and the net pool distributed equally to holders of [said] such tickets.

(4) If no [pick four] pick-four ticket is sold designating any winner to win in the designated [pick four] pick-four races, the [pick four] pick-four shall be declared off and the gross pool refunded.

(h) Race cancellations.

(1) If one or two of the legs of the pick-four races are cancelled or declared no race or non-betting, then those who selected the winners in the greatest number of other legs shall share the net pool.

(2) If more than two of the legs of the pick-four races are cancelled or declared no race or non-betting, then the entire pool shall be cancelled and all pick-four wagers shall be refunded.

(3) If any of the designated races of the pick-four are cancelled or declared no race or non-betting prior to the first leg being made official, then the pick-four shall be declared off and the gross pool refunded.

[(5)] (i) Surface transfers. When the condition of the turf course(s) warrants a change of racing surface in any of the legs of the [pick four] pick-four races, and such change has not been known to the public prior to the close of wagering for the [pick four] pick-four pool, the stewards shall declare [the] such changed [leg(s)] leg to be an “all win” [race(s)] race for pick-four wagering purposes only. An “all win” [race(s)] race will assign the winner of that [race(s)] race to each pick-four ticket holder as [their] such ticket holder’s selection for that race. If there is a surface transfer in one or more legs of the pick-four, then those who selected the winners in the greatest number of non-surface transfer legs shall share the net pool. If there are no wagers selecting the winner of at least one of the non-surface transfer races, then the entire pool for such program shall be refunded.

[(6) If any of the designated races are cancelled or declared “no race,” the [pick four] pick-four will be determined by the winners of the remaining race or races.]

[(h)] (i) Dead heats. In the event of a dead heat for win in any or all [pick four] pick-four races, all [pick four] pick-four tickets designating either horse to win in said race or races shall be eligible for participation in the remaining [pick four] pick-four races, and the net pool shall be equally distributed to the winners, that is, the net pool will be divided by the total amount represented by all winning

tickets and the resulting price, per dollar, and after breakage, shall be the payoff price, which shall be uniform for any winning combination.

[(i)] (k) In the event of occurrences not encompassed within the explicit provisions of this section, distribution shall be formulated on the basis of established pari-mutuel practice and in accordance with the distribution philosophy set forth in this section; provided, nevertheless, that if full distribution of the pool is made on the basis of outstanding tickets, the method of formulation announced by the track, and upon which basis payments have been made, shall be deemed conclusively correct and not subject to review.

[(j)] (l) Copies of this section shall be made available free of charge by the track to the public in the public betting area of the track.

§ 4011.25. Pick-five pools.

(a) A winning pick-five wager requires selection of the first-place finisher in each of five designated, consecutive contests, unless otherwise provided in this section. The association must obtain written approval from the commission concerning the scheduling of pick-five contests, the designation of the method used and the amount of any cap to be set on the carryover. Any changes to the approved pick-five format require prior approval from the commission.

(b) The pick-five pool shall be apportioned as follows: the net pick-five pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-five contests, based on the official order of finish, unless otherwise provided in this section. If there are no such wagers, the net pick-five pool shall be added to the carryover.

(c) *Dead heats.* If there is a dead heat for first in any of the pick-five contests involving:

(1) contestants representing the same betting interest, then the pick-five pool shall be distributed as if no dead heat occurred; or

(2) contestants representing two or more betting interests, then the pick-five pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(d) *Distribution on a specified date.*

(1) Final distribution. The track shall select, with the approval of the commission, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting (which for purposes of this section shall mean the end of assigned racing dates at a track after which such track operator will operate at another track) when there shall be a final distribution of all accumulated carry-overs together with the net pool of the pick-five pool conducted during such program to the holders of wagers selecting the winners of the most pick-five races contested during such program. Thereafter, no pick-five pools shall be conducted during such week. In the event that all pick-five races on the program designated for final distribution are cancelled, and no further programs are conducted at the meeting, the commission shall require that a pick-five pool be conducted on the first program of the next race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

(2) Other designated distribution. The pick-five carryover may be designated for distribution on a specified date and performance, other than as a final distribution, as set forth in paragraph (1) of this subdivision, only under the following circumstances:

(i) upon written approval from the commission as provided in subdivision (i) of this section; or

(ii) upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick-(n) wagering to another or when the pick-five is discontinued.

Should the pick-five carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick-five contests, the net pool, with any carryover, shall be distributed as a single-price pool to those whose selection finished first in the greatest number of pick-five contests.

(e) Should a betting interest in any of the pick-five contests be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substituted selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests that became winners as a result of the substitution, in addition to the normal winning combination. Should a programmed starter be scratched or declared a nonstarter in any pick-five race prior to the start of the first leg, affected bettors may select another betting interest if the wager can be canceled and a replacement wager issued prior to the start of the first race of the pick-five, or obtain a cancellation of the wager prior to the start of the first race of the pick-five. If neither option is exercised, wagers upon such scratched or declared nonstarter shall be deemed wagers upon the "designated horse" for such race.

(f) *Race cancellations.* Except for pick-five pools in which a designated distribution is to be made:

(1) If one or two of the legs of the pick-five races are cancelled or declared no race or non-betting, then those who selected the winners of all pick-five races actually contested shall share the net pool. Any carryover from previous programs will be carried over to the next pick-five wager pool.

(2) If more than two of the legs of the pick-five races are cancelled or declared no race or non-betting, then the pool shall be cancelled and the gross pool refunded.

(3) If any of the designated races of the pick-five are cancelled or declared no race or non-betting prior to the first leg being made official, then the pick-five shall be declared off and the gross pool refunded.

(g) *Surface Transfer.* When the condition of a turf course warrants a change of racing surface to a non-turf course in any of the legs of the pick-five races, and such change has not been known to the public prior to the close of wagering for the pick-five pool, then such changed leg, or legs, shall be deemed an "all win" race, or races, for pick-five wagering purposes only. Such "all win" declaration will assign the winner of that race to each pick-five bettor as such bettor's selection for that race. Except for pick-five pools in which a final distribution is to be made, a pick-five with surface transfer(s) shall be handled as follows:

(1) In the event that there was a surface change to a non-turf course in only one of the legs of a pick-five wager, then the bettors who selected the winners of the four legs for which there were no surface changes shall share that day's net pool for such wager as well as any carryover.

(2) In the event that there was a surface change to a non-turf course in more than one of the legs of a pick-five wager, then the bettors who selected the winners of all the legs for which there were no surface changes shall share that day's net pool for such wager but shall not share any carryover (any such previous carryover to be carried over to the next performance's pick-five wager pool).

(3) In the event that there are one or more surface change races in the pick-five, and there are no wagers selecting the winner(s) of all of the non-surface-change races in the pick-five sequence, the net pool for such program shall be carried over to the next performance's pick-five wager pool.

(4) When there is a final distribution scheduled, if there are one or more surface change races in the pick-five and there are no wagers selecting the winner(s) of at least one of the non-surface change races, the entire pool for such program shall be refunded; if there is any carryover accumulated from previous programs, such carryover shall be carried over as provided in subdivision (k) of this section for subsequent distribution.

(h) The pick-five carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick-five carryover equals or exceeds the designated cap, the pick-five carryover will be frozen until such carryover is won or distributed under the other provisions of this rule. After the pick-five carryover is frozen, 100 percent of the net pool that ordinarily would be added to the pick-five carryover shall be distributed to those whose selection finished first in the greatest number of pick-five contests for that performance.

(i) A written request for permission to distribute the pick-five carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and performance for the distribution.

(j) Should the pick-five carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick-five contests, the net pool, with any carryover, shall be distributed as a single-price pool to those whose selection finished first in the greatest number of pick-five contests. The pick-five carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(1) upon written approval from the commission as provided in subdivision (h) of this section;

(2) upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick-(n) wagering to another or when the pick-five is discontinued;

(3) on the closing performance of the meet or split meet; and

(4) on the last performance of the year.

(k) If for any reason the pick-five carryover must be held over to the corresponding pick-five pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the

commission. The pick-five carryover plus accrued interest shall then be added to the net pick-five pool of the following meet on a date and performance so designated by the commission.

(l) With the written approval of the commission, the association may contribute to the pick-five carryover a sum of money up to the amount of any designated cap.

(m) Other than the display of the will-pays after the penultimate leg in the pick-five sequence, providing information to any person in regard to covered combinations, amounts wagered on specific combinations, numbers of tickets sold or number of live tickets remaining is strictly prohibited. This subdivision shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

(n) The association may suspend previously approved pick-five wagering with the prior approval of the commission. Any carryover shall be held until the-suspended pick-five wagering is reinstated. An association may request approval of a pick-five wager or separate wagering pool for specific performances.

(o) The retention rate for the pick-five pool is 15 percent.

§ [4011.23. Pick six pools] 4011.26. Pick-six pools.

[The rules in this section shall govern all pick six pari-mutuel pools conducted by a thoroughbred track operator.]

(a) *Wagering tickets.* A pick six pari-mutuel pool known as the “pick six,” or such other name as may be approved by the commission, is authorized to be conducted by a thoroughbred track operator upon the outcome of six designated pari-mutuel races to be contested at such operator’s track on the same racing program, such designation to be made by the track operator with the approval of the commission. Such pool shall be separate and distinct from all other pari-mutuel pools conducted at such track. Wagers in such pool shall be represented by pari-mutuel tickets immediately distinguishable from pari-mutuel tickets issued in other pools. A wager, which shall select a winner for each designated race, shall be included on the same pari-mutuel ticket that shall be issued prior to the start of the first designated [pick six] pick-six race. Races designated for the [pick six] pick-six pool shall be clearly described as such in the official program.

(b) *Winners and carry-overs.* In general, after deductions for cancellations, refunds and statutory takeout, 75 percent of the resulting [pick six] pick-six net pool for the day shall be distributed, less breaks, to the holders of [tickets] wagers selecting the winners of all six designated races in the pool, or to the holders of the [tickets] wagers selecting [five winners out of six and have] the winners of the designated races with no more than [one] three “all win” [event] events, and no other races are cancelled [or declared “all win”] in the pick-six [sequences] sequence or races, and 25 percent of such net pool shall be distributed to the holders of the [remaining tickets] wagers selecting the most winners. (Such takeout shall be established at a rate between the range of 15 percent to 36 percent inclusively. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter.) Should there be no wager selecting winners of all six designated races, or [five winners and] to the holders of wagers selecting the winners of the designated races with no more than [one] three “all win” events, then 25 percent of the net pool shall be distributed, less breaks, to the holders of [tickets] wagers selecting the winners of the most [pick six] pick-six races, and the 75 percent of the net pool reserved for holders of [tickets] wagers selecting six

winners, or [five winners and] to the holders of wagers selecting the winners of the designated races with no more than [one] three "all win[,]" events shall be carried over and added to and distributed with the 75-percent net pool share of the next [subsequent pick six] pick-six pool in which a wager correctly selects the winners of all six designated pick six races, or five winners and no more than one "all win." Carryovers from prior [pick six] pick-six pools, advertised guaranteed amounts or advertised added amounts will be distributed to winners in such day's [pick six] pick-six pools, provided that there is no more than one "all win" event and no other races are cancelled [or declared "all win"] in the [pick six] pick-six sequence.

(c) *Added payments to winners.* In addition to the [75-percent net pool] 75-percent-net-pool share and any carry-overs distributable when a wager correctly selects winners of all six designated races, or five winners and no more than one "all win" of a [pick six] pick-six pool, there shall be distributed by the track operator from its own funds, upon such occurrence, any amounts it has advertised that it will add to the total distribution, or any amounts necessary to yield an advertised guaranteed total distribution.

(d) *Intermediate distributions.* Prior to the last two weeks of a race meeting at a track, a date and program approved by the commission may be announced by the track operator at which (provided no one thereafter correctly selects the winners of all six designated races, or five winners and no more than one "all win" of a [pick six] pick-six pool through such program) accumulated carry-overs in an amount announced by the track operator will be added to the 25 percent of the net pool distributable to wagers selecting the winners of the most races of the [pick six] pick-six pool conducted on such program if no one correctly selects all six winners, or five winners and no more than one "all win." The balance of undistributed carry-overs above such announced amount, plus any carry-over from such program, shall in turn carry over for distribution with subsequent [pick six] pick-six pools conducted by such track operator at such track. An intermediate distribution may also be directed at any time, upon three days' notice by the commission, of such portion or all of the accumulated carry-over money as may be directed by the commission.

(e) *Final distribution.* The track shall select, with the approval of the commission, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting (which for purposes of this section shall mean the end of assigned racing dates at a track after which such track operator will operate at another track) when there shall be a final distribution of all accumulated carry-overs together with 75 percent of the net pool of the [pick six] pick-six pool conducted during such program to the holders of wagers selecting the winners of the most [pick six] pick-six races contested during such program and 25 percent of such net pool shall be distributed to the holders of the remaining [tickets] wagers selecting the next most winners; except that, if only one, two or three such races are conducted, then all accumulated carry-overs and the entire net pool shall be distributed to the holders of wagers selecting the most winners of such one, two or three races. Thereafter, no pick-six pools will be conducted during such week. In the event that all [pick six] pick-six races on the program designated for final distribution are cancelled, and no further programs are conducted at the meeting, the commission shall require that a [pick six] pick-six pool be conducted on the first program of the next [subsequent] race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

(f) *Dead heats.* Each horse in a dead heat for win shall be considered the winner, and no allocations among wagers shall be made as a result thereof, unlike the practice in a pari-mutuel win pool. The payoff price per dollar shall be the same for each class of winning wager.

(g) *Scratched horses and nonstarters.* At any time after wagering begins on the [pick six] pick-six pool, should an entire betting entry or field be scratched or declared a nonstarter in any [pick six] pick-six race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the [pick six] pick-six pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the track in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field with the lowest program number shall be designated.) Wagers in the [pick six] pick-six pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except at tracks with totalisator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), in which case, the wagers upon scratched constituent horses will be deemed wagers upon the “designated horse” in such race. In case no starter remains representing any betting entry or field, wagers upon such entry or field shall be deemed wagers upon the “designated horse” in the race affected by the scratch. Should the balance of a betting entry or field race as a nonbetting starter for purposes of other pari-mutuel pools, as provided in section 4009.20 of this Article, wagers upon such entry or field shall be deemed wagers upon the “designated horse” for such race. Should a programmed starter be scratched or declared a nonstarter prior to the start of the first leg, [the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg] affected bettors may select another betting interest, if a wager can be canceled and a replacement wager issued before the start of the first race of the pick-six, or obtain a cancellation of the wager before the start of the first race of the pick-six. If neither option is exercised, then wagers upon such scratched or declared nonstarter shall be deemed wagers upon the “designated horse” for such race.

(h) *Race cancellations [and surface transfers].* Except for [pick six] pick-six pools in which an intermediate or final distribution is to be made, should one or more pick-six races be cancelled or declared no race or non-betting, no carry-overs from prior [pick six] pick-six pools, advertised guaranteed amounts nor advertised added amounts will be distributed to winners in such day's [pick six] pick-six pool; and

(1) if more than three such races are contested, 75 percent [only] of that program's net pool shall be distributed, less breaks, to holders of wagers upon the winners of all [pick six] pick-six races actually contested for such pool, and 25 percent of such program's net pool, less breaks, shall be distributed to the holders of [the remaining tickets] wagers selecting the next most winners; should no wager select the winners of all [pick six] pick-six races actually contested, 25 percent of that net pool shall be distributed, less breaks, to the holders of wagers selecting the most winners of the [pick six] contested pick-six races [contested], and the 75-percent balance shall be carried over as elsewhere provided in this section[,] for subsequent distribution;

(2) if three or fewer such races are contested, then the entire pool for such program shall be refunded[. When the condition of the turf course(s) warrants a change of racing surface in any of the legs of the pick six races, and such change has not been known to the public prior to the close of wagering for the pick six pool, the stewards shall declare the changed leg(s) an “all win” race for

pick six wagering purposes only. An “all win” race will assign the winner of that race to each pick six ticketholder as their selection for that race.]; and

(3) if any of the designated races are canceled or declared no race or non-betting before the first leg being made official, then the pick-six shall be declared off and the gross pool refunded.

(i) *Surface transfers.* When the condition of a turf course warrants a change of racing surface in any of the legs of the pick-six races, and such change has not been known to the public prior to the close of wagering for the pick-six pool, then the stewards shall declare the changed leg an “all win” race for pick-six wagering purposes only. An “all win” race will assign the winner of that race to each pick-six bettor as such bettor’s selection for that race. Except for pick-six pools in which an intermediate or final distribution is to be made, a pick-six with surface transfer(s) shall be handled as follows:

(1) If there is one surface transfer race in the pick-six sequence of designated races combined with the winners of the five other designated races, 75 percent of such program’s net pool, less breaks, and any carryovers, advertised guaranteed amounts or advertised added amounts, shall be distributed to the holders of such wagers, and 25 percent of such program’s net pool shall be distributed, less breaks, to the holders of wagers selecting the next most winners; should no wager include the winners of all five non-surface transfer races in the pick-six sequence, 25 percent of such net pool shall be distributed, less breaks, to the holders of wagers selecting the most winners of the non-surface transfer races in the pick-six sequence, and the 75-percent balance shall be carried over as elsewhere provided in this section for subsequent distribution.

(2) If there are two or three surface transfer races in the pick-six sequence, no carryovers from prior pick-six pools, advertised guaranteed amount or advertised added amounts will be distributed to winners in such day’s pick-six pool, and 75 percent of such program’s net pool shall be distributed, less breaks, to holders of wagers selecting the winners of all non-surface transfer races in the pick-six sequence, and 25 percent of such program’s net pool shall be distributed, less breaks, to holders of wagers selecting the next most winners; should no wager include the winners of all the non-surface-transfer races in the pick-six sequence, 25 percent of such net pool shall be distributed, less breaks, to the holders of wagers selecting the most winners of the non-surface-transfer races in the pick-six sequence, and the 75-percent balance shall be carried over as elsewhere provided in this section for subsequent distribution.

(3) If there are more than three surface transfer races in the pick six sequence, no carry-overs from prior pick-six pools, advertised guaranteed amounts or advertised added amounts will be distributed to winners in such day’s pick-six pool, and 25-percent of that program’s net pool shall be distributed, less breaks, to holders of wagers selecting the winners of the most non-surface-transfer races in the pick-six sequence, and the 75-percent balance shall be carried over as elsewhere provided in this section for subsequent distribution.

(4) If there are one or more surface transfer races in the pick-six sequence, and there are no wagers selecting the winner(s) of at least one of the non-surface-transfer races, the entire pool for such program shall be refunded; in the event there is a final distribution scheduled, and no further programs are conducted at the meeting, the commission shall require that a pick-six pool be conducted on the first program of the next race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission’s discretion.

[(i)] (j) *Seed money or insurance allocation.* Except where the established takeout is higher than the prevailing takeout established for non-carryover days, a percentage designated by the track operator and approved by the commission, not exceeding two percent of the total daily pick six pool wagering, shall be held apart by the track operator from the takeout of each pick-six pool to reimburse such track operator for the cost of any insurance it may secure to guarantee minimum distributions to winners of such pools, or to reimburse a track operator for funds such track operator expends for added money or guaranteed minimum distributions to winners of such pools. Any accumulation of such allocations not necessary to reimburse a track for expenditures actually incurred for such purposes shall be added to the amounts distributable in the pool designated for final distribution for the meeting.

[(j)] (k) *Posting of winning combinations.* Every [pick six] pick-six wagering combination entitled to a payoff shall be posted publicly by the track operator together with the payoff price [therefor].

[(k)] (l) *Trust funds.* Carry-over monies shall be held in a separate account in trust by track operators for the benefit of participants in [pick six] pick-six pools until distributed.

[(l)] (m) *No reduction in guaranteed distributions.* Advertised added monies or minimum distributions shall not apply to intermediate or final distributions, unless a wager correctly selects winners of all six designated races, or five winners and no more than one "all win" of the [pick six] pick-six pool. A guaranteed minimum distribution or guaranteed added money amount, once advertised, may not be reduced and shall continue to be guaranteed by the track operator for every [pick six] pick-six pool for the balance of the meeting.

[(m)] (n) *Betting information.* Unless otherwise ordered by the commission, information concerning combinations wagered upon or not wagered upon in a [pick six] pick-six pool shall not be disclosed by the tote operator, or otherwise, until the final leg of a [pick six] pick-six wager remains as the only race to be contested for completion of the [pick six] pick-six wager. The operation of the totalisator equipment and reports generated thereby, as well as the communication of any information concerning such pool, shall be subject to the strict supervision of the commission.

[(n)] (o) *Nontransferability.* [Pick six] Pick-six tickets shall be nontransferable, and violations of this subdivision may lead to confiscation and cancellation of such tickets in addition to other disciplinary action.

[(o)] (p) *Unforeseen circumstances.* Should circumstances occur that are not foreseen in this section, questions [arising thereby] shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of [pick six] pick-six pools are final and unappealable.

[(p)] (q) *Posting of rules.* These rules shall be posted in the public area of the track by the track operator and copies [thereof] shall be made available to the public by the track operator.

[(q)] (r) *Interfacing of off-track wagers.* Interfacing of off-track wagers shall be accomplished according to procedures approved by the commission. In the event there is a failure to interface all such wagers with on-track wagers in accordance with such procedures, the procedure for distribution of the pool and computation of payoff prices shall be approved by the commission.

The cell phone paddock rule, 9 NYCRR § 4104.14, was adopted originally on January 30, 2012 and included subdivision (c), which stated that "this section shall continue for one year after the date that it goes into effect," allowing the rule to be implemented on a trial basis. The Gaming Commission re-adopted the rule on August 6, 2013. The Gaming Commission, with this proposal, intends to omit the sunset clause and make the rule permanent.

(d) Costs. There are no projected costs to regulated persons or state and local governments associated with the adoption of this rule. The elimination of subdivision (c) will reduce agency costs to the Gaming Commission by eliminating the need to prepare and submit a rulemaking package to continue experimentation with the rule. State and local governments are not affected by this rule.

(e) Paperwork. There will be no new paperwork created by this amendment. Adoption of the amendment will reduce the paperwork required for annual re-adoption of Section 4104.14 by the Gaming Commission.

(f) Local government mandates. Because the Gaming Commission is solely responsible for the regulations of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

(g) Duplication. There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the amendment of Section 4104.14.

(h) Alternative approaches. No alternative approaches were considered for this rulemaking because it was previously implemented in January 2012 and August 2013 on an experimental basis and there were no problems encountered with the rule.

(i) Federal standards. There are no federal standards for pari-mutuel wagering on harness races in New York State.

(j) Compliance schedule. The rule would be effective immediately upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment re-adopts a rule that was originally adopted on January 31, 2012 and re-adopted on August 6, 2013 which allows the use of cellular telephones and electronic communications devices within the paddock or receiving barn at a licensed harness race track. This amendment is different from the January 2012 and August 2013 adoption in that it removes an annual sunset clause, removing the need for the Gaming Commission to re-adopt the rule every year. The rule proposal requires Paddock Judges, who are employees of the New York State Gaming Commission, to designate areas where track personnel may use their cellular telephones or electronic communication devices, prominently post signs regarding the restricted use of cell phones in the paddock and other signs that identify the cellular phone use area. This rule has been in effect at New York State harness racetracks since January 2012 and will not add any new requirements. Consequently, the rule does not adversely affect small business, local governments, jobs nor rural areas. This amendment will not have an impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Thoroughbred Pick-Four, Pick-Five and Pick-Six Wagers

I.D. No. SGC-07-16-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 4011.23 and 4011.26; renumbering of section 4011.24 to 4011.23; and addition of section 4011.25 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Thoroughbred pick-four, pick-five and pick-six wagers.

Purpose: To standardize and improve the pick-four, pick-five and pick-six wagers in thoroughbred racing.

Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov>) Section 4011.23. Pick-six pools.

This section is renumbered as § 4011.26, changes in style are made,

new subdivisions (b), (c), (d), (e), (i), (k), (n) (o), (p) and (x) are added and other amendments are made, often to conform the structure of the section to the sections governing the pick-four and pick-five rules. A new subdivision (a) defines the wager and requires written approval from the commission concerning scheduling of pick-six contests, the designation of the method used and the amount of any cap to be set on the carryover. The subdivision also requires that any changes to the approved pick-six format require prior approval from the commission. A new subdivision (b) sets forth that the pick-six wager is separate from other types of wagers. A new subdivision (c) prohibits the re-sale of pick-six tickets. A new subdivision (d) requires the clear designation of which races are part of pick-six wagering. A new subdivision (e) requires a distinguishing design for pick-six tickets. A new subdivision (f) (formerly subdivision (g)) provides that should a programmed starter be scratched or declared a nonstarter in any pick-six race before the start of the first pick-six race, affected bettors may select another betting interest or cancel the wager before the start of the first pick-six race, or else a designated horse will be substituted for the scratched or nonstarting horse. In the new subdivision (g) (formerly subdivision (b)), the amendments make it possible for a bettor to win the major pool, by correctly selecting the winner in all six races, when there has been a surface transfer from turf in more than one of the pick-six races. The amendment allows for as many as three surface transfer races, which are deemed a win for all bettors ("all win"), when the bettor correctly selects all the other races. In subdivision (h), if a designated race is cancelled for pari-mutuel wagering before the first pick-six race is made official, then the pick-six wagers are deemed cancelled and the gross pool will be refunded to the bettors. A new subdivision (i) is added for when there are surface transfers in one or more designated races in the pick-six pool. The former subdivision (f) is redesignated as subdivision (j). A new subdivision (k) is added in regard to carryovers. The former subdivision (d) is redesignated as subdivision (l) and stylistic changes are made. The former subdivision (e) is redesignated as subdivision (m) and stylistic changes are made. A new subdivision (n) concerns suspension of pick-six wagering, with the prior approval of the commission. A new subdivision (o) concerns prohibition of display of will-pays. A new subdivision (p) concerns distribution occurrences not encompassed within the explicit provisions of section 4011.26. The former subdivision (j) is redesignated as subdivision (q) and stylistic changes are made. The former subdivision (n) is redesignated as subdivision (r) and stylistic changes are made. The former subdivision (o) is deleted, as the substance of it is superseded by the new subdivision (p). The former subdivision (m) is redesignated as subdivision (s) and stylistic changes are made. The former subdivision (l) is redesignated as subdivision (t) and stylistic changes are made. The former subdivision (q) is redesignated as subdivision (u) and stylistic changes are made. The former subdivision (k) is redesignated as subdivision (v) and stylistic changes are made. The former subdivision (i) is redesignated as subdivision (w) and stylistic changes are made. The new subdivision (x) requires the track to make copies of section 4011.26 available to the public free of charge in the public betting area of the track.

Section 4011.24. WIN-3. This section is renumbered as § 4011.23.

Section 4011.25. Pick-five pools.

A new section 4011.25 is added, called pick-five pools. The section was reserved. The provisions for this wager are generally consistent with those for pick-six pools except that there is no minor pool. The pick-five requires a bettor to select the winner of five designated races. Provisions are made for dead heats, final or other designated distributions at a race meeting, scratched horses, cancelled races and surface transfers. The retention rate for the pick-five pool is 15 percent.

Section 4011.26. Pick-four pools.

This section is renumbered as § 4011.24, changes in style are made, new subdivisions (h), (i), (p) and (r) are added and other amendments are made. Subdivision (a) defines the wager and requires written approval from the commission concerning scheduling of pick-four contests and the designation of the method used. The subdivision also provides that any changes to the approved pick-six format require prior approval from the commission. Stylistic changes are made in subdivisions (b), (c), (d) and (e). In subdivision (f), the designated substitute wager, should a betting entry or field be scratched from a pick-four race, when there is a tie among remaining horses for most money wagered on the horse in the win pool, is defined as the horse among those tied that has the lowest program number rather than on which the most money is wagered in the place pool. Also, an affected bettor is authorized to choose between cancelling a wager or selecting another horse when a horse selected to win a designated race is scratched before the first race of the pick-four, and otherwise the wager for such race is construed as a bet on a different horse, determined by rule, for such race. Stylistic changes are made in subdivision (g) and paragraph (5) is redesignated as a new subdivision (i) and amended to specify that bettors who select the winners in the greatest number of races run on the originally scheduled surface will share the net pool when there is a surface change in one or more of the designated races in the pick-four, and if there

are no such winners then the entire pool for such program is refunded. A new subdivision (h) is added for when there are cancellations in the designated races in the pick-four pool. The new rules specify when a pick-four with race cancellations will result in a distribution of the net pool or in a cancellation of the pick-four pool and a refund of wagers. The former subdivision (h) is redesignated as subdivision (j). Subdivisions (k) through (o) would be reserved, in order to further consistency in the designation of similar subdivisions across the pick-four, pick-five and pick-six rules. The former subdivision (i) is redesignated as subdivision (p) and stylistic changes are made. A new subdivision (q) concerns posting of winning combinations. A new subdivision (r) concerns non-transferability of pick-four tickets. Subdivisions (s) through (w) would be reserved, in order to further consistency in the designation of similar subdivisions across the pick-four, pick-five and pick-six rules.

The former subdivision (j) would be redesignated as subdivision (x).

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email:gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104 (1, 19). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. Legislative objectives: To enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule making proposes to amend the Commission's thoroughbred pick-four and pick-six wagering rules to be more consistent and attractive to bettors, and to add a thoroughbred pick-five type of wager that is only incorporated by reference under current rules. This should result in more wagering activity, more entertainment for racing fans, and greater revenue for government.

The proposal would set forth how special circumstances (cancelled races, scratched horses, and surface changes) affect each of these wagers. It would increase a bettor's chances of winning under some circumstances that currently result in a cancellation of the pool, and make such wagers more attractive to bettors by returning the full amount wagered when appropriate in unusual cases. The proposal will put a full description of the pick-five wager in the Commission rules. Finally, the proposal would reorganize these wagers into serial order and make changes in style to make the rules more clear.

The WIN-3 pool, currently 9 NYCRR § 4011.24, would be renumbered section 4011.23. No other amendments are proposed to the WIN-3 pool.

The pick-four pool, section 4011.26, would be renumbered section 4011.24. Subdivision (f) of the rule would be amended to simplify the designation of a substitute wager, when a horse is scratched before a pick-four race. When a betting entry or field is scratched in a pick-four race, the rule designates the favorite horse in the win pool as a substitute wager for the bettors whose horse was scratched. Currently, if two or more horses were tied for most money wagered in the win pool, the tie-breaker is the most money wagered on such horses in the place pool. The amendment will replace the place-pool tie-breaker by designating the substitute wager as the horse, from among those tied in the win pool, with the lowest program number. This will be easier to understand and administer, should such a situation arise, and be consistent with the rule for pick-six wagers. Subdivision (f) would also be amended to provide a bettor with the choice, should such a scratch occur before the first race of the pick-four pool, to select a different substitute horse or to surrender the ticket and receive a refund. If neither option is exercised before the first race, then the bettor will be given a substitute horse as described above. This amendment will give bettors more control and generate greater interest in the pick-four wager.

Paragraph (5) of subdivision (g) would be renumbered subdivision (i) for pick-four surface transfers. A new subdivision (h) for race cancellations would also be added. Both subdivisions would be amended to improve pick-four wagers. When a pick-four race is changed from the turf to another racing surface, it results in all pick-four bettors being credited

with a win ("all win") in such race. The proposal would require that winning bettors must pick at least one horse that wins in a race run on the originally scheduled surface to share in the net pool (amount bet less take-out). If none does, then the gross pool (total amount wagered for such program) will be refunded. Currently, when the only wins are an "all win" race, the bettors share the net pool. The proposal would also provide that when a pick-four race is cancelled before the first race of the pick-four pool, or more than two pick-four races are cancelled, the pick-four wager will be cancelled and the gross pool refunded. Under the current rule, even if only one race is not cancelled the net pool would be paid to bettors rather than a refund of the gross pool. These amendments will make the pick-four rule more attractive to bettors and consistent with the pick-five and pick-six wagers.

A new section 4011.25, currently a reserved rule number, would be added for pick-five pools. The pick-five wager is currently conducted as an "additional authorized wager" under section 4011.28, which cross-references an outside document (a December 1996 national model rule), together with modifications approved by the stewards. A pick-five wager requires the correct selection of the winning horses in every designated race. The pick-six wager also has a minor pool for bettors who select five of six winners. The pick-four wager sometimes pays bettors who select the greatest number of winners. Thus, the pick-five is easier to win (by picking five winners) than a pick-six wager, and the pick-five has carry-overs that can generate very large prizes unlike a pick-four wager. The pick-five has provisions for when a bettor's selected horse is scratched, a race is changed from the turf to another surface, or a pick-five race is cancelled. This type of wager has been recently offered at thoroughbred tracks and has generated greater fan interest than the pick-four or pick-six, and the wager would now be included in the body of the Commission rules.

The pick-six pool, currently in section 4011.23, would be renumbered section 4011.26. Subdivision (b) would be amended to change the major pool winners when there has been a surface transfer that changes every wager on that race into a winner ("all-win"). Currently, the major pool is paid to bettors who win the six designated races with either one "all-win" or no surface transfers. The proposal would amend this by allowing as many as three "all wins." This will make the pick-six wager more attractive to bettors because when there are surface transfers during a race day with a pick-six wager, it is common for more than one race to be changed, with the result under the current rule that no bettors can win the pick-six major pool even when the other races are correctly selected. (Under the current and amended rules, should no bettor win the major pool it is carried over and added to the major pool in the next scheduled pick-six wagering pool.)

Subdivision (g) would be amended to provide bettors the choice, should a scratch of their selected horse occur before the pick-six races begin, of accepting the designated substitute horse or, before the first race of the pick-six pool is run, selecting a different substitute horse or surrendering the ticket for a refund. This amendment will allow such bettors to continue to play this wager. Under the current rule, the racetrack operator would refund such pick-six wagers.

The proposal would amend subdivision (h) to apply to race cancellations, providing that the pick-six pool wagers will be cancelled when a pick-six race is cancelled before any such races begin, and a new subdivision (i) would be added for surface transfers. The proposal would make similar amendments to those for the pick-four and pick-five wagers. This subdivision replaces paragraph (2) of subdivision (h), which provides only that surface transfer races are considered "all wins." These amendments will create an easier set of rules for the wagering public.

Finally, the proposal makes various changes in style to clarify the rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered no other alternatives. The proposed rule changes were drafted in consultation with wagering of-

ficials at the New York Racing Association, Inc. ("NYRA") and are supported by NYRA.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal revises the Commission's pari-mutuel wagering rules in regard to the pick-four, pick-five and pick-six wagers on thoroughbred horse races to make the wagers more attractive to bettors and easier to understand. Such regulation will serve the best interests of thoroughbred racing by improving the wagering opportunities that racetrack operators may offer to the wagering public. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Office of General Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Outdoor Lighting Standards

I.D. No. GNS-07-16-00013-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Addition of Part 312 to Title 9 NYCRR.

Statutory authority: Executive Law, section 200; and Public Buildings Law, section 143(4)

Subject: Outdoor lighting standards.

Purpose: To provide lighting standards that will help state agencies comply with Public Buildings Law section 143.

Text of proposed rule: A new Part 312 is added to read as follows:

PART 312

Restrictions on the Luminous Power of Lighting Fixtures

§ 312.1 Purpose.

The purpose of this Part is to implement the provisions of Section 143 of the Public Buildings Law by setting forth the relevant industry standards with which State agencies must comply when installing new or replacement permanent outdoor lighting fixtures.

§ 312.2 Definitions.

(a) *Direct light* means light emitted by a fixture from the lamp, from a reflector, or through a refractor.

(b) *Facade lighting* means permanent outdoor fixtures that are specifically intended to illuminate the exterior surfaces of buildings or structures.

(c) *Fully shielded fixture* means a fixture that allows no direct light from the fixture above a horizontal plane through the fixture's lowest light-emitting part, in its mounted position.

(d) *Fixture lumens* means total lumens emitted by a fixture.

(e) *Glare* means light emitted by a fixture that causes discomfort or reduced visibility.

(f) *Illuminance* means the luminous power incident per unit area of a surface.

(g) *Lamp* means a light bulb or other component of a fixture that changes electricity into visible light.

(h) *Light trespass* means light that falls beyond the property it is intended to illuminate.

(i) *Lumen* means a standard unit of measurement of the quantity of light emitted from a lamp.

(j) *Fixture* means a complete lighting unit, including a lamp together with the parts designed to distribute the light, to position and protect the lamp and to connect the lamp to the power supply.

(k) *Ornamental roadway lighting* means a roadway lighting fixture that serves a decorative function in addition to a roadway lighting function, having an historical period appearance or decorative appearance.

(l) *Parking-lot lighting* means permanent outdoor fixtures specifically intended to illuminate uncovered vehicle parking areas.

(m) *Permanent outdoor fixture* means a fixture for use in an exterior environment installed with mounting not intended for relocation.

(n) *Roadway lighting* means permanent outdoor fixtures specifically intended to illuminate public roadways.

(o) *Sky glow* means a condition caused by light directed upwards or sideways reducing one's ability to view the night sky.

(p) *State agency* means any State department, office, board, commission, agency, or a public authority or public benefit corporation at least one of whose members is appointed by the governor.

§ 312.3 Restrictions and Exemptions.

(a) No State agency operating in the State shall install or cause to be installed any new or replacement permanent outdoor fixture unless the following conditions are met:

(1) In the case of roadway lighting or parking-lot lighting, whether mounted to poles, buildings or other structures, the fixture is fully shielded.

(2) In the case of building-mounted fixtures not specifically intended for roadway lighting, parking-lot lighting, or facade lighting, the fixture is fully shielded when its initial fixture lumens is greater than 3,000 lumens.

(3) In the case of facade lighting, the fixture is shielded to reduce glare, sky glow, and light trespass to the greatest extent possible.

(4) In the case of ornamental roadway lighting fixtures, the fixture allows no more than 700 lumens from the fixture above a horizontal plane through the fixture's lowest light emitting part.

(5) For illumination by new permanent outdoor fixtures for applications described in paragraph (1), (2), (3) or (4) of this subdivision, only illuminance levels that are no greater than those required for the intended purpose may be used, in accordance with the industry standards set forth in Section 312.4.

(6) In the case of roadway lighting unassociated with intersections of two or more streets or highways, the Department of Transportation has determined that the purpose of the lighting installation or replacement cannot be achieved by installation of reflectorized roadway markers, lines, warnings or informational signs, or other passive means.

(b) This Part shall not apply:

(1) if a federal law, rule or regulation preempts State law;

(2) if the outdoor lighting fixture is used temporarily by emergency personnel requiring additional illumination for emergency procedures or temporarily used by repair personnel for road repair;

(3) to navigational lighting systems and other lighting necessary for aviation and nautical safety;

(4) to lighting for athletic playing areas; provided, however, that all such lighting shall be selected and installed to shield the lamp or lamps from direct view and to minimize upward lighting and glare to the greatest extent possible;

(5) if the State agency determines a safety or security need exists that cannot be addressed by any other method;

(6) to the replacement of a previously installed permanent outdoor fixture that is destroyed, damaged or inoperative, has experienced electrical failure due to failed components, or requires standard maintenance;

(7) to lighting intended for tunnels and roadway underpasses; or

(8) if the combined cost of acquiring and operating a fixture complying with paragraphs (1), (2), and (3) of subdivision (a) of this section is more than 15% greater than the cost of acquiring and operating comparable non-compliant fixtures over the life of the lighting system and if a written determination with findings has been made that no compliant fixture exists that would meet the cost limitation.

§ 312.4 Industry Standards.

When installing new or replacement permanent outdoor lighting fixtures, State agencies shall comply with the following industry standards contained within the following publications:

(a) *Roadway lighting:* Any of the industry standards listed in paragraphs (1), (2), or (3) of this subdivision may be used provided the standard contains a guideline for the relevant type of roadway lighting application.

(1) American Association of State Highway and Transportation Officials (AASHTO) – *Roadway Lighting Design Guide* 6th ed. (October 2005)

(2) Approved American National Standards Institute (ANSI)/ Illuminating Engineering Society (IES) – *RP-8-14 Roadway Lighting*

(3) IES – *DG-19-08 Design Guide for Roundabout Lighting*

(b) *Parking-lot lighting:* IES – *RP-20-14 Lighting for Parking Facilities*

(c) *Building facade lighting:* IES – *The Lighting Handbook*, 10th Edition

(d) *Building-mounted fixtures not specifically intended for roadway lighting, parking-lot lighting or building facade lighting:* *The Lighting Handbook*, 10th Edition

Whenever a State agency uses any of the IES standards identified in this section, such agency shall also refer to *The Lighting Handbook*, 10th Edition in order to properly interpret such IES standards.



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500

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John A. Crotty, Commissioner
Peter J. Moschetti, Jr., Commissioner
John J. Poklemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: March 22, 2016

Re: Proposed Rulemaking for the Conduct and Operation of Gaming (9 NYCRR Part 5313)

For Commission consideration are proposed rules for the conduct and operation of gaming. The proposed Part addresses the following topics: a gaming facility licensee's submission of a system of administrative and accounting procedures for the conduct and operation of gaming; requirements for hours of operation, minimum age participation and access; retention of realty, construction, maintenance and business records; submission of a gaming facility licensee's emergency action plan; requirements for the award of an operation certificate to commence gaming operations; procedures and requirements for key control, facial recognition, and license plate recognition; and limitations on certain financial transactions.

Highlights of the proposal follow:

- Section 5313.1 sets forth the requirements for the internal control system a gaming facility licensee submits to the Commission for approval.
- Section 5313.2 establishes the minimum age a patron must be to participate in gaming activities and the penalties associated with a gaming facility licensee's violation of such requirements.
- Section 5313.3 sets forth the procedure for the alteration or change of gaming facility hours of operation.
- Section 5313.4 cites to the federal statutory requirements for facility access to a public accommodation.
- Section 5313.5 sets forth the requirements for access to restricted areas of a gaming facility and an access badge and credential system a gaming facility licensee must adopt.

- Section 5313.6 provides that a gaming facility licensee retain realty, construction, maintenance and business records for Commission review.
- Section 5313.7 sets forth the requirement that a gaming facility licensee submit an emergency action plan to the Commission
- Section 5313.8 establishes criteria for awarding a gaming facility licensee an operation certificate to commence gaming operations. .
- Section 5313.9 sets forth restrictions on the possession of firearms within a gaming facility.
- Section 5313.10 sets forth requirements for the retention, storage and destruction of books, records and documents pertaining to the operation of the gaming facility licensee.
- Section 5313.11 sets forth control and maintenance requirements for sensitive keys.
- Section 5313.12 and 5313.13 set forth requirements for the installation of facial and license plate recognition equipment.
- Section 5313.14 sets forth limitations on certain financial access.

A copy of the full text of the proposed Part 5313 is attached.

The proposed text was circulated to the three gaming facility licensees and the applicant currently being considered for licensure for their review and comments were incorporated into this proposal.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
Chris Palmer, Deputy Director, Division of Gaming
Heather McArn, Associate Counsel

Part 5313

Conduct and Operation of Gaming

Section	
5313.1	System of internal control
5313.2	Age for gaming participation; signage; responsibilities
5313.3	Hours of operation
5313.4	Facility accessibility
5313.5	Access badges and temporary access credentials
5313.6	Licensee leases and contracts
5313.7	Emergency procedures
5313.8	Operation certificate
5313.9	Firearms
5313.10	Retention, storage and destruction of books, records and documents
5313.11	Key control
5313.12	Facial recognition
5313.13	License plate recognition
5313.14	Limitation on certain financial access

§ 5313.1. System of internal control.

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

- (1) organization charts depicting segregation of functions and responsibilities;
- (2) a description of the duties and responsibilities of each position shown on the organization charts and the respective lines of authority for each;
- (3) a detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of this Part;
- (4) a record retention policy relating to retention, storage and destruction of books, records and documents, as required by section 5313.10 of this Part;
- (5) procedures to ensure that assets are safeguarded and counted in conformance with count procedures as set forth in this Subchapter;
- (6) procedures governing the conduct of all gaming-related promotions to be offered;

- (7) procedures to ensure that the gaming facility licensee's employees comply with licensing or registration requirements;
- (8) other items the commission may request in writing to be included in such gaming facility's internal controls;
- (9) administrative controls that include the procedures and records that relate to the decision-making processes leading to management's authorization of transactions;
- (10) accounting controls that safeguard assets and revenues and ensure the reliability of financial records. Such accounting controls must be designed to provide reasonable assurance that:
 - (i) transactions or financial events that occur in the operation of a slot machine or table game are executed in accordance with management's general and specific authorization;
 - (ii) transactions or financial events that occur in the operation of a slot machine or table game are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States, the act and this Subchapter;
 - (iii) transactions or financial events that occur in the operation of gaming are recorded in a manner that provides reliable records, accounts and reports, including the recording of cash and evidences of indebtedness, for use in the preparation of reports to the commission;
 - (iv) transactions or financial events that occur in the operation of gaming are recorded to ensure accountability for assets and to permit the proper and timely reporting of gaming revenue, fees and taxes;
 - (v) access to assets is permitted only in accordance with management's general and specific authorization; and
 - (vi) the recorded accountability for assets is compared with existing physical assets at reasonable intervals and that appropriate action is taken with respect to any discrepancies;
- (11) procedures and controls for ensuring that each slot machine and electronic table game directly provides and communicates all required activities and financial details to the online monitoring and accounting system;
- (12) procedures and controls for ensuring that all functions, duties and responsibilities are segregated and performed in accordance with sound financial practices by qualified personnel; and

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

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

(1) conform to the requirements of the act and this Subchapter; and

(2) are designed to provide reasonable assurance that the financial reporting conforms to generally accepted accounting principles in the United States and complies with applicable laws and regulations, including the act and this Subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) participate as a player at any game in such gaming facility;

(2) receive any complimentary services or items as a result of, or in anticipation of, such individual's gaming activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5313.3. Hours of operation.

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

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

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

§ 5313.4. Facility accessibility.

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

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

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

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

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

the commission may deem necessary or advisable for a gaming facility licensee to undertake.

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

§ 5313.5. Access badges and temporary access credentials.

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

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

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

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

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

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

(4).

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

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

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

§ 5313.6. Licensee leases and contracts.

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

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

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

§ 5313.7. Emergency procedures.

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

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

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

§ 5313.8. Operation certificate.

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

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

- (1) gaming facility complies in all respects with the applicable requirements of the act and this Subchapter;
- (2) gaming licensee has implemented necessary internal control procedures for the safe and efficient operation of the gaming facility;
- (3) gaming facility has complied with the licensing provisions of this Subchapter;
- (4) commission has been provided proof that all employees are licensed or registered for the performance of their respective responsibilities;
- (5) gaming facility is prepared in all respects to receive and entertain the public;
- (6) gaming facility meets or exceeds State and local fire and safety standards; and
- (7) gaming facility has provided payroll records that establish to the satisfaction of the commission that it has complied with the requirements of the act, if applicable. Such payroll records shall be accompanied by an attestation by the gaming facility's chief executive officer or other delegated person as to their accuracy.

(c) Subject to the commission's authority to revoke, suspend, limit or otherwise alter an operation certificate, each such certificate, once issued, shall remain in full force and effect for so long as the licensee holding such certificate remains licensed, under such terms and conditions as the commission may impose. Such operation certificate shall not be altered, modified or amended except in accordance with the act and this Subchapter.

(d) The continued effectiveness of each operation certificate shall be a prerequisite for the gaming facility to which such certificate applies to remain open to the public for the operation of gaming.

(e) Each gaming facility licensee to which an operation certificate is issued shall operate such licensee's gaming facility strictly in accordance with the terms of such licensee's original operation certificate and the approved gaming floor layout submitted in support thereof, and shall not change any of the items to which the operation certificate applies, except in accordance with the act and this Subchapter and after obtaining any required amendments to such operation certificate. Nothing in this subdivision shall prevent a gaming facility licensee from moving or reconfiguring gaming devices within the approved gaming floor layout provided the commission is notified of such change in writing at least five business days in advance of implementation and that such change is in compliance with State building code and this Subchapter.

(f) Whenever a gaming facility licensee proposes a physical change to such licensee's gaming facility or to a restricted area that requires commission approval in order for

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

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

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

(g) The commission shall review any proposed change for compliance with the act and this Subchapter and shall issue a determination and, if approved, notice to proceed, within a reasonable time after receipt of the application for amended operation certificate.

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

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

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

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

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

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

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

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

§ 5313.9. Firearms.

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

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

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

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

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

(1) prepared and maintained in a complete, accurate and legible form. Electronic data shall be stored in a format that ensures readability, without regard to whether the technology or software that created or maintained such data has become obsolete;

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

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

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

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

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

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

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

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

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

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

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

(3) availability of a reader or printer for use by the commission and the commission's designee at such licensed facility or other location approved by the commission and

the readiness with which the books, records or documents being stored on microfilm, microfiche or other media can be located, read and reproduced; and

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

§ 5313.11. Key control.

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

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

(1) table drop box contents keys;

(2) table drop box release keys;

(3) table drop box trolley keys;

(4) slot machine keys;

(5) count room entrance keys;

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

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

(8) float keys; and

(9) pit podium keys.

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

(1) the maintenance of perpetual inventory records and the physical inventory of all sensitive keys by an independent department;

(2) the requisitioning of keys and locking devices from vendors; and

(3) the security and restrictions that control access to keys, whether manually or through an electronic system, and records and reports generated or prepared.

§ 5313.12. Facial recognition.

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

§ 5313.13. License plate recognition.

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

§ 5313.14. Limitation on certain financial access.

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

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

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

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

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

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

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

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

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



Gaming Commission

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Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners
From: Edmund C. Burns
Date: March 22, 2016
Re: Proposed Rulemaking for Surveillance (9 NYCRR Part 5314)

For Commission consideration are proposed rules for gaming facility surveillance. The proposed Part addresses the following topics: submission of a gaming facility licensee's surveillance plan of operation; requirements for the surveillance department including location and equipment and the monitoring of certain areas and activities; surveillance department employee training and restrictions; and the retention of records.

Highlights of the proposal follow:

- Section 5314.1 sets forth the requirements for a gaming facility licensee's submission of a surveillance plan of operation.
- Sections 5314.2 through 5314.4 guide a gaming facility licensee on, among other things, surveillance department staffing and equipment.
- Section 5314.5 and 5314.6 set forth the areas and activities within the gaming facility that are required to be monitored and recorded by the surveillance department.
- Section 5314.7 establishes the retention periods for audio, visual and other recorded activities.

A copy of the full text of the proposed Part 5314 is attached.

The proposed text was circulated to the three gaming facility licensees and the applicant currently being considered for licensure for their review and comments were incorporated into this proposal.

Commissioners
March 22, 2016
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[REDACTED]

attachment

cc: Robert Williams, Executive Director
Chris Palmer, Deputy Director, Division of Gaming
Heather McArn, Associate Counsel

PART 5314
Surveillance

Section	
5314.1	Surveillance plan of operation; approval; plan amendment
5314.2	Surveillance department establishment; independence; physical characteristics; employee restrictions; training
5314.3	Surveillance room access, required logs
5314.4	Required equipment; capabilities
5314.5	Required surveillance
5314.6	Required recording
5314.7	Surveillance records retention

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

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

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

- (1) surveillance system and equipment used;
- (2) placement of all surveillance equipment in the gaming facility; and
- (3) staffing necessary to provide for the continuous monitoring of activities inside and outside the licensed facility taking into account the size and layout of the facility as well as the number and location of gaming devices on the gaming floor.

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

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

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

- (1) details of the change, including the floor plan;

(2) reason for the change; and

(3) expected results of the change.

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

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

(1) use, as necessary, any surveillance monitoring room in the gaming facility;

(2) display on the monitors in the monitoring room any event capable of being monitored by the surveillance system; and

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

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

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

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

(c) A surveillance monitoring room shall:

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

- (i) a communication system capable of monitoring all gaming facility security department activities; and
 - (ii) a view-only terminal allowing access to the computerized monitoring systems used by the gaming facility licensee in monitoring and management of its gaming operations;
- (2) be connected to all gaming facility alarm systems, which may provide a visible, audible or combination signal; provided, however, that any robbery or other emergency-type alarm shall be perceptually distinguishable from all non-emergency alarm types in a manner approved by the commission;
- (3) contain a library consisting of photographs that
- (i) are no more than four years old, of all current employees of the licensee; and
 - (ii) represent patrons on any self-exclusion or excluded persons list;
- (4) contain and have readily accessible to all surveillance room employees an updated operational blueprint depicting all areas of the gaming facility and elsewhere in the gaming facility where surveillance coverage is available.
- (5) be equipped with telephones connected to the gaming facility licensee’s general telephone system and at least one direct outside line independent of the general telephone system; and
- (6) be equipped with radio communication connectivity with the security department.
- (d) A gaming facility licensee shall require surveillance and security employees to undergo annual incident management training administered by a certified trainer in cooperation with law enforcement and the local fire department. Such training shall be geared to prepare surveillance and security employees on proper procedures to follow in the event of a fire, robbery attempt, bomb threat, terrorist activity, medical emergency or other major occurrence. Such training shall be geared to instruct gaming facility employees in all of the following:
- (1) incident management procedures;
 - (2) incident management notifications and communications to, for example, police, fire, ambulance and hospitals;
 - (3) securing facility records;
 - (4) securing the facility;
 - (5) evacuation; and
 - (6) fire and medical emergencies.

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

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

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

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

(f) A current or former surveillance department employee may petition the commission for a waiver of a restriction set forth in subdivision (e) of this section and permission to be employed in a particular position. The commission may grant or deny the waiver upon consideration of factors including, without limitation:

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

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

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

§ 5314.3. Surveillance room access, required logs.

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

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

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

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

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

- (3) reason for entering the monitoring room or designated area;
- (4) name of the surveillance department employee authorizing the person's entry into the monitoring room or designated area; and
- (5) date and time of exiting the monitoring room or designated area.

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

- (1) be maintained continuously by surveillance employees;
- (2) be changed with each shift change of employees;
- (3) be chronological; and
- (4) contain, at a minimum, all of the following information:
 - (i) the date and time of each log entry;
 - (ii) the identity of the employee making the log entry;
 - (iii) a summary of the activity recorded;
 - (iv) whether the activity was monitored; and
 - (v) disposition of the recording, if any.

(e) All daily surveillance log entries shall contain the following information, unless otherwise directed in writing by the commission:

- (1) the identity of any surveillance room employee each time any such person enters or exits the surveillance room and the reason for such entry or departure;
- (2) the notification of any maintenance or repair of any gaming device or money-handling equipment;
- (3) live table drop box exchanges;
- (4) electronic gaming device drop bucket exchanges;
- (5) transfers of cash, chips, tokens, cards or dice;
- (6) any detention or questioning of patrons or employees by the security department, including the identity of the patrons or employees and the security department employees involved;

- (7) the beginning, end and any interruptions of the soft count;
- (8) an observed violation of the act or this Subchapter or of the gaming facility licensee's internal control procedures;
- (9) suspected criminal activity;
- (10) malfunction or repair of surveillance equipment;
- (11) an emergency activity;
- (12) surveillance conducted on anyone or any activity that appears unusual, irregular or illegal or appears to violate the act or this Subchapter;
- (13) surveillance conducted at the request of the gaming facility licensee, an employee of the gaming facility licensee, a commission representative or the New York State police;
- (14) other notations deemed necessary by surveillance room employees or the commission to ensure compliance with the act and this Subchapter.

§ 5314.4. Required equipment; capabilities.

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

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

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

- (1) permit the preservation and viewing of a clear copy of the transmission produced by any camera connected to the surveillance system;
- (2) be capable of superimposing the time and date of the transmission on each recording made by the video recording equipment; and
- (3) enable the operator to identify and locate, through the use of a meter, counter or other device or method, a particular event that was recorded.

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

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

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

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

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

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

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

§ 5314.5. Required surveillance.

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

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

(2) gaming conducted at the slot machines;

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

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

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

(6) count processes conducted in the count rooms;

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

- (8) entrances and exits to the gaming facility, count rooms and any other location required by the commission;
- (9) equipment designated by the commission in conjunction with the operation of an electronic-transfer credit system, a gaming-voucher system and a slot-monitoring system approved to conduct manual slot payouts;
- (10) operation of automated jackpot-payout machines, gaming-voucher-redemption machines, gaming-voucher systems and electronic-transfer credit systems;
- (11) all table games;
- (12) gaming facility licensee's parking garages, driveways and valet parking areas; and
- (13) all other areas as that the commission may designate.

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

§ 5314.6. Required recording.

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

- (a) all table games, whether active or inactive;
- (b) all activities conducted inside the cage, count room and satellites;
- (c) each simulcast and keno window that is open for business;
- (d) such main bank areas where gross revenue functions are performed;
- (e) the collection of drop boxes, slot drop boxes and slot cash storage boxes and the count of the contents therein;
- (f) any armored car collection or delivery of cash for which security escort or surveillance coverage is required;
- (g) the inspection and distribution of gaming equipment to gaming pits;

(h) the retrieval of gaming equipment from gaming pits at the end of the gaming day and their delivery to the location designated and approved for inspection, cancellation, destruction or, if applicable, reuse;

(i) each transaction conducted at a kiosk, automated bill breaker, voucher/coupon redemption and jackpot payout machine, as well as each replenishment or other servicing of any such machines; and

(j) the entrances and exits to the gaming facility, count rooms and all other locations as the commission may require in writing.

§ 5314.7. Surveillance records retention.

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

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

(1) the date and time the recording was made;

(2) the identities of the surveillance department employee or employees responsible for the monitoring; and

(3) the identity of the surveillance department employee who provides such recording media and the time and date of delivery to the commission. Such recording shall be retained for not less than 14 days after the original recording is provided to the commission.

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

(1) the date and time the recording was made;

(2) the identity of the surveillance department employee or employees responsible for the monitoring; and

(3) the identity of the surveillance department employee who provided to the commission the media from the recorder.



Gaming Commission

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John A. Crotty, Commissioner
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Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: April 18, 2016

Re: Proposed Rulemaking for Voidable Claims
(9 NYCRR §§ 4038.19(a) and 4109.7(a))

For Commission consideration is a proposed revision to the Commission's claiming rules to permit a claimant to void a claim when samples collected the day of the claiming race test positive for an impermissible drug administration. The current rules recognize positive tests performed on post-race (Rules 4038.19(a) and 4109.7(a)) and TCO₂ samples (Rules 4038.19(g) and 4109.7(f)) as bases to void a claim. With the recent adoption of per se regulatory thresholds, which apply to all samples collected on race day, even before the race, the rules on allowable voiding claims need updating to contemplate drug positives from samples collected before a race, as well as after.

In addition, the proposal would conform the Standardbred to the Thoroughbred rule, which permits a claimant to void a claim based on an equine drug positive in the race preceding the claiming race (whose result influences claimants), when the positive drug test result is revealed only after the claiming race.

The text of the proposed amendment is attached.

attachment

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

Subdivision (a) of Section 4038.19 of 9 NYCRR would be amended as follows:

§ 4038.19. Certain voidable claims.

(a) [*Post race*] Race-day positive. Should the analysis of a [post-race] race-day blood or urine sample taken from a claimed horse result in a [post-race] positive test, or if the race-day test results of a previous race have not been cleared by the date of the claim and result in a [post-race] positive test, the claimant's trainer shall be promptly notified by the stewards and the claimant shall have the option to void said claim within five days of such notice by [the claimant's] such trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or the claimant's trainer. In the event the claim is voided, the horse shall be returned to the owner of the horse who subjected the horse to claiming in the race from which the positive test resulted.

* * *

Subdivision (a) of Section 4109.7 of 9 NYCRR would be amended as follows:

§ 4109.7. Certain voidable claims.

(a) [*Post-race*] Race-day positive. Should the analysis of a [post-race] race-day blood or urine sample taken from a claimed horse result in a [post-race] positive test, or if the race-day test results of a previous race have not been cleared by the date of the claim and result in a positive test, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by such trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or such claimant's trainer.

* * *