



## **NYCRR Title 9, Executive**

### **Subtitle T**

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

##### **Chapter IV**

##### **Division of Gaming**

##### **Subchapter A**

##### **Video Lottery Gaming**

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#### **PART 5100**

#### **General Provisions, Construction and Application of Rules**

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### **§ 5100.1. Authority; purpose.**

(a) The rules and regulations governing video lottery gaming are issued under and pursuant to the authority of the Lottery for Education Law (Article 34 of the Tax Law) and Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(b) The purpose of this Subchapter is to set forth the manner in which the Gaming commission shall operate video lottery gaming.

(c) This subchapter pertains to video lottery gaming and is supplementary to those rules and regulations of general applicability promulgated by the Gaming Commission and the Division of Lottery regulations.

### **§ 5100.2. Definitions.**

(a) Unless the context indicates otherwise, the following definitions are applicable throughout this subchapter.

(1) *Accounting department* means a department established in the video lottery gaming agent's approved system of organization in accordance with these regulations.

(2) *Advertising or advertisement* means any information, notice or communication by a video lottery gaming agent to the public concerning the video lottery gaming-related business of such agent through broadcasting, exterior signage, mail, publication, or any other means of dissemination. All advertising or advertisement(s) shall be specifically set forth and itemized in a marketing plan approved by the commission as provided by these regulations.

(3) *Affiliate* means a parent company or subordinate business entity of the video lottery gaming agent.

(4) *Agent compensation* means the commission set forth in the act.

(5) *Applicant* means any person applying for a video lottery gaming license required by this subchapter.

(6) *Application* means the video lottery gaming license application.

(7) *Assets* means those fixtures, furniture, equipment, cash and other items owned and maintained by a video lottery gaming agent in connection with the operation of a video lottery gaming facility and or related amenity.

(8) *Authorized instrument* means a cash equivalent, a video lottery gaming agent check, a video lottery gaming agent affiliate check, an annuity jackpot trust check or a replacement check.

(9) *Background investigation* means the security, fitness and background investigation to be conducted of an applicant by the commission and the commission's representative for the purpose of determining suitability for licensure.

(10) *Banking institution* means any "depository institution" as defined in 12 U.S.C. Section 461(b).

(11) *Bill acceptor* means a device that accepts and reads currency or other approved items of value in order to accurately register player credits at a video lottery terminal.

(12) *Books and records* means any book, record or document pertaining to, prepared in or generated by the operation of a video lottery gaming agent, including, but not limited to: all forms, reports, accounting records, ledgers, subsidiary records, computer generated data, internal audit records, correspondence and personnel records. This definition shall apply without regard to the medium through which the record is generated or maintained; for example, paper, magnetic media, encoded disk or other commission-approved medium. All books and records are considered a public record as that term is used in the State penal law and shall also be construed to mean a business record under such, unless exempt from disclosure pursuant to applicable Federal or State law.

(13) *Business day* means a calendar day other than Saturday, Sunday, or any day on which the commission's main offices are closed because of Federal, State or local holiday, inclement weather, or like circumstance.

(14) *Business entity* means a corporation, partnership, limited liability company, sole proprietorship, or other business form recognized by any state.

(15) *Business plan* means a document containing information regarding video lottery gaming agent facility operations as may be required by the commission.

(16) *Cage cashiers* means the cashiers performing any of the functions in the cashiers' cage as set forth in these regulations.

(17) *Cage supervisor* means any person designated as such and appropriately licensed as required by the video lottery gaming agent's jobs compendium that allows that person to supervise personnel and functions within the cashiers' cage.

(18) *Capital and maintenance expenditures* means expense items related to the video lottery gaming facility incurred in connection with furniture, fixtures, equipment and facilities, and capitalized costs. Such term shall include: acquisition; replacement; repairs; refurbishment; renovation; improvements; maintenance, including public area housekeeping, and labor.

(19) *Cash* means currency.

(20) *Cash equivalent* means

(i) certified check, cashiers' check, treasurer's check, recognized traveler's check or recognized money order that:

(a) is made payable to the video lottery gaming agent where presented, a holding company of the video lottery gaming agent, "bearer" or "cash";

(b) is dated, but not postdated; and

(c) does not contain any endorsement;

(ii) certified check, cashier's check, treasurer's check or recognized money order that:

(a) is made payable to the presenting player;

(b) is endorsed in blank by the presenting player;

(c) is dated but not postdated; and

(d) does not contain any endorsement other than that of the presenting player.

(21) *Central site* means a location where the central video lottery communications control systems is located.

(22) *Central system* means central video lottery communications control system.

(23) *Central system provider* means a licensed vendor with whom the commission has contracted for the purpose of providing and maintaining a central system and the related management facilities with respect to the operation of video lottery terminals.

(24) *Central video lottery communications control system* means the hardware, software and network components that link and support video lottery terminals to a central site.

(25) *Certification* or *certificate of operations* means authorization by the commission to commence operation in accordance with the commission's inspection and approval process of video lottery terminals, central system and related video lottery gaming software at a particular video lottery gaming facility.

(26) *Chief financial officer* means the senior executive of the video lottery gaming agent with overall responsibility for such agent's internal and accounting controls.

(27) *Chief operating officer* means the senior executive of the video lottery gaming agent exercising the overall management or authority over all video lottery gaming operations at a video lottery gaming facility.

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

(29) *Compensation* means direct or indirect payment for services performed including, but not limited to, salary, wages, bonuses, deferred payments, overtime and chattels.

(30) *Complimentary service* or *complimentary item* means a service or cash or non-cash item provided directly or indirectly by the video lottery gaming agent pursuant to a marketing plan approved by the commission at no cost or at a reduced price to a player. Complimentary services or items are subject to this subchapter and guidance issued by the commission from time to time.

(31) *Construction contractor* means any contractor or sub-contractor which is employed by a video lottery gaming agent to construct or assist in the construction of any portion of a video lottery gaming facility prior to the issuance of a certificate of operation by the commission employed after such issuance for more than 30 days, in accordance with these regulations. A contractor or sub-contractor employed by a video lottery gaming agent for less than 30 days shall be authorized as a temporary service provider as defined in paragraph (100) of this subdivision.

(32) *Controller* means the person who is responsible to supervise the accounting department of a video lottery gaming agent and who shall report to an officer as approved by the commission.

(33) *Count* means the total currency or cash equivalent counted for a video lottery terminal, per day, or other period specified by the video lottery gaming agent.

(34) *Count room* means a room where cash is received and counted.

(35) *Coupon* is a non-cash item provided to a player as a complimentary or promotion item and can be used to play a video lottery terminal. All coupons are issued pursuant to the commission's policy and procedure and must be described in an approved marketing plan.

(36) *Currency* means coin or paper money issued by the United States.

(37) *Currency compartment* means a compartment that maintains a separate lock with a separate key from the main cabinet area of the video lottery terminal and stores and secures the drop box.

(38) *Department of State* means the New York Department of State.

(39) *Department of Taxation and Finance* means the New York State Department of Taxation and Finance.

(40) *Direct mail* means a program set forth in a marketing plan approved by the commission that informs player(s) and potential player(s), through direct contact, or promotions, of events and offerings at the video lottery gaming facility in an effort to increase player visitation to such facility and the usage of video lottery terminals.

(41) *Drop* means the total amount of the currency or cash equivalents removed from video lottery terminals.

(42) *Drop box* means a secure container in which shall be deposited all cash and vouchers inserted into the bill acceptor of a video lottery terminal.

(43) *Electronic funds transfer, or EFT*, means the transfer of currency by a banking institution by electronic means.

(44) *Eligible venue* means a location at which the commission is authorized by the act to license the operation of video lottery gaming.

(45) *Entertainment costs* means those costs identified in a marketing plan approved by the commission and incurred by the video lottery gaming agent for entertainers, performers and events that are intended to increase player visitation to the video lottery gaming facility and the usage of the video lottery terminals.

(46) *Equivalent provisions* means lines of credit, parent company guarantees, or other arrangements approved in writing by the commission through which funds can be accessed on a timely and as needed basis.

(47) *Financial institution* means any banking institution or investment bank authorized to do business in the state.

(48) *Financial stability* means the ability of a video lottery gaming agent or vendor to meet its financial obligations.

(49) *Financial statement* means any of the following:

- (i) balance sheet;
- (ii) income statement;



- (iii) profit and loss statement;
- (iv) statement of cash flow; or
- (v) sources and uses of funds statement.

(50) *Gaming day* means any calendar day during which video lottery gaming occurs at any licensed video lottery gaming facility.

(51) *Gross sales* means the total sales from video lottery terminals.

(52) *Group sales* means a program established by a video lottery gaming agent and described in a marketing plan approved by the commission and that provides incentives for groups, organizations, clubs and similar entities to increase player visitation to the video lottery gaming facility and the usage of video lottery terminals.

(53) *Hold* means the relationship of credits played to credits won for video lottery terminals.

(54) *Holding company* means a company whose sole function is to own and control other companies.

(55) *Imprest basis* means the basis on which cashiers' cage funds are replenished from time to time in exactly the amount of the net of expenditures made from the funds and amounts received.

(56) *Incompatible function* means a function, for accounting control purposes, that places any person or department in a position to both perpetrate and conceal errors or irregularities in the normal course of such person or department's duties. For example, anyone recording transactions and having access to assets ordinarily is in a position to perpetrate errors or irregularities.

(57) *Independent certified public accountant* means a professional accountant licensed within the State suitably qualified and sufficiently independent to act as auditor of the video lottery gaming operations.

(58) *Independent gaming test laboratory* means a laboratory, licensed by the commission, that shall be used by vendors of the commission to ensure that the central system, site controllers, terminals and associated equipment used in the conduct of video lottery gaming operate in the manner set forth by these regulations.

(59) *Internal audit* means employees of the video lottery gaming agent who perform an audit function of a video lottery gaming facility operation who are independent of the video lottery gaming facility department subject to such audit. Internal audit activities shall be conducted in a manner that permits objective evaluation of areas examined and the results of internal audits are to be communicated to management.

(60) *Internal control system* means internal procedures, administration, and accounting controls designed by the video lottery gaming agent for the purpose of exercising control over the video lottery gaming facility operation and its assets.

(61) *Jackpot* means the greatest amount of prize value to be awarded to a player for a given game.

(62) *Jackpot payout* means a total payout or the portion of a jackpot paid by video lottery gaming agent personnel.

(63) *Key employee* means a person required to obtain a video lottery gaming key employee license, including any natural person who will be employed by a video lottery gaming agent in a position that includes any responsibility or authority to develop or administer policy or long-range plans or to make discretionary decisions regarding video lottery gaming facility operations, regardless of job title, and who is not a principal of such agent.

(64) *License* means the authorization granted by the commission that permits an applicant to engage in video lottery gaming or video lottery gaming related activities.

(65) *License application* means the instrument by which an applicant requests licensing for participation in video lottery gaming or video lottery gaming related activities.

(66) *Licensee* means any person authorized by the commission onto participate in video lottery gaming or video lottery gaming related activities.

(67) *Main bank* means the video lottery gaming agent's department that is responsible for at least all of the following:

- (i) providing working funds to all operational departments;
- (ii) maintaining custody of all inventory;
- (iii) cashiers;
- (iv) main bank vault or vaults; and
- (v) any other structure that houses representatives of value for which the main bank is accountable.

(68) *Manufacturer* means a firm engaged by the commission onto supply video lottery terminals as designated by the commission.



(69) *Material debt* means a debt, whether in a single transaction or cumulative transactions during any 12-month period, that may have a significant effect on the financial stability of a video lottery gaming agent, in the following amounts:

- (i) \$5,000,000 or more for a video lottery agent with 4,000 terminals or more; or
- (ii) \$2,000,000 or more for a video lottery agent with between 1,500 and 3,999 terminals; or
- (iii) \$1,000,000 or more for a video lottery agent with fewer than 1,500 terminals.

(70) *Marketing expenses or expenditures* means items related to the marketing, promotion and associated costs of a video lottery gaming agent's video lottery gaming operations, consistent with the customary manner of marketing and promoting comparable operations in the industry, subject to the overall supervision of the commission.

(71) *Marketing and promotion program* means the program established by each video lottery gaming agent and funded out of the vendor's fee.

(72) *Marketing plan* means the plan prepared by the video lottery gaming agent and submitted to the commission for approval pursuant to these regulations, which marketing plan describes the marketing and promotional activities for the video lottery gaming facility to be undertaken by the video lottery gaming agent.

(73) *Meter means* an electronic (soft) or mechanical (hard) apparatus in a video lottery terminal used to register events or occurrences.

(74) *Natural person* means any individual person.

(75) *Net proceeds* means credits played less credits won, less the video lottery gaming agent's commission.

(76) *Net terminal income* means the total amount of credits played less the total credits won.

(77) *Net win* means net terminal income.

(78) *Non-gaming employee* means a licensed video lottery gaming employee who is not directly involved in video lottery gaming and does not serve a gaming function, including but not limited to, an employee involved in food and beverage, housekeeping, valet or facility maintenance services.

(79) *On a daily basis* means something that occurs or is performed each gaming day.

(80) *Operating expenses* means the total cost of all selling, plus general and administrative expenses. These costs include, but are not limited to: operating supplies, labor costs, licensing fees, retail and entertainment costs, marketing, advertising, security and surveillance equipment upgrade costs, property operations, utility, and maintenance costs.

(81) *Parent company* means a corporation that owns at least 90 percent of the outstanding shares of another corporation.

(82) *Player* means a natural person who inserts currency, a voucher, or other item of value into the video lottery terminal to purchase video lottery gaming tickets.

(83) *Player rewards club* means a program established by a video lottery gaming agent as described in a marketing plan approved by the commission whereby player(s) can receive or accumulate points based on either

(i) credits played at a video lottery terminal equated to a monetary value, or

(ii) purchases made at a video lottery gaming facility to the extent permissible under the program established by the video lottery gaming agent and approved by the commission.

Such points can then be redeemed for merchandise, entries into drawings, discounts on food and beverage and other complimentary items offered by the video lottery gaming agent.

(84) *Premises* means the building and grounds occupied by a video lottery gaming facility that include that agent's video lottery gaming facility and related amenities. In addition to the video lottery gaming facility, *premises* includes facilities where food and drink are served, as well as those areas not normally open to the public, such as areas where records related to video lottery gaming operations are kept. *Premises* shall not include the racetrack or such areas where such video lottery gaming operations or facilities do not take place or exist, such as racetrack areas or fairgrounds that are wholly unrelated to video lottery gaming operations. The boundaries of the premises will be delineated on the floor plan, required by these regulations as part of the video lottery gaming agent's business plan. Areas that are not open to the public shall be deemed restricted areas.

(85) *Primary and secondary jackpots* means promotional prize pools offered at certain video lottery terminals that can be won in addition to the primary prize.

(86) *Principal of a video lottery gaming agent* means:

(i) each of its officers and directors;

- (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager, including those employees acting in these capacities, director of security, and director of surveillance;
- (iii) each of its partners if a partnership or members if a limited liability company;
- (iv) if a corporation, each of its shareholders who own or control more than 10 percent of the shares of the corporation if all warrants and/or options held by that shareholder were exercised; shareholders who are members of the same family will be considered as one shareholder for purposes of this section;
- (v) if a limited liability company, each of its members;
- (vi) each person other than a banking institution, investment broker, or mortgage broker licensed in this state who has provided more than 10 percent of the total financing of the video lottery gaming enterprise. The actual person or persons in control of the principal financing entity shall be required to be licensed;
- (vii) notwithstanding the foregoing, non-salaried members of boards of directors or their operational equivalent of non-profit or not-for-profit organizations and public benefit corporations may be excluded from certain portions of the licensing requirements set forth in these regulations at the discretion of the commission. For purposes of this section only, "salary" shall mean monetary compensation for services rendered in excess of a total of \$5,000 annually; and
- (viii) any person or other entity to exert decision making control, financial or otherwise, over the video lottery gaming agent including any such person in a parent or holding company of such agent.

(87) *Prize* means any credits won or value awarded as a result of the purchase and playing of a video lottery game.

(88) *Promotion* means an event, invitation, or offering, including coupons, designed to showcase a specific feature, product or amenity of the video lottery gaming facility as described in a marketing plan approved by the commission in an effort to encourage and increase player visitation to the video lottery gaming facility and usage of the video lottery terminals.

(89) *Public area* means the areas in the video lottery gaming facility that are open to the public in accordance with the video lottery gaming agent's system of internal controls.

(90) *Rebate* means cash or other item of value provided to a player, vendor or other third party by the video lottery gaming agent, which is strictly prohibited by these regulations. Rebate does not include complimentary services or complimentary items.

(91) *Replacement reserves* means funds set aside that are restricted for the replacement of wear and tear items throughout the video lottery gaming facility.

(92) *Restricted areas* means areas of the video lottery gaming agent's premises that are not open to the public, including, but not limited to: the cashiers' cage, the count room, the surveillance room, the specific areas designated for the possession and maintenance of video lottery gaming equipment that support the conduct of video lottery gaming in the video lottery gaming facility, any additional area that the video lottery gaming agent designates as restricted in such agent's internal controls, and any other area specifically designated by the commission as restricted.

(93) *Security department member* means any person employed by the video lottery gaming agent to provide physical security at a video lottery gaming facility.

(94) *Sensitive keys* means keys that either the video lottery gaming facility supervisor or the commission consider sensitive to the video lottery gaming operation and therefore require strict control over custody and issuance, in accordance with the video lottery gaming agent's system of internal controls and these regulations.

(95) *Shift* means the regular, daily work period of a group of employees administering and supervising the operation of the video lottery gaming facility, working in relay with another such succeeding or preceding group of employees at specific times.

(96) *Site controller* means computer equipment located at a video lottery gaming facility used to link a number of video lottery terminals to the central system.

(97) *State* means the State of New York.

(98) *Subcontractor* means any person who contracts with a licensed entity to provide goods or services in furtherance of video lottery gaming.

(99) *Temporary badges* mean an identification badge issued by a video lottery gaming agent to a temporary service provider.

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

(101) *Terminal identification number* means a unique number assigned to identify a single video lottery terminal in a video lottery gaming facility.

(102) *Terminal light* means the light located conspicuously on the uppermost surface of a video lottery terminal.

(103) *Theoretical win* means the intended hold percentage or win of an individual video lottery terminal as computed by reference to such terminal's payout schedule.

(104) *Theoretical win worksheet* means a worksheet provided by a manufacturer for video lottery terminals that indicate the theoretical percentages that the video lottery terminal(s) should hold based on expected levels of credits played. The worksheet also indicates the number credits that may be played, the payout schedule and other information descriptive of the particular type of video lottery terminal required by the commission.

(105) *United States* means the United States of America.

(106) *Vendor* means any person or business entity who contracts or subcontracts with the commission or a video lottery gaming agent or other provider to supply goods or services related directly or indirectly to video lottery gaming.

(107) *Vendee* means any person or business entity who contracts with a video lottery gaming agent to take away goods or services from a video lottery facility.

(108) *Video lottery game* means any lottery game played on a video lottery terminal that consists of multiple players competing for a chance to win a randomly drawn prize.

(109) *Video lottery gaming agent* means a person who has been licensed by the commission to operate a video lottery gaming facility pursuant to the Acts.

(110) *Video lottery gaming agent check* means a check that is drawn by the video lottery gaming agent upon their account at a banking institution and made payable to a person in payment of their voucher.

(111) *Video lottery gaming bankroll* means unrestricted cash maintained in the video lottery gaming premises, or in cash and cash equivalent bank accounts, that is readily available to meet prize payment obligations.

(112) *Video lottery gaming count team* means the personnel that perform the count of the video lottery terminal drop.

(113) *Video lottery gaming employee* means a person required to hold a video lottery gaming employee license, including any person who will be employed by a video lottery gaming agent in any position and who is not a principal of a video lottery gaming agent or a video lottery gaming key employee.

(114) *Video lottery gaming facility* means the physical area and amenities where licensed video lottery gaming and related activities are conducted.

(115) *Video lottery gaming facility department* means the department of the video lottery gaming agent responsible for the operation of video lottery gaming.

(116) *Video lottery gaming facility manager* means a person who has the ultimate responsibility to manage, direct, or administer the conduct of the video lottery gaming conducted within a video lottery gaming agent's facility.

(117) *Video lottery gaming facility operation* means the operation of a video lottery gaming facility including, but not limited to, video lottery gaming, the purveying of food, beverages, retail goods and services, and transportation.

(118) *Video lottery gaming floor* means the area of the video lottery gaming facility where video lottery gaming is conducted.

(119) *Video lottery gaming supervisor* means a person employed in the operation of a video lottery gaming facility in a supervisory capacity or empowered to make discretionary decisions to conduct video lottery gaming operations and perform certain functions, including but not limited to, video lottery gaming facility shift manager, the assistant gaming facility manager and the gaming facility manager.

(120) *Video lottery gaming surveillance room* means a room or rooms at the video lottery gaming facility operated and staffed by video lottery gaming agent's employees for monitoring and recording video lottery gaming operations. Entrance to such room shall not be adjacent to, or visible from, any public area.

(121) *Video lottery gaming system* means a system that consists of video lottery terminals, connected to a central system that permit players to purchase video lottery gaming tickets.

(122) *Video lottery gaming ticket* means an electronic instrument produced by a video lottery terminal or video lottery gaming system that represents the outcome of a particular video lottery game.

(123) *Video lottery terminal* (may be referred to as *VLT*) means a video display terminal in which currency or credits are deposited and a selection is made by the player in order to purchase video lottery gaming tickets. A terminal shall be considered a video lottery terminal notwithstanding the use of an electronic credit system making the deposit of bills unnecessary.

(124) *Voucher* means an instrument of value generated by a video lottery terminal representing a monetary amount and/or play value owed to a customer at a specific video lottery terminal based on video lottery gaming winnings and/or amounts not wagered.

(125) *Wager* means an item that is a commission approved representative of value utilized to purchase a video lottery gaming ticket at a video lottery terminal.

(b) These definitions were previously denoted by letters. Any references to those letters shall be deemed to be a reference to the corresponding numbers.



### **§ 5100.3. Construction and amendments.**

(a) These regulations shall be liberally construed in accordance with generally accepted principles of statutory construction, including those set forth in the State General Construction Law, to permit the commission to effectively carry out the commission's statutory functions.

(b) Nothing contained in these regulations shall be so construed as to conflict with any provision of the act or the law.

(c) In special cases and for good cause shown, the commission may permit deviations from these regulations. To request relief from these regulations, written application should be submitted to the commission, setting forth the name, address and telephone number of the requester, the license number, if applicable, the details of the request, including citation to the regulation in question, and the basis for a claim of good cause. Under no circumstances shall the request be granted if the commission determines that granting the request would adversely impact the health, safety, or welfare of the public, or that it would undermine the integrity of or public confidence in video lottery gaming.

(d) These regulations may be amended by the commission from time to time in accordance with the provisions of the New York State Administrative Procedure Act.

(e) Whenever any provision of these regulations requires that an act or event occur on a specified day or date, and such day or date falls upon a Saturday, Sunday or legal holiday, such provision shall be construed to refer to the next business day immediately succeeding such day or date.

(f) This Subchapter is intended to regulate the operation of video lottery gaming by the commission and to be supplementary to all other regulations promulgated by the commission for the operation of the commission's games. To the extent there is a conflict between this subchapter and other regulations promulgated by the commission, this subchapter shall prevail.

### **§ 5100.4. Words and terms; tense and number.**

In construing the provisions of these regulations, except when otherwise plainly declared or clearly apparent from the context:

(a) Words in the present tense shall include the future tense.

(b) Words in the singular shall include the plural and the plural shall include the singular.

### **§ 5100.5. Severability and preemption.**

(a) If any clause, sentence, section, subsection, paragraph, subparagraph, Chapter or other portion of these regulations or the application thereof to any person or circumstance

shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of these regulations or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, section, subsection, paragraph, subparagraph, Chapter or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

(b) Notwithstanding the provisions of any other law to the contrary, no local government unit of this State may enact or enforce any ordinance or resolution conflicting with any provision of the law or of these regulations or with any policy of this State expressed or implied herein, whether by exclusion or inclusion. The commission shall have exclusive jurisdiction over all matters delegated to the commission or within the scope of the commission's powers under the provisions of the law and these regulations.

**§ 5100.6. Practice where regulations do not govern.**

In any matter not governed by these regulations, the commission shall exercise the commission's discretion so as to carry out the commission's purposes.

**§ 5100.7. Applicability of regulations to non-corporate entities.**

For purposes of these regulations, non-corporate entities shall, to the extent possible, comply with all relevant requirements applicable to corporate entities.

**§ 5100.8. Powers reserved.**

All powers not specifically defined in this Subchapter are reserved to the commission under the laws creating the commission and specifying the commission's powers and duties.

**PART 5101**

**Information and Filings**

Section

5101.1 Communications; notices

5101.2 Retention, storage and destruction of books, records and documents by video gaming agents

**§ 5101.1. Communications; notices.**

(a) Except as otherwise provided by these regulations, all papers, process or correspondence relating to the commission should be addressed to or served upon the commission at the commission's principal office.

(b) All such papers, process or correspondence shall be deemed to have been received or served when delivered to the principal office of the commission.

(c) Except as otherwise specifically provided by the act or these regulations, notices from the commission will be sent to an applicant or licensee by either ordinary mail or certified mail to the address shown in the most recent application or change of address notice received from such person. Notices shall be deemed to have been served upon their deposit, postage prepaid, in the United States mail, and the time specified in any such notice shall commence to run from that date.

(d) Any applicant or licensee who desires to have notices mailed to an address other than that specified in the application shall file with the commission a specific request for that purpose, and notices will, in such case, be sent to the applicant or licensee at such address.

(e) An applicant or licensee will be addressed under the name and style designated in the application, and separate notices will not be sent to individuals named in such application unless a specific request for that purpose is filed with the commission. In the absence of such a specific request, a notice addressed under the name or style designated in the application shall be deemed to be notice to all individuals named in such application. Applicants and licensees shall immediately notify the commission of any change of address, and shall expressly request that all notices be sent to the new address.

(f) Whenever possible, except as otherwise provided in these regulations, all written communication and documentation submitted to the commission shall be by electronic delivery.

**§ 5101.2. Retention, storage and destruction of books, records and documents by video gaming agents.**

(a) All original books and records pertaining to the video lottery gaming agent's operations shall be:

- (1) prepared and maintained in a complete, accurate and legible form;
- (2) retained on the site of the video lottery gaming facility or at another secure location approved in accordance with subdivision (d) of this section;
- (3) retained for the time period specified in subdivision (c) of this section;
- (4) held available for inspection by the commission and the commission's designee during normal business hours;
- (5) organized and indexed in such a manner so as to provide immediate accessibility to the commission.

(b) All original books, records and documents shall be retained by any video lottery gaming agent in accordance with policies issued by the commission from time to time. Notwithstanding such policies, the following original books, records and documents shall

be retained indefinitely unless destruction is requested by a video lottery gaming agent and approved by the commission in writing:

- (1) corporate records;
- (2) records of corporate investigations and due diligence procedures;
- (3) current video lottery gaming employee personnel files; and
- (4) a record of any original book, record or document destroyed, identifying the particular book, record or document, the period of retention and the date of destruction.

(c) An off-site storage facility for the books, records and documents required to be retained by a video gaming agent pursuant to this part may be approved by the commission upon receipt of a written request from a video gaming agent. Such request shall include, without limitation, the following information:

- (1) a detailed description of the proposed off-site facility, including security and fire safety systems; and
- (2) the procedures pursuant to which the commission will be able to gain access to the original books, records and documents retained at the off-site facility.

A video lottery gaming agent may request commission approval of an electronic or other suitable media system for the copying and storage of original books, records and documents. The use of such multi-media systems by a video gaming agent shall be pursuant to policies issued by the commission from time to time.

(d) (1) Notwithstanding any policy, statute, rule or regulation to the contrary, video lottery gaming agent shall notify the commission in writing at least 15 days prior to the scheduled destruction of any original book, record or document. Any such notice of destruction shall list each type of book, record and document scheduled for destruction, including a description sufficient to identify the books, records and documents included; the retention period; and the date of destruction.

(2) The commission may object to the destruction of any original book, record or document by notifying the video lottery gaming agent in writing within 15 days of the receipt of any notice of destruction issued by the commission by a video lottery gaming agent. Upon receipt of an objection to any notice of destruction, such original book, record or document may thereafter be destroyed by the video lottery gaming agent only upon the consent of the commission. The destruction of any book, record or document by a video gaming agent without the consent of the commission shall be a violation of these regulations and will be treated as the destruction of a public record under the Penal Law.



(3) The video lottery gaming agent may utilize the services of a commission-approved disposal company for the destruction of any books, records or documents. Any cash complimentary coupons to be destroyed by a disposal company shall first be canceled with a void stamp, hole punch or similar device, or must contain a clearly marked expiration date that has expired, prior to turning possession of such coupons over to the disposal company.

(e) Nothing herein shall be construed as relieving a video lottery gaming agent from meeting any obligation to prepare or maintain any book, record or document required by any other Federal, State or local governmental body, authority or agency.

## **PART 5102**

### **General Provisions Regarding Licensing and Registration**

#### Section

- 5102.1 General
- 5102.2 Identification
- 5102.3 Fingerprinting
- 5102.4 Photographing
- 5102.5 Handwriting exemplars
- 5102.6 Minimum employee age
- 5102.7 Eligibility to work in the United States
- 5102.8 False and misleading information
- 5102.9 Filing
- 5102.10 Processing
- 5102.11 Amendment
- 5102.12 Issuance of a license
- 5102.13 Withdrawal
- 5102.14 Denial of a video gaming license
- 5102.15 Application of employment after denial or revocation
- 5102.16 Assignability
- 5102.17 Temporary service providers; badges
- 5102.18 Application to change video lottery gaming license
- 5102.19 Restriction on employment of a former surveillance department employee.

#### **§ 5102.1. General.**

(a) Every applicant and licensee shall produce such information, documentation and assurances as may be required by the commission to establish, by clear and convincing evidence, such applicant or licensee's suitability for licensure in accordance with these regulations. The refusal by any applicant or licensee to comply with a request by the commission for any such information, documentation or assurances shall be a basis for denial, revocation or disqualification of the applicant or licensee.

(b) Each licensee under these regulations shall have a continuing obligation, as set forth in these regulations:

(1) to ensure that such information, documentation and assurances submitted to the commission is current; and;

(2) to ensure that such information, documentation and assurances, in light of the circumstances in which they were made and submitted, shall not be misleading. Each licensee shall submit such additional information, documentation and assurances as may be necessary to meet such obligations.

(c) (1) It shall be the affirmative duty of all licensed personnel to report:

(i) violations of law and any instances of non-compliance with these regulations;  
or

(ii) regulatory or criminal violations by such licensees in any jurisdiction outside the state in which they are licensed, to the commission and the commission's authorized representative. Licensed entities agree that they shall not apply any sanction, penalty, or job termination against any employee in retaliation for that employee's reporting of violation(s) or cooperation with the commission or the commission's authorized representative in any investigation or other proceeding.

(2) If it is determined after investigation that any licensed entity or person has violated these regulations, the commission will impose the appropriate remedy including, but not limited to, any of the following:

(i) permit the reinstatement of the employee to a former position;

(ii) suspension and/or revocation of the license of the entity or person(s).

### **§ 5102.2. Identification.**

(a) Every natural person applying for a license pursuant to these regulations shall establish such person's identity to the satisfaction of the commission pursuant to the requirements of the license application.

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

### **§ 5102.3. Fingerprinting.**

(a) Each applicant or licensee, including each of the video lottery gaming agent, video lottery gaming agent principals, vendor and vendor principals, vendee and vendee



principals, if applicable, and key and other employees, shall, at the time of application and upon renewal, be fingerprinted under the supervision of the commission or a duly authorized representative approved by the commission. The commission may, for good cause shown, permit an applicant or licensee to alternatively submit sets of classifiable fingerprints on fingerprint impression cards provided by the commission.

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

(c) Each video lottery gaming agent shall remit to the commission the actual costs of reviewing and fingerprinting such agent's principals, employees and vendors, if applicable.

#### **§ 5102.4. Photographing.**

Each applicant or licensee shall submit with their license application a color photograph in the format required by the license application and that was taken within six months of the date the application is submitted to the commission.

#### **§ 5102.5. Handwriting exemplars.**

Each applicant or licensee shall supply handwriting exemplar(s) in the form and manner required by the license application.

#### **§ 5102.6. Minimum employee age.**

No natural person under the age of 18 years shall be eligible to receive a license from the commission as a video lottery gaming key employee, video lottery gaming employee or principal of a vendor or be authorized as a temporary service provider.

#### **§ 5102.7. Eligibility to work in the United States.**

No natural person shall be employed as a video lottery gaming agent unless such person is a citizen of the United States or is otherwise eligible to work in the United States.

#### **§ 5102.8. False and misleading information.**

The commission may deny a license to any applicant who:

(a) supplies information to the commission that is untrue or misleading as to a material fact; or

(b) fails to submit any statement or information that would make any statement made in the application, in light of the circumstances in which they were made, not misleading.

### **§ 5102.9. Filing.**

No application for a license shall be deemed filed with the commission under these regulations until:

(a) all papers presented conform to all requirements relating to format, signature, oath or affirmation, attorney certification (if required) and copies;

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

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

(d) all other information, documentation, assurances and other materials required or requested at that preliminary stage pertaining to qualifications have been properly presented; and

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

### **§ 5102.10. Processing.**

The commission will process only complete applications. The commission will notify the video lottery gaming agent's human resource department when an application has been accepted as complete. The processing of any application shall not constitute the commission's concurrence that the requirements of the act and these regulations have been satisfied.

### **§ 5102.11. Amendment.**

It shall be the continuing duty of each applicant or licensee to promptly file with the commission a written amendment to the application explaining any new or changed facts or circumstances whenever any material or significant new or changed facts or circumstances occur with respect to any matter set forth in the application or other papers relating thereto. Any applicant or licensee may be permitted by the commission to file any other amendment to such applicant or licensee's application at any time prior to final action thereon by the commission. The failure of an applicant or licensee to comply with this section shall be grounds for rejection of the application or for suspension or revocation of a license.

### **§ 5102.12. Issuance of a license.**

(a) The commission shall notify the applicant or the human resource department of the video lottery gaming agent in writing when a license is granted.

(b) No applicant shall commence a licensed activity prior to the issuance of a license.

(c) The commission may issue a temporary license to an applicant pending completion of an initial application review process. Any such temporary license may be issued only if the applicant:

(1) has filed a complete application with the commission;

(2) the completed application, on the face of such application, discloses no grounds from which it may be immediately ascertained by the commission that there are reasonable grounds to deny the application; and

(3) the commission receives and reviews an acceptable fingerprint report from the New York State Division of Criminal Justice Services and Federal Bureau of Investigation.

### **§ 5102.13. Withdrawal.**

(a) Prior to a final action by the commission on an application, regardless of whether a temporary license has been issued, any applicant may withdraw an application filed with the commission by filing a written notice of such withdrawal. Upon the receipt of such notice, the commission will cease processing such application, but shall retain such application and materials in accordance with applicable law.

(b) The commission may refrain from processing any application submitted by any applicant that has previously withdrawn an application for a period of one year from the date of such withdrawal.

(c) No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application unless otherwise determined by the commission for good cause shown.

### **§ 5102.14. Denial of a video lottery gaming license.**

(a) To the extent permitted by law, the commission may deny a video lottery gaming license to an applicant who has been convicted of:

(1) A felony offense, as defined in penal law section 10.00(5), or an equivalent offense committed in another jurisdiction;

(2) A misdemeanor related to gambling, gaming, bribery, fraud, or any other offense prejudicial to public confidence in the State lottery;

(b) The commission may deny a video lottery gaming license to an applicant who has otherwise been determined to be a person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the effective regulation of video

lottery gaming in this State; or if the granting of such license to the applicant would create, or enhance, the chances of unfair or illegal practices, methods, and activities in the conduct of the video lottery gaming under the act; or if such applicant has failed to provide any information reasonably required by the commission to investigate the applicant for a license or to reveal any fact material to such application, or has furnished any information that is untrue or misleading in connection with such application, or fails to submit such information that, if submitted, would make the statements in any application, in light of the circumstances in which they were made, not misleading.

(c) The commission may deny a video lottery gaming license to an applicant who fails to provide such information, documentation and assurances required by the act or these regulations, or as requested by the commission, or who fails to reveal any fact material to suitability, or who supplies information that is untrue or misleading as to a material fact pertaining to licensing suitability criteria;

(d) The commission may deny a video lottery gaming license to an applicant who fails after due inquiry to demonstrate financial stability or who is obligated for past-due support that is owed to persons or entities entitled to enforce an order of support with respect to persons receiving services pursuant to Title 6-A of Article 3 of the state Social Services Law or any final order, decree or judgment in a matrimonial action or family court proceeding, or any foreign support order, decree or judgment that is registered pursuant to Section 37-A of the Domestic Relations Law, which requires the payment of alimony, maintenance, support or child support.

(e) The commission may deny a video lottery gaming license to an applicant upon determination that the applicant has engaged in fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the state lottery;

(f) Notwithstanding the provisions of this section, an applicant who has been convicted of any criminal offense may receive a video lottery gaming license at the discretion of the commission. In determining whether the applicant may receive such license, the commission shall consider the following factors:

- (1) the nature and duties of the position or type of license for which the applicant has applied;
- (2) the nature and seriousness of the offense or conduct;
- (3) the circumstances under which the offense or conduct occurred;
- (4) the date of the offense or conduct;
- (5) the age of the applicant when the offense or conduct was committed;
- (6) whether the offense or conduct was an isolated or repeated incident;

(7) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

### **§ 5102.15. Application and employment after denial or revocation.**

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

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

(1) Failure to demonstrate financial stability: Reapplication is permitted upon achieving financial stability.

(2) Failure to satisfy the age requirement: Reapplication is permitted upon attaining the requisite age or upon a commission finding that such age will be attained before the processing and approval of said reapplication has been completed.

(3) Pending disposition of a charge of a criminal offense if the Lottery has determined to deny a license application or suspend or revoke a license while such charge is pending: Reapplication is permitted upon disposition of the pending charge.

(4) Any statutory or regulatory provision that is subsequently repealed or modified: Reapplication is permitted upon a showing that the subsequent repeal or modification of the statutory or regulatory provision obviates the grounds for denial or revocation and justifies the conclusion that the prior determination should not be a basis for denying a license application.

(c) Except as otherwise set forth in these regulations, any person whose application has been denied or whose license has been revoked may reapply upon submission of sufficient evidence demonstrating that the factual circumstances upon which the denial was based have been cured to the satisfaction of the commission.

(d) Any person whose license has been revoked may reapply upon submission of sufficient evidence demonstrating that the factual circumstances upon which the denial was based have been cured.

**§ 5102.16. Assignability.**

No license issued pursuant to these regulations is assignable by the licensee to any other person.

**§ 5102.17. Temporary service providers; badges.**

(a) The video lottery gaming agent may issue temporary badges to any natural person performing temporary services at a video lottery gaming facility.

(b) Temporary badges shall:

(1) remain the property of the video lottery gaming agent;

(2) be distributed to the temporary service provider upon daily arrival at the video lottery gaming facility; and

(3) be returned daily by such temporary service provider to such agent at the close of the temporary service provider's work shift.

(c) Any licensed entity needing to contract for or employ temporary personnel shall provide to the commission a completed temporary service provider identification number request form, no later than 24 hours prior to arrival of the temporary service provider at the facility. The failure to file such request form shall be a violation of the entity's license, the act and these regulations.

(d) The video lottery gaming agent may issue visitor badges to persons performing services for a period not greater than one business day provided that such visitor is escorted by a licensed employee at all times. If such visitor requires access to restricted areas, the visitor must be accompanied by a licensed key employee, unless otherwise approved by the commission.

**§ 5102.18. Application to change video lottery gaming license.**

A video lottery gaming licensee may apply to change the status of such licensee's current license by filing an application in a form prescribed by the commission.

**§ 5102.19. Restriction on employment of a former surveillance department employee.**

No former video lottery gaming agent surveillance department employee shall accept employment in another capacity for the video lottery gaming agent within the same video



lottery gaming facility in which such surveillance department employee was previously employed or within any other video lottery gaming facility whose surveillance department is under the operational control of the same person who controlled the surveillance department in which the surveillance department employee had been previously employed, unless one year has passed since the former surveillance department employee worked in the surveillance department.

## **PART 5103**

### **Video Lottery Gaming Agents**

Section	
5103.1	Entities permitted to obtain a video lottery gaming agent license
5103.2	Video lottery gaming agent and principal application and disclosure form
5103.3	General information requirements
5103.4	Duration of license and license conditions
5103.5	Bonding of video lottery gaming agents
5103.6	Indemnification and hold harmless
5103.7	Relationship
5103.8	Gaming facility insurance requirements

#### **§ 5103.1. Entities permitted to obtain a video lottery gaming agent license.**

Unless otherwise permitted by law, only racetracks authorized by Article 34 of the Tax Law to operate a video lottery gaming facility may apply for and obtain a video lottery gaming agent license.

#### **§ 5103.2. Video lottery gaming agent and principal application and disclosure form.**

(a) Each owner of a video lottery gaming facility is required to be licensed by the commission as a video lottery gaming agent. A video lottery gaming agent application and disclosure form shall be filed with the commission for each of the following:

- (1) the video lottery gaming agent license applicant; and
- (2) each parent company or holding company of the applicant.

(b) Each person who is a principal of a video lottery gaming agent or the operator of a video lottery gaming facility on behalf of such an agent is required to be licensed by the commission. A video lottery gaming agent principal application and disclosure form shall be filed with the commission for each of the following:

- (1) each person required to be licensed as a principal of the applicant; and
- (2) each person required to be licensed as a principal of a parent or holding company of such agent; and

(3) where the video lottery gaming agent principal is other than a natural person, each person(s) exercising control as principals over the video lottery gaming agent principal applicant.

(c) In addition to the information submitted on or required by the application or disclosure form, any applicant for a video lottery gaming agent or principal license shall submit the following additional documents, which shall be dated, signed and notarized by either the president, chief executive officer, member(s), any general partner(s), sole proprietor(s) or other authorized person:

(1) a statement of truth;

(2) release authorizations as requested by the commission directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the commission; and

(3) an acknowledgment of receipt of notice regarding confidentiality, consent to search and non-refundable filing fees, with a waiver of liability as to the State and the instrumentalities and agents of the State, including the commission, for any damages resulting to the video lottery gaming agents, such agents' principals, servants, agents and employees, from any disclosure or publication of information acquired during the license or investigation process.

(4) such other and further information and documentation as may be required by the commission to establish compliance with all relevant facilities requirements of the commission including, without limitation, the following:

(i) a certified copy of the local law authorizing the applicant's participation in video lottery gaming, if applicable;

(ii) a certified copy of the certificate of occupancy or a certificate of compliance issued by the appropriate governmental body demonstrating that the facility to be licensed is in compliance with all State and local fire and safety codes;

(iii) certified payroll records showing that all workers engaged or to be engaged in the construction, reconstruction, development, rehabilitation or maintenance of any area utilized or to be utilized for video lottery gaming have been paid prevailing wages in accordance with Articles 8 and 9 of the State Labor Law and regulations promulgated by the State Department of Labor to the extent provided in such articles;

(iv) a description of the proposed video lottery gaming facility site, including site plans, total acreage, total square footage, frontages and elevation;

(v) certificates of insurance to comply with Section 5103.8 of this Part;

(vi) the construction program for the video gaming facility, including estimated construction time and anticipated date of opening; the status of all required governmental and regulatory approvals and any conditions thereto, including, but not limited to, the results of any review pursuant to the New York State Environmental Quality Review Act and all necessary demolition and construction permits; the project budget; and the architect, general contractor, construction manager and primary subcontractors, environmental consultant and interior designer and proof of insurance of all phases of the construction process;

(vii) certified copies of any agreement(s) with the organization authorized to represent its horsemen; and;

(viii) any other information or documentation that the commission may deem material to the licensing of the applicant, or of any person required to be licensed pursuant to the regulations of the commission.

### **§ 5103.3. General information requirements.**

(a) No video lottery gaming agent license shall be issued or renewed by the commission unless the applicant, and each person required to be licensed as part of the application, provides all information, documentation and assurances required to establish such applicant's qualifications pursuant to these regulations.

(b) A video lottery gaming agent license may be issued subject to such conditions, restrictions, limitations or covenants as the commission, in the commission's discretion, deems necessary.

(c) Each video lottery gaming agent shall prohibit the possession, use or control of gambling paraphernalia used in the conduct or operation of unlawful gambling in the video lottery gaming facility.

### **§ 5103.4. Duration of license and license conditions.**

Any video lottery gaming agent license issued by the commission, shall be valid for the effective period of the act, unless such license is suspended or revoked by the commission pursuant to these regulations or by reason of the video lottery gaming agent's failure to continue to own and/or operate the video lottery gaming facility.

### **§ 5103.5. Bonding of video lottery gaming agents.**

(a) The commission shall require each video lottery gaming agent to provide to the commission a bond or other surety agreement, including without limitation a letter of credit, issued by a surety company or banking institution authorized to transact business in the state and approved by the Department of Financial Services as to solvency and responsibility, in such amount as the commission may determine, so as to avoid monetary loss to the state because of the video lottery gaming agent's activities or those of a third

party. For each video lottery gaming agent, the commission shall set the minimum amount of such bond or other surety agreement, which amount shall be not less than the total of five days of estimated average daily net win at such video lottery gaming agent's facility, as the commission may determine as appropriate, less an amount equal to the vendor's fee for such video lottery gaming agent set forth in Tax Law section 1612(b)(1)(ii).

The bond or other surety agreement shall name as beneficiaries the commission and the State.

(b) The commission may seek additional bond, surety or other guarantee of financial security consistent with the purposes of these regulations or video lottery gaming law, as the commission may deem appropriate.

(c) The failure of the video lottery gaming agent to post such bond or surety agreement in the amount required by the commission shall be a violation of the requirements of such video gaming agent's license.

#### **§ 5103.6. Indemnification and hold harmless.**

As a condition to the issuance and acceptance of any video gaming agent license, each video lottery gaming agent shall agree, by separate agreement or otherwise, to:

(a) indemnify and hold harmless the State, the commission and any of the employees of the State or the commission from any and all damages, claims for damages or suits that may arise or occur directly or indirectly as a result of any operation carried on, under and pursuant to said video lottery gaming agent license;

(b) release the State, the commission and any of the employees of the State or the commission from any and all claims, damages and/or rights of action that shall accrue to the video lottery gaming agent or any of such agent's employees that may arise or occur directly or indirectly as a result of any operation carried on, under or pursuant to said license; and

(c) defend, at such agent's own expense, any and all suits against the State that may be brought by third parties as a result of any operation carried on pursuant to or in accordance with the terms of such license.

#### **§ 5103.7. Relationship.**

Every employee of a video lottery gaming agent shall be employees of such video lottery gaming agent and not of the commission or the State.

#### **§ 5103.8. Gaming facility insurance requirements.**

(a) Prior to the commencement of video gaming operations, the video gaming agent shall file with the commission certificates of insurance evidencing compliance with all

requirements contained in these regulations. Such certificates shall be of form and substance acceptable to the commission.

(b) Acceptance and/or approval by the commission does not and shall not be construed to relieve the video gaming agent of any obligations, responsibilities or liabilities under these regulations.

(c) All insurance required by these regulations shall be obtained at the sole cost and expense of the video gaming agent with insurance carriers acceptable to the commission; shall be primary and non-contributing to any insurance or self-insurance maintained by the commission; shall be endorsed to provide written notice be given to the commission at least 30 days prior to the cancellation, non-renewal, or material alteration of such policies, and shall name. The people of the State of New York, its officers, agents, and employees as additional insured. The additional insured requirement does not apply to workers' compensation or disability coverage.

(d) The video gaming agent shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the commission. Such approval shall not be unreasonably withheld.

(e) Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the commission and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

(f) The video gaming agent shall cause all insurance to be in full force and effect as of the commencement date of video gaming operations and to remain in full force and effect throughout the license term. The video gaming agent shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

(g) Not less than 30 days prior to the expiration date or renewal date, the video gaming agent shall supply the commission updated replacement certificates of insurance, and amendatory endorsements.

(h) *Limits.* The video gaming agent shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

(1) Commercial general liability insurance with a limit of not less than \$5,000,000 each occurrence. Such insurance shall cover liability arising from premises operations, independent contractors, broad form property damage, personal and advertising

injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per location basis.

(2) Workers' compensation, employers liability, and disability benefits as required by New York State.

(3) Commercial business automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile accident including owned and leased automobiles.

(i) The video gaming agent shall cause to be included in each of such agent's policies insuring against loss, damage or destruction by fire or other insured casualty, a waiver of the insurer's right of subrogation against the commission, or, if such waiver is unobtainable,

(1) an express agreement that such policy shall not be invalidated if the video gaming agent waives or has waived before the casualty, the right of recovery against the commission or

(2) any other form of permission for the release of the commission.

## **PART 5104**

### **Financial Stability of Video Lottery Gaming Agents**

#### Section

5104.1 Financial stability criteria

5104.2 Financial stability reporting requirements

5104.3 Failure to demonstrate financial stability

#### **§ 5104.1. Financial stability criteria.**

(a) *Criteria.* Each video lottery gaming agent, and each of such agent's principals, shall establish and maintain during the pendency of such video gaming agent license the financial stability of such licensee to the satisfaction of commission. The commission may consider any relevant evidence of financial stability. A video lottery gaming agent shall be considered to be financially stable if such agent establishes by clear and convincing evidence that such agent meets each of the following standards:

(1) Each video lottery gaming agent must assure the financial integrity of video lottery gaming operations by the maintenance of a video lottery gaming bankroll, or equivalent provision(s), adequate to pay prizes to video lottery gaming patrons when due. A video lottery gaming agent shall be found to have established this standard if it maintains, on a daily basis, a video lottery gaming bankroll, or equivalent provisions, in an amount at least equal to the facility's immediate cash requirement exposure for



player prizes. Prior to receiving a certificate of operation for the video lottery gaming facility, each video lottery gaming agent must submit to the commission a calculation of their video lottery gaming bankroll to be maintained at the commencement of each gaming day. Such calculation shall be based upon prize valuation levels. The bankroll will be reviewed by the commission, and shall guarantee that the vault funding by weekday is at least equal to 200 percent of the projected average daily prize claims at the video lottery gaming facility. Each video lottery gaming agent must continually review and evaluate daily bankroll requirements and notify the commission in writing if it requests to change the amount of the minimum bankroll. Such notification must be provided to the commission at least 10 days prior to the implementation of the new funding level. Maintenance of a minimum bankroll is subject to audit or review by the commission. Failure to maintain adequate funding levels consistent with this requirement will be a violation of the video lottery gaming agent's license.

(2) Each video lottery gaming agent must be able to pay, as and when due, all local, State and Federal taxes, including the tax on gross revenues imposed by the video lottery gaming law, and any costs associated with the licensing process.

(3) A video lottery gaming agent shall maintain the video lottery gaming facility and related amenities in good repair. Each video lottery gaming agent shall submit annually to the commission for review, any changes or updates to the capital investment plan for the video lottery gaming facility together with the then-effective capital investment plan. The commission shall review such changes and updates to ensure that each video lottery gaming agent is investing portions of the vendor fee permitted by the act in the facility's infrastructure as is necessary to support viable and successful video lottery gaming in this State. Each capital investment plan submitted shall be in such form as required by the commission and shall discuss the improvements made to the facility since the submission of the last investment plan. Each video lottery gaming agent shall budget for repair and replacement reserves to maintain the facility unless otherwise prohibited by law. The commission reserves the right to require video lottery gaming agents to create and fund replacement reserves at such amounts determined by the commission consistent with the requirements of the act.

(4) Each video lottery gaming agent must be able to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, that will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts. Each video lottery gaming agent shall advise the commission of such agent's plans to meet this standard with respect to any material debt(s) coming due and payable within 12 months after the end of the license term.

(5) No video lottery gaming agent shall consummate a material debt transaction without the prior written approval of the commission.

(6) No video lottery gaming agent shall guarantee the debt of any person or business entity, whether by co-signature or otherwise, or assume the debt of any person or business entity; or enter into any agreement to place any encumbrance on its video lottery gaming facility to secure the debts of such video gaming agent, any person or business entity, without the prior written approval of the commission.

(b) In reviewing any transaction in connection with the financial stability of the video lottery gaming agent or any of such agent's principals, the commission shall consider whether the transaction deprives the agent or person of financial stability, taking into account the current or projected financial condition of the video lottery gaming agent and such agent's affiliate, and the potential impact of any default on the agent or person.

(c) Any subsequent use of the proceeds of a financial transaction previously approved by the commission pursuant to these regulations, including subsequent drawings under previously approved transactions, shall not require further commission approval unless such use is inconsistent with the use approved by the commission.

(d) The commission may restrict or prohibit the transfer of cash to, or the assumption of liabilities on behalf of, an affiliate of the video gaming agent if, in the judgment of the commission, such transfer or assumption would deprive the video lottery gaming agent of financial stability.

### **§ 5104.2. Financial stability reporting requirements.**

Each video lottery gaming agent and such agent's principals shall be required to maintain accurate and complete accounting records pertaining to video lottery gaming operations at the video lottery facility or such location approved in writing by the commission. Such records shall be maintained in accordance with generally accepted accounting principles. In connection with such records, each video lottery gaming agent shall report to the commission the following:

(a) on the fiscal year basis of the video lottery gaming agent, the video lottery gaming agent shall submit audited financial statements in accordance with these regulations within 120 days of such fiscal year end;

(b) video lottery gaming agents will submit standard financial reports required by these regulations; and

(c) such other information as the commission shall deem necessary for a showing of financial stability for a particular video lottery gaming agent including, without limitation, quarterly submissions of financial information.

### **§ 5104.3. Failure to demonstrate financial stability.**

In the event a video lottery gaming agent, or any licensee under these regulations, fails to demonstrate financial stability as required by these regulations to the satisfaction of the

commission, the commission may take such action as is necessary to fulfill the purposes of the act and to protect the public interest, including, but not limited to: issuing conditional or temporary licenses, approvals or determinations; establishing an appropriate cure period; imposing reporting requirements in excess of those otherwise mandated by these regulations; placing such restrictions on the transfer of cash or the assumption of liabilities as is necessary to insure future compliance with the financial stability standards; requiring the maintenance of reasonable reserves or the establishment of dedicated or trust accounts to insure future compliance with the financial stability standards; requiring a special audit, with such audit plan to be approved by the commission and conducted by an independent accounting firm at the expense of the video lottery gaming agent; charging interest as provided in these regulations on any outstanding amount of sales due the commission; suspending, revoking or denying licensure; or such other action as the commission determines appropriate in accordance with these regulations.

## **PART 5105**

### **Video Lottery Gaming Key Employee and Employee Licensing**

#### Section

- 5105.1 Persons required to obtain a video lottery gaming key employee license
- 5105.2 Persons required to obtain a video lottery gaming employee license
- 5105.3 Video lottery gaming key employee and video lottery gaming employee applications and disclosure forms
- 5105.4 Standard for issuance of video lottery gaming key employee and video lottery gaming employee licenses
- 5105.5 Duration of license, effective date

#### **§ 5105.1. Persons required to obtain a video lottery gaming key employee license.**

Any natural person who will be employed by a video lottery gaming agent in a position that includes any responsibility or authority to develop or administer policy or long-range plans or to make discretionary decisions regarding video lottery gaming facility operations, regardless of job title, and who is not a principal of such agent, shall be required to hold, prior to being involved in any video lottery gaming licensed activities, a current and valid video lottery gaming key employee license issued by the commission or shall have filed a request for a temporary license under section 5102.12 of this Subchapter.

#### **§ 5105.2. Persons required to obtain a video lottery gaming employee license.**

(a) Any natural person who will be employed by a video lottery gaming agent in any position and who is not a principal of a video lottery gaming agent or a video lottery gaming key employee, shall be required to hold, prior to the commencement of such employment, a current and valid video lottery gaming employee license issued by the commission.

(b) Any person who holds a current and valid video lottery gaming key employee license may perform the duties and responsibilities of any position that requires a video lottery gaming employee license.

(c) Any person who is employed solely in the pari-mutuel racing business shall not be required to obtain a video lottery gaming employee license, unless such person enters video lottery gaming restricted areas in the course of such person's employment.

**§ 5105.3. Video lottery gaming key employee and video lottery gaming employee applications and disclosure forms.**

(a) The video lottery gaming key employee and video lottery gaming employee applications, personal history disclosure forms or principal disclosure forms shall be in a format prescribed by the commission.

(b) In addition to any information requested in the application, each applicant for a video lottery key employee and video lottery gaming employee license shall provide the commission:

(1) the name, address, occupation and phone number of each person(s) who can attest to the applicant's character and reputation;

(2) a signed, dated and notarized certification of truth; and

(3) a signed, dated and notarized release authorization(s) that shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the commission.

**§ 5105.4. Standard for issuance of video lottery gaming key employee and video lottery gaming employee licenses.**

(a) Each applicant for a video lottery gaming key employee and video lottery gaming employee license must produce such information, documentation and assurances as requested by the commission concerning the following qualification criteria:

(1) Such information, documentation, releases and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to, bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary.

(2) Such information, documentation, releases and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty

and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal government, of this State or of any other state, jurisdiction, province or country.

(3) Upon request of the commission, the potential employee shall produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is.

(4) If the applicant has been associated with gaming operations in any capacity in any jurisdiction that permits such activity, the applicant, when requested by the commission, shall produce letters of reference from the gaming enforcement or control agency for such jurisdiction. Such letters of reference shall specify, without limitation, the experience of such gaming enforcement or control agency with the applicant, the applicant's associates, the applicant's participation in the gaming operations of such jurisdiction, and, to the extent permitted by applicable law, any enforcement action by such gaming enforcement or control agency against the applicant. The applicant shall separately authorize the commission or the commission's authorized representative to communicate with and examine appropriate files of any such gaming enforcement or control agency in any such jurisdiction.

#### **§ 5105.5. Duration of license, effective date.**

Any video lottery gaming key employee or employee license shall be issued by the commission and shall remain in force until suspended, revoked or terminated by the commission in accordance with the provisions set forth in this subchapter. Upon reasonable notice to existing licensees, the commission may require renewal of licenses, establish probation, or set other conditions upon the license. A license fee may be established and required at the discretion of the commission.

### **PART 5106**

#### **Video Lottery Gaming Vendor Licensing**

Section	
5106.1	Persons required to obtain a video lottery gaming vendor license
5106.2	Standards for issuance of a video lottery gaming vendor license
5106.3	Vendor license application and disclosure form



### **§ 5106.1. Persons required to obtain a video lottery gaming vendor license.**

(a) Any vendor who offers goods or services, as defined in this subchapter, that directly relate to a video lottery gaming activity at any video lottery gaming facility, including, without limitation, those who intend to manufacture, sell, distribute, maintain and repair video lottery gaming terminals and related equipment, or who intend to provide management services, or who intend to provide a central system for the operation of video lottery gaming within the State, together with such vendor's principal(s) and key employee(s), shall be required to be licensed in accordance with the provisions of these regulations prior to providing any such goods or services to the commission or any video lottery gaming agent or at a video lottery gaming facility.

(b) In addition to any vendor required to be licensed by this part, the commission may require a license for any person or business entity, other than a banking or financial institution who has provided more than 10 percent of the total financing of the video lottery gaming enterprise, if the issuance of such license would be consistent with this Part and consistent with the protection of video lottery gaming in the state.

(c) The commission may conduct background investigation(s) on any person or business entity performing services or providing goods for or at the video lottery gaming facility at any time after the issuance of a temporary license to the video lottery gaming agent pursuant to these regulations. The video lottery gaming agent shall cooperate and cause such person(s) or business entities to cooperate in any such investigation(s). The failure of the video lottery gaming agent or such person(s) or business entities to cooperate with any commission investigation shall be a violation of any license issued to the video lottery gaming agent, the act and these regulations.

### **§ 5106.2. Standards for issuance of a video lottery gaming vendor license.**

(a) In order to be qualified to receive a video lottery gaming vendor license, each vendor and their principals and key employees, must qualify under the standards established by these regulations for the issuance of a video lottery gaming agent license. Licensure of any vendor may be denied to any applicant disqualified in accordance with the criteria established for qualification of a video lottery gaming agent; provided that no video lottery gaming vendor license shall be issued until proof of valid business registration with the Department of State and the Department of Taxation and Finance is submitted to the commission.

(b) A vendor licensed pursuant to these regulations shall require proof from all of such vendor's subcontractors that such subcontractors hold valid business registration with the Department of State and the Department of Taxation and Finance.

(c) Notwithstanding any other section of these regulations, as a condition of any video lottery gaming vendor license, each video lottery gaming vendor shall comply with the requirements of the State Labor Law and the regulations promulgated hereunder, if



applicable, to facilitate the training of persons in the repair and reconditioning of video lottery terminals.

### **§ 5106.3. Vendor license application and disclosure form.**

Each applicant for a video lottery gaming vendor license will be required to submit a vendor license application in such form prescribed by the commission.

## **PART 5107**

### **Personnel Assigned to the Operation of Video Lottery Gaming Facilities**

Section

5107.1 Assigned personnel

5107.2 Jobs compendium submission

### **§ 5107.1. Assigned personnel.**

(a) The video lottery gaming agent shall be required to employ the personnel herein described in the operation of the video lottery gaming facility regardless of the position titles assigned to such personnel by such agent in the jobs compendium submitted to the commission. Functions described in this Part shall be performed only by persons holding the appropriate license required by the video lottery gaming agent's jobs compendium to perform such functions, or by persons holding the appropriate license required by such compendium to supervise persons performing such functions.

(b) Each video lottery gaming agent shall at all times maintain a level of staffing that ensures the proper operation and effective supervision of all video lottery gaming in such agent's video lottery gaming facility.

(c) The video lottery gaming agent shall be required to employ a video lottery gaming facility manager. The video lottery gaming facility manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of the video lottery gaming agent's gaming facility department including, without limitation, the hiring and terminating of all video lottery gaming facility personnel.

(d) In the absence of the video lottery gaming facility manager, the video lottery gaming facility shall have an assistant video lottery gaming facility manager who is employed within the video lottery gaming facility department and shall be designated by the video lottery gaming agent as the person responsible for the overall operation of the video lottery gaming facility department and such person shall have the authority of a video lottery gaming facility manager.

(e) Subject to prior commission approval, in lieu of an assistant video lottery gaming facility manager, the video lottery gaming facility manager may designate any licensed video lottery gaming key employee as a "manager on duty" except that the director of

surveillance and the director of security for the video lottery gaming facility are each prohibited from being so designated.

**§ 5107.2. Jobs compendium submission.**

(a) The video lottery gaming agent shall prepare and maintain a jobs compendium consistent with the requirements of this section detailing job descriptions and lines of authority for all personnel engaged in the operation of the video lottery gaming facility. Unless otherwise directed by the commission, a jobs compendium shall be submitted for approval at least 60 days prior to the projected date of the commencement of video lottery gaming operations. Upon receipt, the commission shall review the jobs compendium and shall determine whether the job descriptions and tables of organization contained therein conform to the standards of this Part. If the commission finds insufficiencies, the commission shall, in writing, specify the same to the video lottery gaming agent, which shall make appropriate alterations. When the commission determines the submission to be adequate with respect to these standards, it shall notify the video lottery gaming agent of such in writing. The video lottery gaming agent shall not commence gaming operations unless and until the jobs compendium of such agent is approved in writing by the commission.

(b) Each jobs compendium submitted by a video lottery gaming agent shall include the following sections, in the order listed:

(1) an alphabetical table of contents, listing the position, title, job code and type of license (*i.e.*, principal, key, etc.) for each job description included in paragraph (3) of subdivision (b) of this section, and the page number on which the corresponding job description may be found;

(2) an organization chart for each department, including all positions regardless of whether the positions require an occupational license, and illustrating, by position title, direct and indirect lines of authority within the department. Each page of a table of organization shall specify the following:

(i) the date of its submission;

(ii) the date of the previously submitted table of organization that it supersedes if any; and

(iii) a unique title or other identifying designation for that table of organization.

(3) A description of each employee position that accurately corresponds to the position title as listed in the table of organization and in the alphabetical table of contents. Each position description shall be contained on a separate page, organized by departments, and shall include, at a minimum, the following:

(i) position title and corresponding department;

- (ii) salary range;
- (iii) job duties and responsibilities;
- (iv) detailed descriptions of experience or educational requirements;
- (v) projected number of employees in the position;
- (vi) the date of submission of each employee position job description and the date of any prior job description it supersedes;
- (vii) the date of submission and page number of each table of organization on which the employee position title is included; and
- (viii) the type of license (*i.e.*, principal, key, etc.).

(b) Except as otherwise provided in subdivision (d) of this section, any amendment to a previously submitted jobs compendium, including any amendment to a table of organization, may be implemented by the video lottery gaming agent without the prior approval of the commission, provided that:

(1) the amendment is immediately recorded in the jobs compendium maintained by the video lottery gaming agent on the premises of such agent; and

(2) the amendment is submitted to the commission by the end of the business day on the date of implementation, including at a minimum, the following:

(i) a detailed cover letter listing by department each position title to which modifications have been made, a brief summary of each change, instructions regarding any changes in page numbers and the date of implementation; and

(ii) the proposed changes to the information required by subdivision (b) of this section, including the corresponding job descriptions and tables of organization, contained on pages that may be used to substitute for those sections of the jobs compendium previously in writing by the commission.

(3) the video lottery gaming agent shall not be required to file amendments to job descriptions for positions that do not require an employee license. Non-licensed positions subsequently determined or required to be licensed shall be treated as an amendment pursuant to subdivision (c) of this section.

(4) except as otherwise required by these regulations, the video lottery gaming agent shall submit a complete and up-to-date jobs compendium in accordance with subdivision (a) of this section to the commission 18 months after commencement of gaming and every two years thereafter, unless otherwise directed by the commission.

(5) the video lottery gaming agent (or applicant) shall maintain on the premises of such agent a complete, updated copy of the jobs compendium of such agent (or applicant), which shall be made available for review upon the request of the commission.

(6) whenever required by these regulations, the video lottery gaming agent shall file three copies of a jobs compendium and three copies of an amendment to a jobs compendium with the commission. Each copy shall be in a format prescribed in writing by the commission, including a cover indicating the date of the submission and the label "Jobs Compendium Submission" or "Jobs Compendium Amendment" as appropriate.

(7) the video lottery gaming agent shall submit to the commission a list of employees who have received annual compensation of \$100,000 or more, including salary, bonuses, incentives, profit sharing or any other compensation as indicated on the employees' annual Internal Revenue Service Form W-2. Such list shall be submitted to the commission by March 31 for the preceding calendar year and shall include the following for each employee listed:

- (i) the name of the employee;
- (ii) the employee license number;
- (iii) the position of the employee and the corresponding job code for such position;
- (iv) the total amount of compensation received by the employee; and
- (v) each form of compensation received, such as salary, bonuses, incentives or profit sharing, and the amount thereof;

(8) no provision of this section shall be construed so as to limit the video lottery gaming agent's discretion to utilize a particular job title for any position in such agent's jobs compendium.

## **PART 5108**

### **Internal Controls Governing the Operation of Video Lottery Gaming**

#### Section

- 5108.1 Video lottery gaming agent's organization
- 5108.2 Purpose, format, submission and amendment of the video lottery gaming agent's system of internal control.
- 5108.3 Obligation to terminate, suspend or refuse employment; form of notice
- 5108.4 Employee reporting and record keeping requirements

### **§ 5108.1. Video lottery gaming agent's organization.**

(a) Each video lottery gaming agent shall organize their video lottery gaming operation in such a manner that all financial records are separate and distinct from all financial records relative to their other business operations.

(b) Each video lottery gaming agent's system of internal controls shall include tables of organization. Each video lottery gaming agent shall, except as otherwise provided in this section, tailor such agent's organizational structure to meet the needs or policies of such agent's particular management philosophy. The proposed organizational structure of each video lottery gaming agent shall be approved in writing by the commission in the absence of a conflict between the organizational structure and the criteria listed below, which criteria are designed to maintain the integrity of video lottery gaming operations. Each video lottery gaming agent's tables of organization shall provide for:

(1) a system of personnel and chain of command that permits management and supervisory personnel to be held accountable for actions or omissions within their areas of responsibility;

(2) the segregation of incompatible functions so that no employee is in a position both to commit an error or to perpetrate a fraud and to conceal the error or fraud in the normal course of such employee's duties;

(3) primary and secondary supervisory positions that permit the authorization or supervision of necessary transactions at all relevant times; and

(4) areas of responsibility that are not so extensive as to be impractical for one person to monitor.

(c) In addition to satisfying the requirements of subdivision (b) of this section, each video lottery gaming agent's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of the departments and supervisors required or authorized by this section (a "mandatory" department or supervisor) shall cooperate with, yet perform independently of, all other mandatory departments and supervisors of the video lottery gaming agent. Notwithstanding the foregoing, a department or supervisor of a video lottery gaming agent that is not required or authorized by this section may operate under or in conjunction with a mandatory department or supervisor unless the commission subsequently disapproves such operation as being inconsistent with the standards in subdivision (b). Mandatory departments and supervisory positions are as follows:

(1) The director of surveillance shall supervise the surveillance department. The director of surveillance shall report to the facility manager of the video lottery gaming facility, the chief operating officer, or another officer as determined by the agent and approved by the commission and be free to make reports directly to the video lottery

gaming agent's principals, members and board of directors. The surveillance department shall be responsible for, without limitation, the following:

- (i) the clandestine surveillance of the operation and conduct of the video lottery gaming and bill acceptors;
- (ii) the clandestine surveillance of the operation of the cashiers' cage and satellite cages;
- (iii) the audio-video recording of activities in the count rooms;
- (iv) the detection of cheating, theft, embezzlement, and other illegal activities in the video lottery gaming facility, count rooms, and cashiers' cages;
- (v) the detection of the presence in the video lottery gaming facility of any person who is excluded or ejected;
- (vi) the video recording of illegal and unusual activities monitored;
- (vii) providing mandatory immediate notification to appropriate supervisors and the commission and the commission's designee upon detecting, and also upon commencing video or audio recording of, any person who is engaging in or attempting to engage in, or who is reasonably suspected of cheating, theft, embezzlement, or other illegal activities;
- (viii) providing mandatory immediate notification to appropriate supervisors and the commission and the commission's designee upon detecting, and also upon commencing video or audio recording of, any person who is excluded or ejected;
- (ix) pursuant to and in addition to subparagraphs (vii) and (viii) of this paragraph, a daily report of these events shall be transmitted to the commission or the commission's designee.

(2) A video lottery games department supervised by a person referred to herein as a video lottery gaming manager. The video lottery games department shall be responsible for the operation of the video lottery gaming facility, including the conduct of all authorized games and bill acceptors in the facility.

(3) A security department is supervised by a person referred to herein as a director of security. The security department shall be responsible for the overall security of the video lottery gaming facility including, without limitation, the following:

- (i) the physical safety of patrons in the video lottery gaming facility;
- (ii) the physical safety of personnel employed at the video lottery gaming facility;



(iii) the physical safeguarding of assets transported to and from the video lottery gaming facility and cashiers' cage departments;

(iv) the protection of the patrons' and the video lottery gaming facility's property from illegal activity;

(v) the detainment of each individual as to whom there is probable cause to believe that he or she has engaged in or is engaging in conduct that violates the Act or these regulations inclusive, for the purpose of notifying appropriate law enforcement authorities;

(vi) the control and maintenance of a system for the issuance of temporary employee license credentials and vendor access credentials;

(vii) the recordation and immediate notification to appropriate supervisors and the commission and the commission's designee of any and all unusual occurrences within the video lottery gaming facility for which the assignment of a security department employee is made. Each incident, without regard to materiality, shall be assigned a sequential number and, at a minimum, the following information shall be recorded in an electronic file that prohibits or tracks any changes or in indelible ink in a bound, laboratory-type notebook from which pages cannot be removed and each side of each page of which is sequentially numbered:

(a) the assignment number;

(b) the date;

(c) the time;

(d) the nature of the incident;

(e) the name of the person involved in the incident, and if applicable, their employee license number;

(f) the name and employee license number of the security department employee assigned; and

(g) the identification of any person who is removed, excluded or ejected.

(4) A video lottery gaming accounting department supervised by a person referred to herein as a controller. The controller shall be responsible for all video lottery gaming facility accounting control functions including, without limitation, the preparation and control of records and data, the control of stored data, the control of unused forms, the accounting for and comparison of operational data and forms, and the control and supervision of the cashiers' cage, any satellite cages and the count room.

(5) The video lottery gaming agents are required to submit to the commission a written plan stating the manner in which they will ensure compliance with the commission's internal control guidelines and those internal control procedures submitted by the agent to the commission. This plan may include the creation of an internal audit department or the hiring of a qualified provider of internal audit services (e.g. a certified public accounting firm or other consulting firm) or a combination of these measures. This plan should be approved in writing by the commission prior to start up and any changes in the plan should be submitted to the commission for approval.

(6) The count room shall each be supervised by a video lottery gaming key employee, who shall be responsible for the supervision of the count.

(7) A video lottery gaming agent that operates video lottery gaming in more than one room of the video lottery gaming facility may be required to maintain a separate cashiers' cage in each room. Each cashiers' cage shall be supervised by a video lottery gaming key employee referred to herein as a cage supervisor. The cage supervisor shall directly report to the controller or to another supervisor as approved by the commission and shall be responsible for the control and supervision of cage cashiers, clerks and the cage functions. If a video lottery gaming agent elects to operate one or more satellite cages, each satellite cage shall be supervised by a video lottery gaming key employee in accordance with a supervisory structure approved in writing by the commission and consistent with these regulations.

(d) The video lottery gaming agent's personnel shall be trained in all internal control and accounting practices and procedures relevant to each employee's individual function. Special instructional programs shall be developed by the video lottery gaming agent in addition to any on-the-job instruction sufficient to enable all members of the departments required by this section to be thoroughly conversant and knowledgeable with the appropriate and required manner of performing of all transactions relating to their functions.

(e) Notwithstanding any other provision of the commission's regulations to the contrary, a video lottery gaming agent may designate and assign more than one person to serve jointly as the manager of a department so long as each person assigned has been licensed as a key employee and such assignment does not undermine the purpose of the internal control procedures. Each person serving as a joint manager of a department shall be individually and jointly accountable and responsible for the operations of that department.

(f) Each department required or authorized by this section shall be supervised at all times by at least one video lottery gaming key employee; provided, however, that the commission may, upon request by a video lottery gaming agent, exempt the internal audit department or the MIS department from this requirement.

(g) The surveillance department shall be separate from all other departments of the video lottery gaming facility. To protect the confidentiality of surveillance system capabilities, access and admittance to the surveillance areas shall be limited to surveillance department personnel, the general manager of the facility, and any other person approved by the commission.

(h) In the event of a vacancy in the chief operating officer position or in any department supervisor position required by this section:

(1) The video lottery gaming agent shall notify the commission thereof no later than five days from the date of vacancy. Such notice shall be in writing and shall indicate, without limitation, the following information:

- (i) the title of the vacant position;
- (ii) the date on which the position became vacant; and
- (iii) the date on which it is anticipated that the vacancy will be filled on a permanent basis.

(2) The video lottery gaming agent shall designate a person to assume the duties and responsibilities of the vacant position no later than 30 days from the date of vacancy. Such person may assume the duties and responsibilities of the vacant position on a temporary basis, provided that:

- (i) such person does not function as the department supervisor for any department required by this section;
- (ii) such person's areas of responsibility will not be so extensive as to be impractical for one person to monitor;
- (iii) such person is appropriately and adequately licensed; and
- (iv) such position shall be filled on a permanent basis within 120 days of the original date of vacancy.

(3) Within five days of filling any vacancy as set forth in this subdivision (h), the video lottery gaming agent shall notify the commission thereof. Such notice shall be in writing and shall indicate, without limitation, the following:

- (i) the position;
- (ii) the name of the person designated;
- (iii) the date that the vacancy was filled; and

(iv) an indication of whether the position has been filled on a temporary or permanent basis.

**§ 5108.2. Purpose, format, submission and amendment of the video lottery gaming agent's system of internal control.**

(a) The video lottery gaming agent shall design a system of internal control procedures that shall conform to the guidelines established by the commission.

(b) The procedures of the system of internal control will be designed to ensure that:

(1) that assets of the video lottery gaming agent and commission are safeguarded;

(2) that the financial records of the video lottery gaming agent are accurate and reliable;

(3) that the transactions of the video lottery gaming agent's operation are performed only as authorized by the Act and these regulations;

(4) that accountability for assets is maintained in accordance with generally accepted accounting principles;

(5) that only authorized personnel have access to assets;

(6) that recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies;

(7) that employee and management functions, duties, and responsibilities are appropriately segregated and performed in accordance with sound practices by competent, qualified, licensed personnel and that no employee of the video lottery gaming agent is in a position to perpetuate and conceal errors or irregularities in the normal course of the employee's duties;

(8) that gaming is conducted with integrity and in accordance with the Act and these regulations; and

(9) that the video lottery gaming agent complies with all Federal, State, and local tax laws, codes, and reporting requirements.

(c) Each video lottery gaming agent shall submit to the commission a description of such agent's system of internal procedures and administrative and accounting controls in accordance with these regulations. Such submission shall be made to the commission at least 45 days prior to the expected date of commencement of video lottery gaming activities unless otherwise decided by the commission. The video lottery gaming agent shall be solely responsible for the design of the internal control system and for maintaining all the provisions and requirements of such system in day to day operations. The video

lottery gaming agent shall not commence gaming operations unless and until the submitted internal control system is approved by the commission.

(d) The commission shall review each submission and shall determine whether it conforms to the requirements of the Act, these regulations and the guidelines established by the commission. If the commission finds any insufficiency, it shall specify such insufficiency in writing to the video lottery gaming agent, which shall make timely and appropriate revisions and provide same to the commission. When the commission completes a review of the final submission and finds no insufficiencies, the commission shall so notify the video lottery gaming agent in writing. The commission reserves the right to direct the video lottery gaming agent to revise such agent's internal control procedures at any time if the commission determines that an internal control weakness exists.

(e) The video lottery gaming agent shall submit to the commission for review and approval any changes to such agent's approved internal control system not less than 60 days before the changes are to become effective, unless otherwise permitted in writing by the commission.

(f) If an event occurs at the video lottery gaming facility that would not allow for a 60-day review by the commission as set forth in subdivision (e) of this section, an emergency shall be deemed to exist. In such event, the video lottery gaming agent shall be permitted to make an emergency amendment to the approved internal control system as follows:

(1) In the event of an emergency, the video lottery gaming agent may amend an internal control procedure.

(2) The video lottery gaming agent shall submit a description of the emergency amendment of the internal control procedures and the circumstances necessitating the emergency amendment to the commission within five business days of the adoption of the emergency amendment.

(3) When the circumstances necessitating the emergency amendment to the internal control procedures abate, the video lottery gaming agent shall resume compliance with the internal control procedures.

(g) Each applicant for a video lottery gaming agent license shall prepare a description of such agent's internal employee licensing procedures. Unless otherwise directed by the commission, the employee licensing procedures shall be completed at least 60 days prior to the projected date of issuance of a certificate of operation and shall be made available to the commission upon request. Each such submission shall be prepared and maintained in a format provided by the commission; shall contain a narrative and, where appropriate, diagrammatic representations of the internal control system to be utilized by the applicant, and shall address, without limitation, the following employee licensing requirements:

- (1) procedures used to prepare and maintain a jobs compendium;
  - (2) procedures used to process and submit applications for video lottery gaming agent employee licenses;
  - (3) procedures used to prepare and submit petitions for temporary employee licenses.
- (h) The video lottery gaming agent shall establish procedures to be approved by the commission for the issuance, distribution and control of temporary and permanent identification and access badges to each such identified employee who is to be permitted, during the normal course of performing such employee's duties or during emergencies, access to one or more restricted areas.

(1) Badges shall be serially numbered, shall include a photograph of the employee, the employees first name, designation of position and access code as published by the commission. No person shall have access to any non-public area of a video lottery gaming facility without having an authorized and valid identification badge prominently displayed. The commission will prescribe the design, color(s), wording and lettering of the identification badge in accordance with job title of the employee. The badge shall be of sufficient size to be readily visible by surveillance monitoring.

(2) Such identification badge shall remain the property of the commission and must be surrendered by the licensed gaming employee upon the demand by any authorized representative of the video lottery gaming agent or the commission or the commission's designee where such employee has been suspended, discharged or has terminated such employee's employment. The name of each badge recipient, the employment position, badge number and assigned code shall be forwarded to the commission by the video lottery gaming agent no later than five business days following the last date of employment.

(3) No video lottery gaming agent shall permit any person to have access to any restricted area in such agent's video lottery gaming facility unless such access is permitted in accordance with the video lottery gaming agent's internal controls and these regulations. No video lottery gaming agent shall permit any person to have access to any area restricted only to commission employees as designated by the commission.

(4) Each video lottery gaming agent may deny or limit access to any public areas in order to preserve the policies of the act and these regulations, including, but not limited to, the following:

- (i) employees of video lottery gaming agents;
- (ii) unruly or disruptive patrons;
- (iii) underage persons; and



(iv) any person who has voluntarily excluded themselves pursuant to the exclusion policy of the video lottery gaming agent.

(5) Nothing in this section shall limit the authority of the commission or the commission's duly authorized representative from obtaining immediate, unfettered access to restricted areas during the performance of their respective duties and responsibilities in accordance with the Act and these regulations.

(6) The commission and the commission's designees shall have unfettered and complete access to badge system records including, but not limited to, name of each badge recipient, the employment position, badge number and assigned code. This listing shall be provided to the commission or the commission's designees upon commencement of the operation of the video lottery gaming facility and updated pursuant to subdivision (c) of this section.

### **§ 5108.3. Obligation to terminate, suspend or refuse employment; form of notice.**

(1) Each video lottery gaming agent shall terminate or suspend the video lottery gaming employment of any employee whose license has been denied, revoked or suspended by the commission.

(2) The commission shall notify each video lottery gaming agent of the name of each person whose license, registration or application has been revoked, suspended or denied by the commission concurrent with such revocation, suspension or denial.

(3) Each video lottery gaming agent required to terminate or suspend the video lottery gaming employment of any person shall do so within 24 hours of receipt of the notice from the commission described in this part.

### **§ 5108.4. Employee reporting and record keeping requirements.**

Each video lottery gaming agent shall maintain a complete, accurate and current record of each employee in a form required by the commission and each video lottery gaming agent shall file such active and terminated employee reports with the commission by electronic data transfer monthly as prescribed by the commission.

## **PART 5109**

### **Financial Controls for Video Lottery Gaming Agents**

Section	
5109.1	Annual audit and other related reports
5109.2	Submission of standard financial and statistical reports
5109.3	Format and structure of accounting records

### **§ 5109.1. Annual audit and other related reports.**

(a) Each video lottery gaming agent, unless specifically exempted by the commission in writing, shall, at such agent's own expense, cause such agent's annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed to practice in the State.

(b) The annual financial statements shall be prepared on a comparative basis for the video lottery gaming agent's current and prior standard financial year, and shall present financial position and results of operations in conformity with generally accepted accounting principles.

(c) The financial statements required by this section shall include a footnote reconciling and explaining any differences between the financial statements included in the video lottery gaming agent's annual report and the audited financial statements. Such footnote shall, at a minimum, disclose the effect of such adjustments on:

- (1) revenues from the video lottery gaming facility;
- (2) revenues net of complimentary services;
- (3) total costs and expenses;
- (4) income before extraordinary items; and
- (5) the net result of revenues less expenses.

(d) Two copies of the audited financial statements, together with the report thereon of the video lottery gaming agent's independent certified public accountant, shall be filed with the commission not later than 120 days following the end of the video lottery gaming agent's fiscal year.

(e) In addition to a video lottery gaming agent's audited financial statements, the video lottery gaming agent shall submit a copy of the management letter prepared by the independent certified public accountant that lists any internal control or operational weaknesses noted during the financial statement audit and recommendations for improvement. The video lottery gaming agent shall prepare a response to the issues outlined in the management letter that describes any corrective actions taken or planned to be taken and include a copy of this response with such agent's submission to the commission as required in subdivision (d) of this section.

(f) In addition to the management letter, the commission may require the video lottery gaming agent to engage an independent certified public accountant approved by the commission to perform an additional review of internal controls and/or specified expenditures that conform to specifications prescribed by the commission. The commission shall notify the video lottery gaming agent of the type of report required, the

scope of such report, and the frequency with which it should be performed. This review shall be performed at the expense of the video lottery gaming agent unless otherwise determined by the commission. The video lottery gaming agent shall respond to recommendations in the report noting any corrective actions taken or planned to be taken. The video lottery gaming agent shall submit two copies of this report including the required response to the commission within 90 days following the end of the period covered by the report, unless otherwise instructed by the commission.

(g) If the video lottery gaming agent or any of such agent's affiliates is publicly held, the video lottery gaming agent or the affiliate shall submit one copy to the commission of any report, including, but not limited to, forms S-1, 8-K, 10-Q, 10-K, proxy or information statements and all registration statements, required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency, at the time of filing with such Securities and Exchange Commission or other agency.

(h) If an independent certified public accountant who was previously engaged as the principal accountant to audit the video lottery gaming agent's financial statements resigns or is dismissed as the video lottery gaming agent's principal accountant, or another independent certified public accountant is engaged as principal accountant, the video lottery gaming agent shall file a report with the commission within 10 days following the end of the month in which such event occurs, setting forth the following:

(1) the date of such resignation, dismissal or engagement;

(2) whether in connection with the audits of the two most recent years preceding such resignation, dismissal, or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused such accountant to make reference in connection with such accountant's report to the subject matter of disagreement, including a description of each such disagreement. The disagreements to be reported shall include those resolved and those not resolved;

(3) whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or disclaimer of opinion or was qualified. The nature of such adverse opinion, disclaimer of opinion, or qualification shall be described;

(4) the video lottery gaming agent shall request the former accountant to furnish to the video lottery gaming agent a letter addressed to the commission stating whether that accountant agrees with the statements made by the video lottery gaming agent in response to subdivision (h) of this section. Such letter shall be filed with the commission as an exhibit to the report required by subdivision (h) of this section.

(i) The commission has the authority to conduct or have conducted an audit or review of any of the video lottery gaming agent's financial controls and records.

(j) In those circumstances where the video lottery gaming agent is not currently an active operator of a video lottery gaming facility, or portion thereof, the commission may by written authorization either revise or eliminate the standard reports to be filed by the video lottery gaming agent.

### **§ 5109.2. Submission of standard financial and statistical reports.**

(a) Each video lottery gaming agent, unless specifically exempted by the commission, shall file quarterly reports of financial, statistical, and informational data. The commission shall prescribe a set of standard reporting forms and instructions to be used by each video lottery gaming agent in filing such reports.

(b) Each report required to be submitted to the commission by this Part shall be received or postmarked not later than the required filing date unless specific approval for an extension is granted in writing to the video lottery gaming agent by the commission. Requests for such extension must be submitted to the commission in writing prior to the required filing date. Quarterly reports shall be due not later than 45 days following the end of the last month of any quarter.

(c) In the event of a video lottery gaming agent license termination, change in business entity, or material change in ownership, the commission may at the commission's discretion require the filing of an interim report, as of the date of occurrence of the event.

(d) Copies of all financial statements and statistical reports required to be filed with the commission shall be furnished by the video lottery gaming agent.

### **§ 5109.3. Format and structure of accounting records.**

(a) *Maintenance.* The video lottery gaming agent shall maintain complete, accurate, legible and permanent records of all transactions pertaining to such agent's revenues, expenses, assets, liabilities, and equity in conformance with generally accepted accounting principles. The failure of the video lottery gaming agent to maintain records according to such principles shall be a violation of these regulations.

(b) *Specific requirements for records.* The accounting records maintained by a video lottery gaming agent shall be maintained using a double-entry system of accounting with transactions recorded on the accrual basis and supported by detailed subsidiary records. Such subsidiary records shall include, at a minimum, all of the following:

- (1) detailed general ledger accounts identifying all revenue, expenses, assets, liabilities, and equity for the video lottery gaming agent;

- (2) a record of all investments, advances, loans, and accounts receivable balances due the video lottery gaming agent;
  - (3) a record of all loans and other accounts payable by the video lottery gaming agent;
  - (4) a record of all accounts receivable written off as uncollectible by the video lottery gaming agent;
  - (5) journal entries prepared by the video lottery gaming agent;
  - (6) records that identify video lottery terminal drop and video lottery terminal win for each video lottery terminal and records accumulated for each video lottery terminal by shift or by another accounting period pre-approved in writing by the commission;
  - (7) records supporting the accumulation of the costs for complimentary services and items including records required to fully comply with all the Federal financial record-keeping requirements enumerated in 31 CFR Part 103;
  - (8) records required by a video lottery gaming agent's system of internal control;
  - (9) work papers supporting the daily reconciliation of cash accountability;
  - (10) records supporting the utilization of any expenses funded by the marketing and promotion program;
  - (11) other records that the commission has required, in writing, to be maintained;
- (c) *Retention.* Notwithstanding any of this subchapter to the contrary, all accounting records shall be kept for a period of not less than seven years from their respective dates.

## PART 5110

### Requirements for Doing Business with Construction Contractors

#### Section

- |        |   |
|--------|---|
| 5110.1 | Conduct of business with construction contractors; agent responsibilities |
| 5110.2 | Construction contractor identification number                             |
| 5110.3 | Prohibited construction contractor list                                   |
| 5110.4 | Filing construction contractor information with the commission            |

#### **§ 5110.1. Conduct of business with construction contractors; agent responsibilities.**

No video lottery gaming agent may commence business with a construction contractor for the provision of construction services except pursuant to this Part if:

- (a) The construction contractor has a contract (or expects to transact business) with a video lottery gaming agent that exceeds \$250,000 in any 12-month period; or
- (b) The construction contractor has contracts with more than one video lottery gaming agent that combined exceed \$500,000 in any 12-month period.

**§ 5110.2. Construction contractor identification number.**

(a) It shall be the responsibility of each video lottery gaming agent to ensure that all construction contractors with which it seeks to conduct business has first obtained from the commission a construction contractor identification number by submitting an application for such number on a form prescribed by the commission.

(b) The commission shall maintain the name and business address of each construction contractor receiving an identification number pursuant to this part. During normal business hours, a licensed employee shall escort a construction contractor on the gaming floor.

(c) Notwithstanding any other provision of these regulations, no video lottery gaming agent shall enter into an agreement with any person or business entity who:

- (1) has been denied a construction contractor registration and identification number;
- (2) has failed to comply with the appropriate filing requirements for a construction contractor;
- (3) has been temporarily prohibited from doing business with any video lottery gaming agent.

**§ 5110.3. Prohibited construction contractor list.**

(a) The commission shall maintain a prohibited construction contractor list containing those person(s) or business entities with whom video lottery gaming agents are prohibited from doing business in accordance with these regulations. Such list shall be made available to video lottery gaming agents by the commission on a regular basis.

(b) No person or business entity shall be removed from the prohibited construction contractor list except as follows:

- (1) by order of the commission;
- (2) upon expiration of the applicable period of restriction; or
- (3) for a person who is placed on the prohibited construction contractor list for failure to comply with all applicable filing requirements, upon compliance therewith or after a



period of three years from the date of prohibition unless the commission determines that such contractor should remain on such list to protect the public interest.

**§ 5110.4. Filing construction contractor information with the commission.**

(a) Each construction contractor that does business with a video lottery gaming agent shall complete and file a registration statement with the commission.

(b) Each video lottery gaming agent shall submit to the commission on a quarterly basis a list of all construction contractors with whom it transacts business. Such agent shall update such list submitted to the commission immediately upon entering into any agreement with a construction contractor to conduct such business.

(c) The commission may review the transaction documents between the video lottery gaming agent and any construction contractor to determine the following:

(1) the reasonableness of the terms of the transaction, including the terms of compensation;

(2) the qualifications of the persons involved in and associated with the transaction in accordance with the standards of these regulations.

(d) If the commission disapproves of a transaction between the video lottery gaming agent and any construction contractor or any person associated therewith, the commission may direct the video lottery gaming agent to terminate such transaction or may direct such agent to pursue any remedy or combination of remedies as the commission may require. If such disapproved transaction is not thereafter promptly terminated, such failure shall be a violation of such agent's license and the commission may pursue such remedy or combination of remedies against a video lottery gaming agent provided for in these regulations.

(e) The commission reserves the right to require any construction contractor to apply for a construction contractor identification number, regardless of whether the monetary threshold set forth in this Part has been met, if it is deemed necessary by the commission in order to protect the public interest, or to accomplish the policies and purposes of the act or these regulations.

(f) Construction contractors may be required to pay a registration fee as determined by the commission.

**PART 5111**

**Fees**

Section

5111.1 Fee policy for video lottery gaming

### **§ 5111.1. Fee policy for video lottery gaming.**

The commission shall impose a fingerprint processing fee upon any applicant as required by these regulations.

## **PART 5112**

### **Video Lottery Gaming Revenues**

Section	
5112.1	Identification of financial institutions
5112.2	Deposit of video lottery gaming revenues by agents
5112.3	[Repealed]
5112.4	Duty to notify of accounting discrepancies
5112.5	Delinquent accounts

### **§ 5112.1. Identification of financial institution.**

(a) *Establishment of accounts.* Prior to the commencement of the operation of any video lottery gaming facility, the video lottery gaming agent shall submit to the commission for approval the name and location of a financial institution authorized to do business in the State together with:

- (1) the account number for the account designated by the video lottery gaming agent for the deposit of video lottery gaming revenues;
- (2) the account number for the account designated by the video lottery gaming agent for the deposit of the portion of the vendor fee to be used exclusively for capital investments; and
- (3) the financial institution's routing information for collection and distribution of video lottery gaming revenue.

(b) *Financial institution.* The financial institution shall be a bank or trust company, as defined by the State banking law, that is authorized to do business in the State and that maintains an office for the transaction of business within the State. The video lottery gaming agent shall authorize such bank or trust company to transfer revenue to the commission or the commission's duly authorized representative in a manner consistent with these regulations.

(c) *Use of accounts.* The accounts designated by the video lottery gaming agent pursuant to this Part shall be used exclusively for either:

- (1) the deposit and distribution of the daily video lottery gaming revenue; or
- (2) the deposit and distribution of capital investments.

The video lottery gaming agent shall not commingle other funds into such accounts.

(d) *Required notice.* Each video lottery gaming agent shall provide the commission 30 days advance notice of any proposed account changes in order to ensure the uninterrupted distribution of video lottery gaming revenue to the commission.

#### **§ 5112.2. Deposit of video lottery gaming revenues by agents.**

(a) *Daily deposit.* Each video lottery gaming agent shall be required to deposit daily into the dedicated bank account for video lottery gaming revenue the net proceeds from video lottery gaming for the previous day as determined by the video lottery gaming central system and related reports. Any withholdings for Federal, State, and local income taxes, or public assistance and child support intercepts, shall be included in the daily deposit. The commission shall remit such withholdings when received to the appropriate governmental agencies.

(b) *Electronic funds transfer.* The net proceeds of video lottery gaming required to be remitted daily to the commission by this Part shall be remitted through an Electronic Funds Transfer (*EFT*) from the dedicated bank account for video lottery gaming revenue provided by the video lottery gaming agent. The commission may utilize the EFT to adjust certain administrative expenses, prize payments or net machine income, as determined by the commission. To the extent that such daily EFT cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day thereafter that such services are available. Failure to comply with this procedure for EFT may result in the immediate suspension of video lottery gaming at the video lottery gaming facility.

(c) *Loss or theft.* The commission is not responsible for the loss or theft of money prior to the distribution of such money to the commission.

(d) *Prize lapse.* Any prize that has not been paid out within a time period specified by the commission shall be remitted to the commission.

#### **§ 5112.3. [Repealed]**

#### **§ 5112.4. Duty to notify of accounting discrepancies.**

(a) Each video lottery gaming agent shall be responsible for resolving accounting discrepancies between actual monies collected and the amounts reported by the central system.

(b) Each video lottery gaming agent shall report to the commission the date, amount, and cause of any accounting discrepancy resulting from a daily count of receipts. Where the cause of the accounting discrepancy is due to erroneous central computer system reporting, the commission shall conduct an investigation to determine the proper accounting for daily receipts and report the findings of such investigation to the video lottery gaming agent.

(c) Discrepancies shall mean differences between actual money collected and the amount shown on the invoice report provided by the commission.

(d) The commission is not responsible for resolving net terminal income discrepancies.

#### **§ 5112.5. Delinquent accounts.**

The commission may charge debt service in the amount of one and one-half percent monthly (18 percent per annum) on any monies due to the commission from video lottery gaming agents whose accounts are delinquent for more than 30 days.

### **PART 5113**

#### **Suspensions, Revocations and Other Discipline**

Section	
5113.1	Suspension and revocation of a license or discipline of a licensee
5113.2	Continuation of video lottery gaming in event of termination of video lottery gaming agent license
5113.3	Initiation of disciplinary proceedings
5113.4	Summary suspension
5113.5	Penalties imposed by commission prior to reissuance of license
5113.6	Costs
5113.7	Disciplinary hearings
5113.8	Final action by commission

#### **§ 5113.1. Suspension and revocation of a license or discipline of a licensee.**

(a) Acceptance of a video lottery gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by these regulations and the policies and procedures of the commission. It is the affirmative responsibility of all licensees to keep informed of the content of all such regulations, policies and procedures and amendments thereto. Any licensee, other than a natural person, may be held accountable for the violations of such licensee's principals or key employees. The commission may suspend or revoke any license issued by the commission for any violation of these regulations.

(b) At the discretion of the commission, a license issued under these regulations may be subjected to suspension or revocation, the renewal of such license may be rejected or a licensee may be fined for any of the following reasons, or any combination thereof:

- (1) any violation of any provision of such license, the act, other applicable law or these regulations;
- (2) failure to comply with instructions of the commission concerning a licensed activity;
- (3) conviction of any:

- (i) felony offense, as such term as defined in Penal Law Section 10.00(5), or an equivalent offense committed in another jurisdiction;
  - (ii) a misdemeanor related to gambling, gaming, bribery, fraud, or any other offense prejudicial to public confidence in the State lottery;
- (4) failure to file any returns or reports or to keep records or to pay any fee or submit revenue as may be required;
- (5) fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the commission;
- (6) failure to furnish a surety or other bond in such amount as may be required by the commission;
- (7) a material change since issuance of the license with respect to any matter required to be considered by the commission;
- (8) violation of the provisions of the act and/or these regulations;
- (9) whenever the commission finds that the licensee's experience, character, and general fitness are such that participation in video lottery gaming is inconsistent with the public interest or convenience or for any other reason within the discretion of the commission;
- (10) the failure to notify the commission, in writing, within a reasonable time of any arrest for a misdemeanor or a felony, indictment, or service of a summons, or conviction for any felony whether within or without the State, or within or without the United States, occurring during the term of the license or the renewal thereof.
- (c) Prior to commencing a disciplinary proceeding, each licensee shall have the opportunity to correct and/or explain the issue raised by the commission.
- (d) Upon suspension or revocation of any license issued pursuant to these regulations, other than a video lottery gaming agent license, the licensee shall surrender such license and any badges for the video lottery gaming facility to the commission. Such licensee shall be banned from entering the video lottery gaming facility for a period of one year or until the license is reinstated, whichever first occurs.
- (e) Upon termination of a video lottery gaming agent's license for any reason, the video lottery gaming agent shall:
- (1) go to such agent's bank on a date designated by the commission for the purpose of rendering a final video lottery gaming accounting of any accounts established by these regulations;

(2) surrender of the video lottery gaming agent's license and other material provided by the commission.

(3) upon failure of any video lottery gaming agent to settle accounts on or before the designated date, the commission may exercise such enforcement powers as may be provided for by law. The video lottery gaming agent will provide unrestricted entry onto such agent's premises for the purpose of the removal of all video lottery gaming equipment and incidentals.

### **§ 5113.2. Continuation of video lottery gaming in event of termination of video lottery gaming agent license.**

By reason of the substantial investment of State revenue in each video lottery gaming facility, in the event of a termination of the video lottery gaming agent's license, the commission or the commission's designee may take possession and control of such video lottery gaming facilities and amenities to insure the uninterrupted operation of the video lottery gaming facility until such time as a successor to such video lottery gaming agent is approved by the commission. During any such period of operation by the commission or the commission's designee, the agent compensation shall be retained by the commission for the benefit of the fund.

### **§ 5113.3. Initiation of disciplinary proceedings.**

(a) Except as otherwise provided by the act or these regulations, at any time during the review and investigation of a complaint or alleged violation of the act or these regulations, the commission may initiate disciplinary proceedings:

(1) to suspend or revoke any license or certificate issued pursuant to the act; or

(2) to otherwise sanction the agent or licensee for violations of the act or these regulations.

(b) Disciplinary proceedings commenced by the commission shall be initiated by sending a notice by first class mail to the last known mailing address of the licensee. Such notice, without limitation, shall set forth a list of the grounds for the proposed disciplinary action; the time and place for a hearing before the commission concerning the proposed disciplinary action; and a statement of the disciplinary action sought to be imposed against such licensee. Such notice shall be mailed to the licensee not less than 30 days prior to the scheduled hearing date.

### **§ 5113.4. Summary suspension.**

(a) Where the commission has reasonable grounds to believe that any licensee has been guilty of a deliberate, willful or a grossly negligent violation of any of the provisions of the act or these regulations, including, without limitation, the failure to pay when due the moneys due and owing to the commission pursuant to the act or these regulations, or that



the licensee has been charged with a felony under the laws of the State or in another state, or that due to other violations of law by the licensee or the licensee's patrons, emergency action is required in order to protect the public health, safety, or welfare of the public, and where the commission incorporates such findings in an order, the commission may summarily suspend the license and the licensee without prior notice pending disciplinary proceedings pursuant to these regulations.

(b) The summary suspension of a license without notice pending a public hearing shall be for a period not to exceed 30 days except that a licensee may waive the 30-day hearing requirement in writing no later than five business days prior to the scheduled hearing. In no event, however, shall the requested continuance be granted unless the licensee requesting the continuance has complied with the order of summary suspension by surrendering their license to the commission.

(c) The commission shall deliver a notice of summary suspension by registered mail to the licensee who has been suspended. The notice shall contain such information as the commission determines necessary to provide the licensee with notice of the summary suspension and the reason(s) therefore, including, without limitation, stating when the suspension will begin and end.

(d) The commission shall serve upon the summarily suspended licensee a formal notice initiating disciplinary proceedings and a notice of hearing within five days after receipt by the licensee of the notice of summary suspension.

#### **§ 5113.5. Penalties imposed by commission prior to reissuance of license.**

The commission may require a person or business entity who (or that) is subjected to disciplinary proceedings, or who (or that) formerly held a license pursuant to this subchapter, to meet certain conditions before reissuing a license to that person or business entity, including, without limitation, one or more of the following:

- (a) restitution of money;
- (b) restitution of property;
- (c) making periodic reports to the commission as required; and
- (d) payment of outstanding fines imposed by the commission.

#### **§ 5113.6. Costs.**

(a) In addition to the condition imposed by the commission upon the licensee, the licensee shall pay, pursuant to an order issued by the commission or the commission's authorized representative, the costs incurred by the commission in making the determination to discipline, suspend or revoke, including, without limitation, the costs of the commission's vendors and contractors engaged for such purpose.

(b) Costs may include, but are not limited to: witness fees and per diem; expert witness fees; duplication costs; court reporter, transcription, and other costs incurred in administering or preserving any record; extraordinary staffing costs of the commission; legal fees; expenses incurred in commencing, accommodating, or conducting the hearing; investigative costs; exhibit costs; and any other judicially or statutorily recognized cost, whether incurred prior or subsequent to the conclusion of the investigation of the matter.

(c) Unless otherwise ordered as set forth in subdivision (a) of this section, costs must be paid to the ordered recipient on or before the 30th day from the date of the order awarding the costs, unless stayed by the commission or a court of competent jurisdiction. Failure to pay and tender such costs as ordered shall constitute grounds for sanction, including further fine, suspension and revocation of any license or other affirmative approval.

#### **§ 5113.7. Disciplinary hearings.**

Any disciplinary hearing commenced pursuant to these regulations shall be conducted substantially in accordance with the provisions of section 5000.6 of this subtitle. In the event of a conflict between that section and these regulations, these regulations shall control.

#### **§ 5113.8. Final action by commission.**

After notice and hearing, in the event the commission finds insufficient evidence to support the violations claimed, the commission may find the licensee not guilty of any of the grounds alleged for disciplinary action; in which event the disciplinary proceedings shall be terminated. The commission may, however, find the licensee guilty by a preponderance of the evidence of some or all of the grounds alleged for disciplinary action, in which event the commission may take one or more of the following actions:

- (a) revoke the license;
- (b) suspend the license for a period of time not to exceed six months;
- (c) fine the licensee; or
- (d) issue a public or private letter of reprimand to be placed in the file of the licensee.

This section does not prevent the commission from compromising or settling at any time a formal hearing. Written findings of fact, conclusions of law, and an order must be entered before any decision of the commission shall be considered final.



## **PART 5114**

### **Continuing Obligations of Video Lottery Gaming Agents**

Section	
5114.1	Notification of anticipated or actual changes in directors, officers or equivalent licensees of video lottery gaming agents and holding companies
5114.2	Notification concerning certain new principals of publicly traded holding companies
5114.3	Notification of financial transactions
5114.4	Issuance or transfer of interests; approval
5114.5	Subsidiaries
5114.6	Minutes of meetings of boards and committees
5114.7	Records regarding ownership
5114.8	Continuing obligation to notify commission of violations and criminal activities
5114.9	Sale of other lottery games

#### **§ 5114.1 Notification of anticipated or actual changes in directors, officers or equivalent licensees of video lottery gaming agents and holding companies.**

Each video lottery gaming agent or managing agent shall immediately notify the commission, in writing, as soon as is practicable, of the proposed appointment, appointment, proposed nomination, nomination, election, intended resignation, resignation, incapacitation or death of any member of, or partner in, such agent's board of directors, partnership or limited liability company, as applicable, or of any officer or other person required to be licensed as a principal or key employee under these regulations. The commission shall undertake any review of the license necessitated by the change.

#### **§ 5114.2. Notification concerning certain new principals of publicly traded holding companies.**

(a) A video lottery gaming agent shall immediately notify the commission in writing if the video lottery gaming agent becomes aware that, with regard to any publicly traded or private holding company of the video lottery gaming agent or managing agent, any person has acquired:

- (1) five percent or more of any class of equity securities;
- (2) the ability to control the holding company; or
- (3) the ability to elect one or more directors of the holding company.

(b) If any publicly traded holding company of a video lottery gaming agent either files or is served with any Schedule 13D, Schedule 13G or Section 13F filing under the Securities Exchange Act of 1934, copies of any such filing shall be immediately submitted to the commission by the video lottery gaming agent or the publicly traded holding company.

(c) The commission shall undertake any review of the license necessitated by the change.

#### **§ 5114.3. Notification of financial transactions.**

(a) Each video lottery gaming agent and/or the managing agent of the video lottery gaming facility shall immediately notify the commission, in writing, as soon as it becomes aware that it intends to enter into a financial transaction bearing any relation to such agent's video lottery gaming facility, including, without limitation, if such financial transaction may result in any new financial backers, investors, mortgagees, bondholders, or holders of indentures, notes, or other evidences of indebtedness who may be subject to licensing. Such notice shall be addressed to the commission in accordance with these regulations.

(b) Prior to closing on any such financial transaction, the video lottery gaming agent shall provide a summary of the terms of such transaction; copies of all relevant documents for such transaction; such financial statements as requested by the commission; together with any such other and further information that the commission may request. In addition to the foregoing, the video lottery gaming agent shall cause the financial institution or lender to consent to a non-disturbance agreement with the commission that will insure the uninterrupted operation of the video lottery gaming facility in the event of any default under the terms and provisions of such financial transaction.

(c) The commission shall undertake any review of the license necessitated by the financial change.

#### **§ 5114.4. Issuance or transfer of interests; approval.**

No person shall issue or transfer any security or ownership interest in a video lottery gaming agent or managing agent, or any non-publicly traded subsidiary or holding company thereof, without the express, prior written approval of the commission. The commission shall not grant any such approval without considering the provisions of licensing.

#### **§ 5114.5. Subsidiaries.**

(a) Each video lottery gaming agent or holding company thereof shall report immediately, in writing, to the commission the formation or dissolution of, or any transfer of a non-publicly traded interest in, any subsidiary of the video lottery gaming agent or any subsidiary of any holding company of the video lottery gaming agent that bears any relationship to the video lottery gaming facility.

(b) Each video lottery gaming agent shall file with the commission such documents for each subsidiary of the video lottery gaming agent as may be requested by the commission.

(c) The commission shall undertake any review of the license necessitated by the financial change.

#### **§ 5114.6. Minutes of meetings of boards and committees.**

Each video lottery gaming agent licensee or applicant thereof shall file with the commission copies of the minutes of all meetings of such licensee or applicant's board of directors, members or partnership executive committee, as applicable, and of all committee meetings including, without limitation, the audit committee, within seven days of their formal adoption.

#### **§ 5114.7. Records regarding ownership.**

(a) In addition to other records and information required by these regulations, each video lottery gaming agent and/or the managing agent for the video lottery gaming facility shall maintain and keep current the following records regarding the equity structure and owners:

(1) If a corporation:

(i) a certified copy of articles of incorporation and any amendments thereto;

(ii) a copy of by-laws and amendments thereto;

(iii) an incumbency list of officers and directors;

(iv) minutes of all meetings of stockholders and directors;

(v) a current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial owners of shares held in street or other name where any beneficial owner has a beneficial interest in two percent or more of the outstanding shares of any class, addresses, and the number of shares held by each and the date acquired;

(vi) a complete record of all transfers of stock;

(vii) a record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof;

(viii) a record, by stockholder, of all dividends distributed by the corporation; and

(ix) a record of all salaries, wages, and other remuneration (including prerequisites), direct and indirect, paid during the calendar or fiscal year, by the corporation, to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than five percent of the outstanding capital stock of any class of stock.

(2) If a partnership:

(i) a schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each;

(ii) a record of the withdrawal of partnership funds or assets;

(iii) a record of salaries, wages, and other remuneration (including prerequisites), direct and indirect, paid to each partner during the calendar or fiscal year; and

(iv) a copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

(i) a schedule showing the name and address of the proprietor and the amount and date of such proprietor's original investment;

(ii) a record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom; and

(iii) a record of salaries, wages, and other remuneration (including prerequisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

(4) If a limited liability company:

(i) a certified copy of the articles of organization;

(ii) a certified copy of the member agreement;

(iii) a certified record of all current members;

(iv) an incumbency list for all officers; and

(v) minutes of all meetings of members.

(b) All records regarding ownership shall be located on the premises of the video lottery gaming facility, unless a specific exemption is allowed to the video lottery gaming agent by the commission.



(c) Each video lottery gaming agent or applicant shall, upon request by the commission, provide a list of all record holders of any or all classes of publicly traded securities issued by any holding company or by any other affiliated entity that is required to qualify as a financial source.

**§ 5114.8. Continuing obligation to notify commission of violations and criminal activities.**

Each licensee under these regulations shall have the continuing obligation to report to the commission any regulatory or criminal violation that becomes known to them with respect to any aspect of video lottery gaming in this State or their gaming activities in any other jurisdiction. The failure of any licensee to report any such regulatory or criminal violation to the commission shall be a violation of such license, the act and these regulations.

**§ 5114.9. Sale of other lottery games.**

Each video lottery gaming agent will offer for sale to the public and any player at the video lottery gaming facility all lottery games offered for sale by the commission, and will provide to the commission adequate and appropriate space for such sales as approved by the commission.

**PART 5115**

**Video Lottery Gaming Agent Operation Certificate**

Section	
5115.1	General
5115.2	Standards for issuance
5115.3	Video lottery gaming facility
5115.4	Parking
5115.5	Video lottery gaming floor and any restricted areas
5115.6	Movement of video lottery gaming terminals
5115.7	Removal of video lottery gaming equipment
5115.8	Operation certificate; effective date; duration
5115.9	Operation certificate; amendment to conform to approved changes

**§ 5115.1. General.**

In addition to any requirements of the act and these regulations, by reason of the substantial investment of State revenue in each video lottery gaming facility, each video lottery gaming agent agrees upon acceptance of such agent's license and operation certificate that for so long as the video lottery gaming facility is in operation, either by such agent, the commission or the commission's designee, the commission shall have unfettered access to the video lottery gaming facility to assure such facilities' uninterrupted operation.

## § 5115.2. Standards for issuance.

(a) Each video lottery gaming agent, and/or such agent's managing agent, responsible for the operation of a video lottery gaming facility shall obtain an operation certificate from the commission prior to conducting video lottery gaming in such facility and prior to opening such video lottery gaming facility to the public. The operation certificate may be amended from time to time as required.

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

(1) the video lottery gaming facility complies in all respects with the applicable requirements of the act and these regulations;

(2) the video lottery gaming licensee has implemented necessary internal control procedures for the safe and efficient operation of the video lottery gaming facility;

(3) the video lottery gaming agent and each of such agent's principals has complied with the licensing provisions of these regulations;

(4) the commission has been provided proof that all employees are licensed for the performance of their respective responsibilities;

(5) the video lottery gaming facility is prepared in all respects to receive and entertain the public;

(6) the facility of the video lottery gaming agent has met or exceeded State and local fire and safety standards; and

(7) the video lottery gaming agent has provided certified payroll records establishing to the satisfaction of the commission that it has complied with the requirements of the act, if applicable.

(c) Each operation certificate granted by the commission to a video lottery gaming agent shall include, at a minimum, an itemized list of the authorized video lottery terminals, by identification number, that are permitted in the video lottery gaming facility; and a list of those areas specifically designated as restricted areas.

(d) As a condition to receiving such operation certificate, each video lottery gaming agent and/or such agent's managing agent shall enter into such agreements with the commission as the commission deems necessary to protect the uninterrupted access and operation of the video lottery gaming facility.

### **§ 5115.3. Video lottery gaming facility.**

(a) In addition to any other requirements required by the act or these regulations, in order to receive an operation certificate from the commission, the applicant for a video lottery gaming agent license must satisfy the commission that the proposed facility will have adequate support facilities as required by these regulations, as well as superior consumer amenities and conveniences comparable to other similar facilities in the industry that will encourage repeated player attendance.

(b) All video lottery gaming facilities shall provide sufficient alternate power sources to permit continued operation of the facility in case of the failure of primary power supplies.

(c) In the event the video lottery gaming agent proposes to conduct video lottery gaming, or to house an amenity thereto, in a temporary structure, and in addition to any other requirements required by these regulations for the commission to issue an operation certificate for such structure, the video lottery gaming agent must demonstrate to the satisfaction of the commission that conducting video lottery gaming, or housing such an amenity, in the proposed temporary structure will be to the economic benefit to the video lottery gaming facility.

(d) Each video lottery gaming facility shall include separate offices of sufficient size for use by the commission and otherwise built in accordance with specifications provided by the commission.

(e) The commission shall not approve the construction or alteration of any facility or building devoted to the operation or housing of video lottery gaming until the person or entity selected to operate such video lottery gaming shall have submitted to the commission a statement of the location of the proposed facility or building, together with a plan of such racetrack, and plans of all existing buildings, seating stands and other structures on the grounds of such racetrack, in such form as the commission may prescribe, and such plans shall have been approved by the commission. The commission, at the expense of the applicant, may order such engineering examination thereof as the commission may deem necessary. Such construction or alteration may be made only with the approval of the commission and after examination and inspection of the plans thereof and the issuance of a permit therefore by the commission.

### **§ 5115.4. Parking.**

Each video lottery gaming agent shall submit to the commission for review and approval a plan for parking at the video gaming facility that provides sufficient parking, in accordance with applicable State and Federal laws, rules and regulations.

**§ 5115.5. Video lottery gaming floor and any restricted areas.**

(a) Prior to the issuance of or an amendment to an operation certificate and the commencement of video lottery gaming, each video lottery gaming agent shall obtain commission approval for the physical floor plans of such agent's video lottery gaming floor including any restricted areas, which floor plans shall be consistent with standards established by the commission. Without limitation, such floor plans shall illustrate proper surveillance coverage of all the mandatory activities. Any deficiency in surveillance coverage shall be rectified by the video lottery gaming agent prior to issuance of a certificate.

(b) Each physical video lottery gaming facility floor plan shall be drawn to one-eighth inch scale or such other scale approved in writing by the commission, shall be certified by an architect or other suitable professional licensed to practice in New York and shall depict, at a minimum, the location of the following:

- (1) vault and main bank;
- (2) cashiers' cage and the component offices and areas of the cashiers' cage;
- (3) window at the cashiers' cage, noting such window's number;
- (4) count room(s);
- (5) delivery station;
- (6) video lottery gaming self-redemption kiosk(s);
- (7) coin redemption kiosk(s);
- (8) automated teller machine(s);
- (9) bill breakers;
- (10) allocated space for the sale of other commission products;
- (11) the precise space allotted for each video lottery terminal, site controller and associated equipment. The initial floor plan shall contain, at the minimum, the following information for each terminal:
  - (i) type of video lottery terminal, e.g., upright or slant top
  - (ii) the location of a player stool, if any;
- (12) each satellite cage and the component offices and areas of each satellite cage;

(13) each other room or area that is accessible directly from the video lottery gaming floor;

(14) each other area or room as designated by the commission; and

(15) points of access to the horse racing track portion of the racing facility.

(c) The commission shall determine placement of video lottery terminal manufacturers, games, and game denominations within the physical floor plan provided by the video lottery gaming agent and shall manage subsequent revisions, in conjunction with the video lottery gaming agent, to the placement of video lottery terminal manufacturers, games and game denominations.

(d) The commission reserves the right to continually manage, revise, modify and upgrade the product mix plan, games, themes, play styles, denominations, and other related aspects of the video lottery terminals in order to optimize the overall marketability and terminal performance of video lottery gaming.

#### **§ 5115.6. Movement of video lottery gaming terminals.**

(a) Whenever a video lottery gaming agent proposes that video lottery terminals be moved within a video lottery gaming facility, the video lottery gaming agent shall first:

(1) obtain any amendment to such agent's operation certificate required by the commission; and

(2) provide the commission and the appropriate video lottery gaming vendor with written notice at least five days prior to the scheduled movement. Under no circumstances shall terminals be moved until the commission has approved the relocation plans.

(b) Each written request submitted to the commission pursuant to this Part shall be authored by the video lottery gaming agent's employee directly responsible for video lottery terminal(s) or such person's designee and shall include:

(1) A computer-generated inventory listing each video lottery terminal, the present location of each video lottery terminal and the proposed location of each video lottery terminal.

(2) The date of request.

(3) The proposed date of relocation or removal.

(4) A written certification that all State safety and egress codes are adhered to.

(5) A written certification from the surveillance director or his/her designee that adequate closed circuit television coverage of each video lottery terminal is present.

(c) The number of each type of authorized game included in the video lottery gaming agent's operation certificate or any approved amendments thereto shall be amended, upon the filing of an updated video lottery terminal master list, to conform to the correct number of each type of authorized game that is specified in the applicable list.

#### **§ 5115.7. Removal of video lottery gaming equipment.**

(a) When a video lottery terminal is temporarily removed from the video lottery gaming floor, video lottery terminal drop contents shall be protected in accordance with the approved internal control system to preclude the misappropriation of stored funds.

(b) When a video lottery terminal is permanently removed from the video lottery gaming floor, the video lottery terminal drop contents shall be counted and recorded by at least two employees, one of whom shall be a video lottery gaming count room employee, with appropriate documentation being routed to the accounting department for proper recording and accounting.

(c) Prior to the removal of a video lottery terminal from the video lottery gaming facility, prior written approval shall be obtained from the commission. Documentation providing the following shall be included for each removed video lottery terminal:

- (1) manufacturer;
- (2) serial number of video lottery terminal;
- (3) video lottery terminal identification number.

#### **§ 5115.8. Operation certificate; effective date; duration.**

(a) Upon satisfaction of the requirements set forth in this part, the commission shall establish the effective date of each operation certificate and authorize the video lottery gaming agent to commence operation of the video lottery gaming facility.

(b) Subject to the commission's authority to revoke, suspend, limit or otherwise alter an operation certificate in accordance with the terms of the act and these regulations, each such certificate, once issued, shall remain in full force and effect indefinitely under such terms and conditions as the commission may impose, and shall not be altered, modified or amended except in accordance with the act and these regulations.

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



(d) Each video lottery gaming agent to which an operation certificate is issued shall operate such agent's video lottery gaming facility strictly in accordance with the terms of such agent's original operation certificate and the approved floor plans 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 these regulations and after obtaining any required amendments to such agent's operation certificate.

**§ 5115.9. Operation certificate; amendment to conform to approved changes.**

(a) Each video lottery gaming agent shall serve on the commission, in a manner and in a format prescribed by the commission, an application to amend such agent's operation certificate whenever the video lottery gaming agent proposes a physical change to the video lottery gaming facility or a restricted area that requires commission approval in order for such agent's original operation certificate or any approved amendments thereto to continue in force and effect. The application for an amended certificate shall include, without limitation, the following:

(1) a revised video lottery gaming facility floor plan or restricted area reflecting the proposed change, which revised floor plan shall be submitted in a format approved in writing by the commission and filed therewith; and

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

(b) The commission shall review the proposed change set forth in the application for an amended certificate or any amendments thereto for compliance with the act and these regulations and shall issue a determination and, if approved, notice to proceed, within a reasonable time after receipt of the application to amend.

(c) The video lottery gaming agent submitting an application to amend such agent's operation certificate pursuant to subdivision (a) of this section shall notify the commission in writing within five days of final completion of any proposed change. A floor plan that depicts the actual changes made shall accompany the notice and be filed with the commission. Each such floor plan shall depict the change and shall include updates, based on the actual changes made, for each item required to be included in the application pursuant to subdivision (a) of this section and described in the notice; provided, however, that a floor plan of the entire video lottery gaming facility that depicts all changes proposed in the application and any amendment thereto shall accompany the notice of final completion.

(d) Promptly after the filing of a notice pursuant to subdivision (c) of this section, the commission shall inspect the physical changes actually made to the video lottery gaming facility to ensure that those changes conform to the floor plan accompanying the notice and the description previously submitted to the commission, as modified by any properly

filed amendments thereto. Following such inspection, the commission shall notify the video lottery gaming agent in writing as to which physical change is approved and which is rejected, whereupon:

- (1) The video lottery gaming agent, in the event any change is rejected, shall either:
  - (i) correct any rejected change to conform with the floor plan accompanying the notice 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 (a) of this section, a new application for the proposed change; or
  - (iii) take such other action as the commission may direct to ensure that the currently approved floor plan accurately depicts the physical layout of the video lottery gaming facility, including any restricted areas.
- (2) The operation certificate shall be amended to conform to each inspected and approved physical change.

## **PART 5116**

### **Marketing and Promotion Program**

#### Section

- 5116.1 Video lottery gaming agent marketing and promotion program
- 5116.2 Marketing and promotion plan
- 5116.3 [Repealed]
- 5116.4 Marketing and promotion plan implementation
- 5116.5 Permitted marketing and promotion expenses
- 5116.6 Advertising
- 5116.7 Complimentary services and items
- 5116.8 Promotions
- 5116.9 Player rewards club
- 5116.10 Non-permitted marketing and promotion expenses
- 5116.11 Competitive bids

#### **§ 5116.1. Video lottery gaming agent's marketing and promotion program.**

(a) *Requirements for marketing plan.* In accordance with the act, each video lottery gaming agent shall dedicate a portion of its vendor fee to fund a marketing and promotion program to be used by such video lottery gaming agent for marketing, promotion and associated costs incurred by the video lottery gaming agent for such agent's video lottery gaming operations and pari-mutuel horse racing operations pursuant to an approved marketing plan pursuant to this Part, so long as such costs associated with pari-mutuel

horse racing operations simultaneously encourage increased attendance at such agent's video lottery gaming facilities.

All such marketing, promotion and associated costs incurred by any video lottery gaming agent shall be:

(1) consistent with the customary manner of marketing and promoting comparable operations in other states and as described in an approved marketing plan; and

(2) subject to the overall supervision of the commission.

(b) *Violation for unapproved expenses.* Any marketing or promotion expense incurred by a video lottery gaming agent that is not approved by the commission or identified in a marketing plan approved by the commission shall be a violation of the video lottery gaming agent's license, the act and this Part.

#### **§ 5116.2. Marketing and promotion plan.**

(a) *Contents.* Each video lottery gaming agent shall prepare annually a marketing and promotion plan (the *marketing plan*) for the video lottery gaming facility. Each annual marketing plan shall be submitted to the commission for review and approval as described in this Part. An annual marketing plan shall include a summary of projected net machine income and projected marketing expenditures by category, in a standard worksheet format prescribed by the commission. The marketing plan worksheet shall include budgeted marketing expenditures by month and in total for each standard category. The commission shall review such worksheet as part of the overall plan approval.

(b) *Violation.* The failure to submit any marketing plan when due to the commission shall be a violation of the video lottery gaming agent's license, the act and this Part.

(c) *Requirements.* Each annual marketing plan shall:

(1) be prepared in accordance with the format prescribed by the commission; and

(2) fully describe, in a narrative form, subject to the approval of the commission, the marketing and promotional activities that the video lottery gaming agent proposes for the applicable video lottery gaming facility for the subsequent 12-month period commencing on the first day of January of any calendar year. Such description shall include the overall strategy of how the portion of the vendor's fee used to fund the marketing and promotion program will be used for marketing, promotional and associated costs consistent with the customary manner of marketing and promoting comparable operations in the video lottery gaming entertainment industry in other states, and that are expected to be implemented at such video lottery gaming facility on a monthly, quarterly and annual basis; the target market for such marketing and promotion; the anticipated effect (return on investment) of the marketing, promotional and associated costs described; any and all media buys advertising the video lottery

gaming facility, whether directly or indirectly; and an itemization of the projected budget for all marketing and promotional expenses on a monthly, quarterly and annual basis.

(d) *Time for submission.* Each annual marketing plan must be submitted to the commission for review and approval not earlier than 120 days and not later than 90 days prior to January 1 of any calendar year.

(e) *Commission review.* The commission shall review the annual marketing plan upon receipt and provide objections, questions or comments, if any, to the video lottery gaming agent within 45 days.

(f) *Approval and implementation.* If the marketing plan is approved by the commission without comment, then the video lottery gaming agent may proceed with the marketing plan's implementation commencing on the first day of January of any calendar year.

(g) *Commission objection.* In the event the commission objects or comments on the marketing plan, or any portion thereof, such objection, comment or question shall be delivered to the video lottery gaming agent in writing together with a disapproval notice of the submitted marketing plan in whole or in part.

(h) *Amended plan after commission objection.* Not later than 15 days from the receipt by the video lottery gaming agent of a marketing plan disapproval notice from the commission, or such longer time as the commission and the video lottery gaming agent may agree in writing, the video lottery gaming agent shall address the commission's objections or comments and submit an amended marketing plan to the commission for review. Upon submission of the amended marketing plan to the commission, a new 45-day time period for commission review will commence as described by this part.

(i) *Interim marketing plan.* In the event the annual marketing plan is not approved by the commencement date of the marketing plan as agreed to by the commission for any year, the commission may, but shall not be required to, enter into an interim marketing plan agreement with the video lottery gaming agent for a period not to exceed 90 days from such commencement date. Such interim marketing plan shall be in such form as approved by the commission and govern the expenditure from the marketing and promotion program during such 90-day period for marketing, promotion and associated costs approved in such interim marketing plan. In the event the commission does not approve an interim marketing plan, or in the event an interim marketing plan expires, the video lottery gaming agent shall be in violation of this Part and the commission may impose fines.

(j) *Adjustments.* During any fiscal quarter covered by a marketing plan, the video lottery gaming agent may submit proposed adjustments, including an adjusted marketing plan worksheet and supporting documentation, to the marketing plan to the commission for review and approval. The commission shall have 15 days from the receipt of any

proposed adjustment(s) to the marketing plan to review, approve or disapprove such adjustments in writing.

(1) In the event the proposed adjustments to the marketing plan are approved by the commission, written approval shall be sent to the video lottery gaming agent and the marketing plan shall be deemed amended accordingly.

(2) In the event such adjustments are disapproved by the commission, such disapproval, and the reason(s) therefore, shall be sent to the video lottery gaming agent in writing.

### **§ 5116.3. [Repealed]**

### **§ 5116.4. Marketing and promotion plan implementation.**

(a) *Review of books and records.* The commission or the commission's representative may, at the commission's discretion, review the books and records of the video gaming agent, to determine additional needs for assurance regarding utilization of the funds from the marketing and promotion program. Each video gaming agent shall maintain sufficient documentation and a clear audit trail to support any and all marketing expenditures.

(b) *Violation for failure to submit monthly worksheet.* The failure of the video lottery gaming agent to submit any monthly worksheet required by this Part shall be a violation of such agent's license, the act and this Part.

(c) *Reports.*

(1) The commission shall review each scheduled or required report submitted by a video lottery gaming agent and audit the same against the approved marketing plan. Exceptions, discrepancies or questionable spending identified by the commission must be explained by the video lottery gaming agent in a timely manner to the satisfaction of the commission, but in no event later than 30 days from the date of the commission's initial inquiry. The failure of the video lottery gaming agent to adequately respond to any inquiry of the commission shall be a violation of this Part and may result in commission actions to include, without limitation, the imposition of fines.

(2) A video lottery gaming agent shall prepare each report in a professional manner detailing the marketing expenses to ensure that only qualified marketing expenses have been included. Qualified marketing expenses are defined in section 5116.5 of this Part and in guidance documents as the commission may issue. Should the commission determine that a video lottery gaming agent has submitted non-qualified expenses, appropriate penalties may be applied.

(3) The monthly marketing and promotion program expense report shall, without limitation, summarize the expenditure made and provide details and supporting documentation as determined by the commission in evidence of the expenditures.

(d) *Sanctions.* In the event a video lottery gaming agent cannot explain adequately an expenditure or discrepancy the commission raises, or in the event any violation of this Part remains uncured for a period of one through 30 days, the commission, in addition to any other remedy permitted by this Subtitle, may take any or all of the following actions:

(1) impose fines; and

(2) reimburse the commission for the cost of the commission's expenses related to researching and investigating such expenditure.

(e) *Requirements after insufficient reporting.* Within 45 days of the end of each quarter for an applicable marketing plan, in the event the monthly marketing expense reports are deemed insufficient at the sole discretion of the commission, the commission may require a video lottery gaming agent to provide the following information:

(1) a full and complete reconciliation of the previous quarter's marketing, promotion and associated costs incurred; and

(2) an accounting for the cash spending related to the marketing expenses.

(f) *Annual report.* Each video lottery gaming agent shall provide annually to the commission a report by an independent auditor of the content of the final annual statement of marketing expenses in a type and format prescribed by the commission.

(g) *Documentation required.* Each video lottery gaming agent shall maintain sufficient documentation to support any and all of such agent's marketing expenses.

#### **§ 5116.5. Permitted marketing and promotion expenses.**

(a) *Permissible expenses.* The following qualified marketing expenses incurred by a video lottery gaming agent pursuant to an approved marketing plan pursuant to this Part shall be permitted:

(1) advertising;

(2) complimentary services;

(3) promotions;

(4) group sales;

(5) direct mail expenditures;

(6) player's club expenses, except as otherwise provided in Section 5116.9 of this Part;



(7) entertainment costs;

(8) personal Service Costs for the number and type of positions authorized by the commission as allowable;

(9) such other marketing expenses for which advance approval is specifically requested in writing and subsequently approved by the commission or otherwise described in official guidance released by the commission from time to time and subject to audit by the commission.

(b) *Caps.* Nothing in the act or this Part shall be construed as preventing the commission to cap allowable marketing, promotion and associated costs in any category of the permitted uses of the funds from the marketing and promotion program.

(c) *Cease and desist notice.* To the extent that the commission believes that marketing expenditures are inconsistent with the purpose and intent of the marketing plan, the commission may issue a cease and desist notice to the video lottery gaming agent.

Upon receipt of any such cease and desist order issued by the commission, the video lottery gaming agent shall immediately cease the identified action.

(d) *Hearing request following compliance with cease and desist notice.* Provided that the video lottery gaming agent has complied with any cease and desist order issued by the commission, a video lottery gaming agent may request a hearing on said action pursuant to this Subtitle.

### **§ 5116.6. Advertising.**

(a) *Advertising generally.*

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

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

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

(b) Criteria governing advertising.

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

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

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

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

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

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

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

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

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

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

**§ 5116.7. Complimentary services and items.**

(a) *Distribution of complimentary services.*

(1) Neither a video lottery gaming agent nor any third party affiliate or non-affiliate shall offer or provide any complimentary service, item, cash or other item of value to any person except as set forth in the video lottery gaming agent's marketing plan as approved by the commission and as provided for in this Part.

(2) A video lottery gaming agent shall establish and maintain a system of internal controls, subject to commission approval, for the authorization and issuance of all complimentary services and items, including cash and non-cash items. Such system of internal controls shall include, without limitation, the procedures by which a video lottery gaming agent may delegate to such agent's employees the authority to approve the issuance of complimentary services and items, the controls in place to ensure

complimentary services and items are utilized by those individuals offered such services and items, and the procedures by which conditions or limits placed upon such authority are established and modified, including limits based on relationships between the authorizer and recipient, the relationship between the video lottery gaming agent or such agent's principals with the recipient, and shall further include effective provisions for audit purposes.

(3) For purposes of determining the level of dollar value of complimentary service to be deemed an acceptable use by the video lottery gaming agent from the marketing and promotion program:

(i) all complimentary services or items, whether or not offered or provided to players in the normal course of the video lottery gaming agent's business, shall be allowable costs under the marketing plan of the video lottery gaming agent at amounts based upon rates established by the commission;

(ii) a complimentary service or item provided directly or indirectly to a player on behalf of the video lottery gaming agent by a third party not affiliated with the video lottery gaming agent, shall be recorded at an amount based upon the actual cost to the video lottery gaming agent of having the third party provide such service or item;

(4) The video lottery gaming operation shall record both the dollar amount of, and the number of persons provided with, each category of complimentary services or items. The complimentary services shall, at a minimum, be separated into categories for rooms, food, beverage, travel, free-play and other services.

(5) Any complimentary service or item, including a complimentary cash or non-cash item, that is issued to a player as part of a complimentary incentive program shall be subject to the requirements of this Part and the approved marketing plan. The video lottery gaming agent shall record, on a daily basis, the name of each person provided with a complimentary service(s) or item(s), the category or type of service(s) or item(s) provided, the value (as calculated in accordance with this Part or as determined by the commission) of the service(s) or item(s) provided to such person, and the signature, title or position and occupational license number of the person authorizing the issuance of such service(s) or item(s). Upon the commission's request, a copy of this record shall be immediately submitted to the commission. This provision shall not apply to complimentary items of nominal value (e.g., a portion of coffee or soda provided to a player while on the gaming floor) that are offered to all patrons of the video gaming facility without regard to level of play.

(6) Notwithstanding any inconsistent provision of this section, the video lottery gaming agent shall not permit any video lottery gaming agent employee to authorize the issuance of a complimentary cash or non-cash item with a value of \$1,000 or more unless the employee is licensed as a key employee and the authorization is co-signed

by a second key employee of equal rank as identified in the approved jobs compendium.

(7) If the video lottery gaming agent provides complimentary cash or non-cash item(s) worth \$1,000 or more to a player or a player's guests within any five-day period, the video lottery gaming facility shall record the profit-based reason why such items were provided and maintain such records available for inspection by the commission upon request.

(8) The video lottery gaming agent shall submit to the commission a report listing each player who has received \$1,000 or more in complimentary cash or non-cash item(s) within any five-day period ending during the preceding month. Such report shall be filed by the last business day of the following month and shall include the total amount of complimentary cash or non-cash items provided to each person.

(9) Notwithstanding any inconsistent provision of this section, no video lottery gaming agent shall permit any employee to authorize the issuance of a complimentary cash or non-cash item(s) with a value of \$5,000 or more unless the video lottery gaming employee is licensed and functioning as the facility manager or assistant facility manager and the authorization is co-signed by a second employee who is functioning as the controller of the video lottery gaming agent.

(10) If a video lottery gaming agent provides complimentary cash or non-cash item(s) worth \$5,000 or more to a player or a player's guests within any five-day period, the video lottery gaming agent shall record the profit-based reason why such items were provided and maintain such records available for inspection by the commission upon request.

(11) In instances where complimentary service(s) or item(s) have been issued by or on behalf of the video lottery gaming agent, the video lottery gaming agent is responsible to comply with all Federal, State and local tax reporting and withholding laws and rules for all complimentary service(s) or item(s).

(12) No video lottery gaming agent shall offer or provide, either directly or indirectly, any complimentary cash or non-cash item to any player or any player's guests except in accordance with the approved video lottery gaming agent marketing plan and these regulations.

(13) All complimentary cash or non-cash item(s) shall be disbursed directly to the player after receipt of appropriate documentation or in any other manner approved in writing by the commission in a video lottery gaming agent's internal control submission.

(b) *Alternative reporting procedures; accessible complimentary goods or services database.*

(1) A video lottery gaming agent that records all information concerning complimentary services or items as required by subdivision (a) of this section in a computer database that is accessible by the commission from remote locations and conforms to standards established and approved in writing by the commission pursuant to this section may be exempt from filing the monthly marketing plan reports required by this part.

(2) The structure and accessibility of the complimentary goods or services database shall be subject to review and approval by the commission and such submission shall include, without limitation, the following:

- (i) a complete description of the computer hardware, file formats and software products to be used;
- (ii) the hours of the day and the days of the week, if any, that the database will be inaccessible on a routine basis due to system maintenance or other technical reasons;
- (iii) the procedures by which the commission will be able to read and copy data files, both current and stored; and
- (iv) security procedures for database access and secondary data dissemination.

**§ 5116.8. Promotions.**

(a) *Information about promotions.* Each video lottery gaming agent shall include in its marketing plan a description of each anticipated promotion, the cost of such promotion, the benefit for holding such promotion, the timing of such promotion, and any other information helpful to the commission in considering the approval of such promotion.

(b) *Costs or promotions.* The actual and necessary costs of each promotion shall be funded from the marketing and promotion program as approved by the commission.

(c) *Advertising content.* The video lottery gaming agent shall submit such boards and proposed images to the commission, as the commission may require, for any advertising material for any promotion.

(d) *Competitive bidding.* The commission may require competitive bidding at particular dollar levels of purchasing for any promotion.

### **§ 5116.9. Player rewards club.**

(a) Each video lottery gaming agent licensed by the commission shall prior to start-up engage the services of a video lottery gaming vendor to provide such facility with a player rewards club system or the agent may provide such system.

(b) Any player rewards club system established pursuant to a marketing plan shall be open to any member of the public who is playing the authorized video lottery game at which the complimentary service is being offered. In addition, any system shall require the video lottery gaming agent to establish and maintain a system of detailed internal control procedures controlling the player rewards club program, prior to the implementation of such program, which procedures shall be maintained by a designated department approved by the commission; provided, however, that if complimentary goods or services will be issued based upon the occurrence of an event that may occur in the normal conduct of a video lottery game, the video lottery gaming agent shall submit for commission approval, in writing, a description of the internal control procedure governing the issuance of a complimentary, at least 10 days prior to the commencement of the program. Such approval shall be deemed to have been granted if it is not denied, in writing, within the 10-day period, and, provided, that such internal control procedures shall address, at a minimum:

(1) the period of time that the program will be offered. However, nothing herein shall prohibit the video lottery gaming agent from offering a program for an indefinite period of time, subject to termination upon 24 hours' notice, in writing, to the commission;

(2) the video lottery game at which the complimentary good(s) or service(s) will be issued;

(3) the internal control procedures for determining how the winners of the complimentary good(s) or service(s) shall be determined;

(4) a description of the type and value of complimentary good(s) or service(s) that will be issued; and

(5) the procedures by which the video lottery gaming agent will pay cash or complimentary good(s) or service(s) or deliver non-cash item(s).

(c) Each video lottery gaming agent shall provide unrestricted access to all information collected by the player rewards club system to the commission and the commission's authorized representatives.

### **§ 5116.10. Non-permitted marketing and promotion expenses.**

The following expenses incurred by a video lottery gaming agent shall not be included in the marketing and promotion program under any circumstance:



- (a) payroll expenses incurred in the ordinary course of operating the video lottery gaming facility that are not marketing related;
- (b) general office equipment and services, such as telephone, office supplies, photocopying, subscriptions, travel and other dues that are not marketing related;
- (c) except as otherwise permitted by the Act, the actual cost of any management fee paid by the video lottery gaming agent to any vendor engaged to operate the video lottery gaming facility on a daily basis;
- (d) expenses that are borne ultimately by licensed video lottery terminal vendors; or
- (e) rebates of cash to any vendor, vendee or other third party.

**§ 5116.11. Competitive bids.**

The actual monthly cost of any marketing or promotion expense shall be permitted as set forth in the commission-approved marketing plan, provided that, if applicable, the video lottery gaming agent shall competitively bid any marketing or promotion expense or program in excess of \$50,000 and demonstrate to the commission’s satisfaction that the cost for such vendor is the lowest available proposal that satisfied the technical requirements of the bid or demonstrated to the commission’s satisfaction that costs in excess of those of the lowest bidder are outweighed by the benefits of the chosen bidder. Certain sole source and professional services may be excluded from the competitive bid requirements. Any firm or company exempt from competitive bidding must be at arm’s length from the facility.

**PART 5117**

**Underage Gaming; Alcoholic Beverages; Firearms; Responsible Gaming; Undesirable Persons**

Section	
5117.1	Underage gaming violations
5117.2	Underage gaming violations—affirmative defenses
5117.3	Alcoholic beverages
5117.4	Firearms
5117.5	Undesirable or excluded persons
5117.6	Responsible gaming
5117.7	Restrictions on acceptance of public assistance

**§ 5117.1. Underage gaming violations.**

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

- (1) participate as a player at any game in a video lottery gaming facility;
- (2) receive any complimentary service(s) or item(s) as a result of, or in anticipation of, such person's gaming activity;
- (3) be present on the gaming floor without the escort of a licensed video lottery facility employee and for longer than necessary to reach a destination that is not on the gaming floor.

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

(c) Each violation of any of the provisions of subdivision (a) of this section as to a single underage person shall be considered a separate and distinct violation.

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

- (i) for a first violation, a fine of \$5,000;
- (ii) for a second violation within one year of a violation, a fine of \$20,000;
- (iii) for a third violation within one year of a violation, a fine of \$25,000; and
- (iv) for a fourth violation or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of the occupational license of any key employee found to be responsible for the violation.

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

- (i) for a first violation, a fine of \$1,000;
- (ii) for a second violation within one year of a violation, a fine of \$5,000;
- (iii) for a third violation within one year of a violation, a fine of \$10,000; and
- (iv) for a fourth violation or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include without limitation the suspension or revocation of the occupational license of any key employee found to be responsible for the violation.

(d) Each employee and representative of a video lottery gaming agent shall have an affirmative obligation to ensure that no underage person engages in any of the activities listed in subdivision (a) of this section. In addition to any penalty that may be imposed by

the commission against the video lottery gaming agent, each employee or representative of a video lottery gaming agent who violates any provision of this section may be held jointly or severally liable for any such violation.

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

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

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

(b) For purposes of establishing an affirmative defense to an underage gaming violation, the video lottery gaming agent, representative or employee thereof must show that it verified the underage patron's identification and such identification indicated that the underage patron was of lawful age. Additionally, the underage patron must have produced one of the following:

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

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

### **§ 5117.3. Alcoholic Beverages.**

Nothing in these regulations prohibits the service of alcoholic beverages at a video lottery gaming facility pursuant to a license issued by the State liquor authority.

### **§ 5117.4. Firearms.**

No person, including security department personnel, shall possess, or be permitted to possess any firearm within any video lottery gaming facility without the prior express written consent of both the video lottery gaming agent and the commission, including the commission's duly authorized representative, except for duly authorized personnel of each and law enforcement officials required to enter the video lottery gaming facility as part of their official duties. The video lottery gaming agent shall post in a conspicuous location at every entrance to the video lottery gaming facility, a sign stating: "No Person Shall Possess Any Firearm Within This Facility."

### **§ 5117.5. Undesirable or excluded persons.**

(a) Any person whether a licensee, participant or patron who is deemed or whose conduct is deemed detrimental to the best interest of video lottery gaming or who is deemed an undesirable person may be expelled from the video lottery gaming facility. In this regard the video lottery gaming agent, on such agent's own initiative, or upon request of the commission or the commission's representatives, shall take immediate steps by whatever means are reasonably required to expel such person(s). Acts deemed undesirable shall consist of, but not be limited by, the following:

(1) bookmaking or other illegal gambling activities;

(2) touting;

(3) creating or continuing a public disturbance;

(4) disorderly conduct;

(5) associating with undesirables;

(6) failure to appear when directed to do so by any official of the commission in furtherance of an investigation or hearing and to testify under oath concerning any facts within such person's knowledge and produce any books, records, written matter or other evidence within such person's possession or control relevant to such matter.

(b) Nothing contained in this section shall diminish the right of any video lottery gaming agent to exclude any person as a patron or otherwise without reason, provided such exclusion is not based upon age (except for persons under the age of 18), race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status.

(c) Excluded persons shall immediately be provided with a notice of exclusion. A report, which shall include a copy of the exclusion notice and a photograph of the excluded subject, will be retained at the video lottery gaming facility for the period of exclusion and a copy shall be provided within 24 hours of exclusion to the commission or the commission's designee.

### **§ 5117.6. Responsible gaming.**

(a) Each video lottery gaming agent shall establish a responsible gaming program approved by the commission, which plan shall comply with these regulations.

(b) Announcements encouraging responsible play shall be displayed by the video lottery gaming agent in all video lottery gaming areas as well as the reception and cashier areas.

(c) Responsible gaming information shall be prominently displayed by the video lottery gaming agent at the video lottery gaming facility, and problem gambling information shall be posted on each video lottery gaming agent’s website and on each video lottery terminal.

(d) The video lottery gaming agent’s responsible gaming plan will provide for employee training for responsible gaming.

(e) through (h) [Repealed].

(i) The video lottery gaming agent shall not divulge any name on the master list of excluded persons, other than to authorized surveillance, security or video lottery gaming department employees or other video lottery gaming personnel whose duties and functions require access to such information, and the commission or the commission’s duly authorized representatives.

(j) Neither these regulations nor any of the rights, duties, or obligations established hereunder, shall create any cause of action, right of action, claim, or other right whatsoever in favor of any person against the State, the commission, any video lottery gaming agent or any of the representatives or employees of any of the foregoing entities. Each person applying for placement on the List of Excluded Persons shall execute a full and complete Waiver/Release form commission releasing the State, the commission, any video lottery gaming agent or any of the representatives or employees of any of the foregoing entities from any liability associated with the acts relating to this provision.

**§ 5117.7. Restrictions on acceptance of public assistance.**

Any video lottery gaming agent that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission pursuant to Part 5113 of this Subchapter.

**PART 5118**

**Conduct and Operation of Video Lottery Gaming**

Section	
5118.1	General definitions, qualifications, restrictions, validations and regulations applying to video lottery gaming
5118.2	Display of rules of play
5118.3	Credit redemption
5118.4	Validation of vouchers
5118.5	Discharge of State liability upon payment
5118.6	Testing and certification of video lottery gaming systems
5118.7	Maintenance, repair and servicing of video lottery terminals



- 5118.8 Inventory storage
- 5118.9 Hours of operations

**§ 5118.1. General definitions, qualifications, restrictions, validations and regulations applying to video lottery gaming.**

(a) Within a time period specified by the commission following the issuance of a winning voucher to a player by a video lottery terminal, the player may redeem such voucher at the video lottery gaming facility where the winning voucher was issued; thereafter the winning voucher may be redeemed only at a customer service center operated by the commission.

(b) All prizes evidenced by a voucher must be claimed within one year of the issuance of a voucher.

(c) *Voucher responsibility.*

(1) Vouchers are bearer instruments.

(2) Neither the commission nor the video lottery gaming agent shall be liable for payment of:

(i) lost or stolen vouchers;

(ii) vouchers claimed by a player in error for a lower prize;

(iii) vouchers that are not intact;

(iv) vouchers that are mutilated, altered, reconstituted, counterfeit in whole or in part, or tampered with in any manner, or mis-cut; or

(v) vouchers that have not been issued in an authorized manner, or are mis-registered, defective, or printed or produced in error.

(d) To be valid, a voucher must pass all additional confidential and security validation tests of the commission.

(e) Any voucher that does not conform to the requirements of this section shall be considered null and void.

(f) No video lottery gaming ticket shall be sold to or purchased by, and no video lottery gaming prize shall be paid to, any of the following persons:

(1) any officer or employee of the commission; or



- (2) any principal or key employee, except as may be permitted by the commission for good cause shown; or
- (3) any video lottery gaming or non-gaming employee at the video lottery gaming facility that employs such person and at any other video lottery gaming facility controlled by that agent; or
- (4) any licensee, registrant, contractor, subcontractor, or consultant, or officer or employee of a contractor, subcontractor, licensee, registrant or consultant, if such person is directly involved in the operation of video lottery gaming, the operation or observation of video lottery gaming or drawings, or the processing of video lottery gaming prize claims or payments; or
- (5) any person subject to a contract with the commission if such contract contains a provision prohibiting such person from purchasing a video lottery gaming ticket or receiving a video lottery gaming prize; or
- (6) any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any of the foregoing persons at the same video lottery facility or facilities where the foregoing person is prohibited from purchasing a video lottery gaming ticket or collecting a video lottery gaming prize. This section shall not be deemed to prohibit the sale of a video lottery gaming ticket or the payment of a video lottery gaming prize to an officer or employee of the commission or a video lottery gaming agent or to a contractor, subcontractor, or consultant or to an officer or employee of a contractor, subcontractor, or consultant if such sale or prize payment is not for the individual benefit of such person and is made in connection with an official investigation, audit, or other activity authorized by the commission.
- (7) the restrictions of this subdivision shall not apply to an employee of a video lottery gaming agent that is not licensed by the commission.
- (8) nothing in this section shall prohibit a video lottery gaming agent from establishing a policy that is stricter than the standards described in this subdivision.
- (g) The commission may at any time, in the commission's sole discretion, announce a termination date for any game, subsequently recommence any game, or extend termination or closing dates for any game. When a game is terminated, no further video lottery gaming tickets shall be sold.
- (h) In purchasing a video lottery gaming ticket, the video lottery gaming player agrees to comply with and abide by all laws, these regulations, policies and procedures, and final decisions of the commission, as well as procedures established by the commission for the conduct of any game.

(i) No video lottery gaming agent may extend credit or financial assistance to permit the purchase of video lottery gaming tickets.

**§ 5118.2. Display of rules of play.**

(a) Each video lottery gaming terminal vendor shall be responsible for displaying the rules of play for a video lottery terminal on the face or screen of the video lottery terminal or be capable of such display at the player's option through use of an easily-accessible "help" screen.

(b) The rules of play for a particular video lottery terminal game shall be evaluated and approved by the commission. The commission may reject the rules if it is determined that the rules are incomplete, conflicting, confusing, or misleading.

(c) The rules of play for a particular video lottery terminal game shall not be altered without prior approval of the commission.

(d) Stickers or other removable devices shall not be placed on the face of the video lottery terminal unless their placement is approved in writing or required by the commission.

**§ 5118.3. Credit redemption.**

(a) Available credits may be collected through the printing of a voucher from the video lottery terminal by the player pressing the appropriate button at any time other than when:

(1) a game is being played;

(2) the terminal is in audit mode;

(3) any door is open;

(4) the terminal is in test mode;

(5) a meter incrementation is in progress, unless the entire amount is recorded on the meters when the collect button is pressed; or

(6) there is an error condition.

(b) When any prize won at a video lottery terminal exceeds the threshold for reportable lottery winnings established by the Internal Revenue Service, the video lottery terminal shall print a voucher that shall only be redeemable at an attended validation terminal. The attendant at such validation terminal shall obtain personal identifying information from the prize winner for tax reporting purposes.

(c) When any prize won at a video lottery terminal exceeds \$2,000, or such other amount determined and published by the commission, the video lottery terminal shall enter a lock

up state and an attendant shall be called to verify, initiate and witness the printing of the voucher and shall document same.

#### **§ 5118.4. Validation of vouchers.**

Validation and payment by voucher as a method of credit redemption shall be permissible only by a commission approved device that is linked to the central system that permits validation of such voucher. Validation approval or related information shall be generated by the central system in order to validate tickets. Vouchers may be validated only at locations approved in writing by the commission.

(a) A prize form shall be filed in the name of a single legal entity as claimant, either one individual or one organization. Multiple payees are not permitted, except as may be authorized pursuant to subdivision (c) of this section.

(b) If a claim is erroneously entered with multiple claimants, the claimants shall designate one of them as the individual recipient of the prize, or, if such claimants fail to designate an individual recipient, the commission may designate any one of the claimants as the sole recipient. In either case, the claim shall then be considered as if such claim were originally entered in the name of the designated individual and payment of any prizes won shall be made to that single individual.

(c) Under exceptional circumstances, payment may be made to multiple payees at the discretion of the commission.

#### **§ 5118.5. Discharge of State liability upon payment.**

The State and the State's agents, officers, employees, the commission and the commission's agents, officers and employees and video lottery gaming agents and their agents, officers, employees shall all be discharged of any and all liability upon payment of a prize.

#### **§ 5118.6. Testing and certification of video lottery gaming systems.**

The central system, video lottery terminals and associated equipment used in the conduct of video lottery gaming, or a prototype thereof, shall be tested and approved in a manner consistent with Part 5318 of this Chapter as if a video lottery gaming agent were a gaming facility licensee and as if a vendor were a licensed casino vendor enterprise.

#### **§ 5118.7. Maintenance, repair and servicing of video lottery terminals.**

(a) The video lottery gaming vendor shall not alter the operation of any approved video lottery terminal or associated equipment and shall ensure that each video lottery terminal and associated equipment is maintained in proper working condition.

(b) Only the following persons may service or repair a video lottery terminal or associated equipment:

- (1) a duly licensed video lottery gaming vendor;
- (2) a licensed employee of a video lottery gaming vendor;
- (3) a licensed technician certified by a video lottery gaming vendor; or
- (4) a licensed employee of a video lottery gaming agent who may be assigned to clean the exterior of the video lottery terminal, to reload printer paper and ink, and to clear bill acceptor jams.

(c) It shall be the ongoing duty of each video lottery gaming vendor to maintain and provide an inventory of spare parts to assure the timely repair and continued, approved operation and play of video lottery terminals. Each video lottery gaming vendor shall provide to the commission, if requested, appropriate technical assistance and training in the service and repair of such vendor's video lottery terminals and associated equipment so as to ensure the continued, approved operation and play of those video lottery terminals.

(d) Each video lottery gaming vendor shall immediately notify the commission of any recurring video lottery terminal malfunction or other problem experienced with approved video lottery terminals.

(e) Each video lottery gaming vendor must maintain a certification program for the purpose of training and certifying technicians to service and repair video lottery terminals manufactured by such vendor. Upon request, such vendor shall provide evidence of such program to the commission, including a full description of the program, models of video lottery terminals for which training is provided, criteria for certification, information concerning instructor qualifications, and copies of training materials and tests. Any program deemed insufficient by the commission shall be modified upon request.

(f) Each video lottery gaming vendor shall ensure that such vendor's technicians have received sufficient and appropriate training in the service and repair of each of such vendor's approved video lottery terminal models before any video lottery terminal may be placed in operation in the video lottery gaming facility.

(g) Each video lottery gaming vendor that certifies other persons as technicians shall ensure that such technicians have received sufficient and appropriate training in the service and repair of the approved video lottery terminals to be operated by the video lottery gaming agents, or to be distributed by a licensed video lottery gaming vendor employing the technician. Such training shall meet the requirements of subdivision (e) of this section.

(h) Upon request of the commission, a certified technician, or a video lottery gaming vendor employing the technician, shall provide proof satisfactory to the commission of the technician's certification, in accordance with subdivision (e) of this section.

(i) The video lottery gaming vendor shall ensure that all service and repairs on such vendor's video lottery terminals, including the installation or repair of component parts such as bill acceptors, monitoring systems, or other parts that may alter the current or subsequent operation of a video lottery terminal, are made correctly and in compliance with these standards and any additional commission requirements.

(j) Except for certified technicians, as defined herein, no employee of the video lottery gaming agent or any other person may perform service on or repair any video lottery terminal or associated equipment other than incidental maintenance repairs that cannot affect any of the video lottery terminals' major systems or require that the person performing the service or making the repair access any internal space within a video lottery terminal or any of such terminal's associated equipment.

(k) The exterior door keys shall be issued, on a per shift basis, only to personnel qualified under subdivision (b) of this section to maintain the terminals. When exterior door keys are not in use, they shall be maintained in a locked box designed for the purpose of securing the keys, access to which shall be controlled and maintained by the department identified in the approved internal control system.

(l) Each video lottery gaming vendor shall maintain a written maintenance log inside the main cabinet access area of each video lottery terminal. Every person who gains entry into any internal space of a video lottery terminal for performing physical maintenance or repair must sign the maintenance log, record their employee license, indicate the date and time of entry and list all areas inspected, repaired or serviced. Such vendor(s) shall retain the maintenance log for a period of five years and shall make the maintenance log immediately available to the commission upon request.

#### **§ 5118.8. Inventory Storage.**

Each video lottery gaming agent shall allow each video lottery gaming vendor access to a secure area for the inventory storage of terminal parts. Inventory and replacement parts may be maintained off premises within the State at an approved location. The location of this secured area is subject to the approval of the commission.

#### **§ 5118.9. Hours of Operation.**

The hours of operation of video lottery gaming at all licensed video lottery gaming facility locations shall be 20 consecutive hours per day, unless otherwise approved by the commission in writing after a video gaming agent applies for an exception at least 60 days in advance of a proposed change. In no event shall video lottery gaming be conducted past the time set forth in Tax Law section 1617-a(e). Public access to the video lottery

gaming floor must be restricted at all times video lottery gaming is not in operation. The failure of the video lottery gaming agent to comply with the hours of operation set forth in this section shall be a violation of these regulations.

## **PART 5119**

### **Video Lottery Terminal Component Standards**

Section	
5119.1	Terminal identification requirements
5119.2	Video lottery terminal drop boxes
5119.3	Voucher standards

#### **§ 5119.1. Terminal identification requirements.**

(a) Each video lottery terminal machine shall have a permanent metal identification number that shall be mounted in a manner that does not permit such number's removal without leaving evidence of tampering. Such identification number shall be permanently affixed to the machine by the machine's manufacturer in a location on the exterior of the cabinet approved in writing by the commission. In addition to the identification number, the tag mounted to the video lottery terminal machine shall contain the following information:

- (1) the manufacturer;
- (2) a unique serial number;
- (3) the video lottery terminal model number; and
- (4) the date of manufacture.

(b) The video lottery gaming agent shall affix a label approved by the commission to the video lottery terminal that permits identification by surveillance of terminal location and terminal number.

#### **§ 5119.2. Video lottery terminal drop boxes.**

(a) The video lottery terminal drop boxes shall be secured by a lock on the main door to the video lottery terminal, a lock on the currency compartment door, and a lock on the drop box, located in the currency compartment. Each lock shall be keyed differently from the other. The keys to the main door lock shall be maintained and controlled by a video lottery gaming agent employee. The key to the lock securing the currency compartment area, which key shall be different from the keys securing the contents of the drop box, shall be maintained and controlled by the video lottery gaming agent security department. Access to the key for the lock to the currency compartment area shall be gained only by a supervisor in that department.





(b) Each drop box shall have an affixed or adhered clear visible label containing letters, numbers or a barcode corresponding to the location of the video lottery terminal to which it is attached, except that emergency drop boxes may be maintained without such marking, provided the word “emergency” is affixed or adhered thereon and, when put into use, are temporarily marked with the location of the video lottery terminal.

### **§ 5119.3. Voucher standards.**

(a) Vouchers shall provide the following information regarding each voucher printed that can be obtained from the video lottery terminal, an interface board, the central system, or another means approved in writing by the commission:

- (1) value of credits in local monetary units in numerical form;
- (2) time of day the video lottery gaming ticket was printed;
- (3) date, in any recognized format, indicating the day, month, and year;
- (4) unique validation number, and/or barcode; and
- (5) video lottery gaming agent location.

(b) A commission approved system shall be used to validate the voucher, and the video lottery gaming ticket information recorded by the central system shall be retained for at least as long as the voucher is valid at that location, or as otherwise required by the commission.

## **PART 5120**

### **Shipment; Possession Limitations**

#### Section

- |        |   |
|--------|---|
| 5120.1 | Transportation of video lottery terminals into, within and out-of-State |
| 5120.2 | Possession of video lottery terminals                                   |

### **§ 5120.1. Transportation of video lottery terminals into, within and out-of-State.**

(a) Prior to the transport or movement of any video lottery terminal from one authorized location to another authorized location within, or out of, the State, a video lottery gaming vendor or other person causing such video lottery terminal to be transported or moved shall first notify the commission in writing using the commission approved shipment form.

(b) No delivery of video lottery terminals or equipment shall be made to a video lottery gaming agent facility unless and until that facility has been issued a license to engage in video lottery gaming.

## **§ 5120.2. Possession of video lottery terminals.**

(a) Except as otherwise provided in these regulations or specifically authorized in the law, no person shall possess within this State any video lottery terminal, associated video lottery gaming equipment or similar device.

(b) The following persons and any employee or agent acting on their behalf may, subject to any terms and conditions imposed by the commission, possess video lottery terminals in this State for the purposes provided herein, provided that the video lottery terminals are kept only in such locations as may be specifically approved in writing by the commission and that any terminals located outside of a licensed video lottery gaming facility not be used for gambling activity:

(1) an applicant for or holder of:

(i) a video lottery gaming agent license, for the purpose of maintaining for use or actually using such video lottery terminal in the operation of a licensed video lottery gaming facility;

(ii) a gaming vendor license, for the purpose of manufacturing, distributing, repairing or servicing video lottery terminals;

(2) a common carrier, for the purpose of transporting such video lottery terminal;

(3) an employee or agent of the commission, for the purpose of fulfilling official duties or responsibilities;

(4) an educational institution operating pursuant to the State education law and/or pursuant to the State labor law for the purpose of training technicians in the service and repair of video lottery gaming equipment; or

(5) any other person the commission may approve after finding that possession of video lottery terminals by such person in this State is necessary and appropriate to fulfill the goals and objectives of the act and these regulations.

## **PART 5121**

### **Surveillance and Security**

#### **Section**

- 5121.1 Closed circuit television system; surveillance department control; surveillance department restrictions
- 5121.2 Emergency procedures
- 5121.3 Credit; banking services at the video lottery gaming facility
- 5121.4 Cashiers' cage, satellite cages; standards
- 5121.5 Accounting controls for the cashiers' cage, satellite cages
- 5121.6 Count room; characteristics



- 5121.7 Drop boxes, transportation to and from video lottery terminals; storage
- 5121.8 Opening, counting and recording of drop box contents
- 5121.9 Delivery station specifications

**§ 5121.1. Closed circuit television system; surveillance department control; surveillance department restrictions.**

(a) Each video lottery gaming agent shall install and/or permit the installation of, in such agent's video lottery gaming facility, a closed circuit television (CCTV) system according to specifications approved and issued by the commission, and shall provide unfettered access to the system or the system's signal by the commission. Separate secure space, with adequate heating, ventilation, air-conditioning and lighting shall be provided by the video lottery gaming agent to house necessary surveillance consoles and other monitoring equipment as well as related staff. Each video lottery gaming agent, and each member of such agent's surveillance department, shall timely comply with all requests from the commission.

(b) Entrances to the closed circuit television monitoring rooms shall not be visible from the public areas of a video lottery gaming facility.

(c) For a facility equipped with a camera console, the security department shall only be permitted to view the feed from cameras in food and beverage areas or other areas located outside a building in which the gaming floor is located. Notwithstanding the foregoing, the security department may have access to a limited view of the gaming floor if such view is approved in writing by the commission's internal audit unit.

(d) Each video lottery gaming agent shall have a surveillance department manager and a security department manager on duty at the video lottery gaming facility at all times.

**§ 5121.2. Emergency procedures.**

Before a video lottery gaming agent has operated a video lottery gaming facility for 90 days, the video lottery gaming agent shall submit to the commission, the State law enforcement agency, local police department, and the local fire department, an emergency action plan for the response to, and management of, fire and medical emergencies and natural disasters in all areas of the video lottery gaming facility and related enterprises. Such plan shall include procedures for notification of the State law enforcement agency, local police department, the local fire department or emergency medical personnel, or both, and procedures for expedited and unimpeded access of the personnel into all areas of the video lottery gaming facility or related enterprise in the event of a fire, medical, or other emergency. Such plan shall also include an inspection schedule allowing the New York Department of State, State law enforcement agency, local police department and local fire department personnel to inspect all areas of the video lottery gaming facility and related enterprises for compliance with applicable fire and emergency laws, codes and ordinances.

**§ 5121.3. Credit; banking services at the video lottery gaming facility.**

- (a) The video lottery gaming agent may place a duly authorized automated teller machine (ATM) within a video lottery gaming facility at a location approved by the commission.
- (b) A video lottery gaming agent may offer check cashing services or provide cash to a player in exchange for a valid charge or cash advance against a recognized credit card account or recognized debit card account only if the agent has developed internal control procedures detailing the conditions and circumstances under which such practice will be allowed, and has provided copies of such internal control procedures to the commission no later than 30 days prior to the offering of cashing services.
- (c) Nothing in these regulations shall prohibit the sale of dining and other non-gaming patron amenities through the use of a commercially available credit, debit or charge card, nor shall a video lottery gaming agent be prohibited from entering into a contract with a person licensed under the State banking law to cash checks or otherwise provide banking services within the State.

**§ 5121.4. Cashiers' cage, satellite cages; standards.**

- (a) Each video lottery gaming facility shall have on or immediately adjacent to the gaming floor a physical structure known as a cashiers' cage (*cage*) to house the cashiers and to serve as the central location in the video lottery gaming facility for the following:
- (1) the custody of the cage inventory comprising currency and forms, documents, and records normally associated with the operation of a cage;
  - (2) the receipt, distribution, and redemption of vouchers in conformity with these regulations; and
  - (3) such other functions normally associated with the operation of a cashiers' cage.
- (b) The cage shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein. Such design and construction shall be, at a minimum, as effective as the following:
- (1) manually triggered silent alarm systems for the cage, the ancillary office space of the cage and any related video lottery gaming facility vault, which systems shall be connected directly to the monitoring rooms of the closed circuit television system and the video lottery gaming security department office;
  - (2) double door entry and exit system that will not permit a person to pass through the second door until the first door is securely locked; and

- (i) the first door of the double door entry and exit system adjacent to the video lottery gaming floor shall be controlled. The second door of the double door entry and exit system shall be controlled;
  - (ii) the double door entry and exit system shall have closed circuit television coverage that shall be monitored during all hours of operation by the video lottery gaming surveillance department;
  - (iii) any entrance to the cage that is not a double door entry and exit system shall be an alarmed emergency exit door only.
- (3) the video lottery gaming facility shall identify in such facility's internal control procedures which department will be responsible for controlling these points of access and shall include procedures for managing the security of these points of access.
- (c) Each video lottery gaming facility may also have one or more "satellite cages" separate and apart from the cashiers' cage, but adjacent to areas of video lottery gaming operation, established to maximize security, efficient operations, or player convenience and comfort and designed and constructed in accordance with these regulations. Subject to commission approval, a satellite cage may perform any or all of the functions of the cashiers' cage. The functions that are conducted in a satellite cage shall be subject to the applicable accounting controls set forth in these regulations.
- (d) Each video lottery gaming agent shall file with the commission the names of all persons having control of the entrance to the cage, any satellite cages, and vaults, as well as all persons able to operate alarm systems for the cage, any satellite cages and vaults.
- (e) Whenever the commission or the internal controls of a video lottery gaming agent require or authorize documents to be transported from the cashiers' cage to a satellite cage or from a satellite cage to the cashiers' cage or another satellite cage, the video lottery gaming agent shall, unless the commission or internal control provides otherwise, transport the documents through the use of a video lottery gaming security department representative.
- (f) Notwithstanding any other provision of the regulations to the contrary, any video lottery gaming agent that operates two or more video lottery gaming areas within the facility that are physically connected in a manner deemed appropriate by the commission may, with the prior written approval of the commission, operate a single cashiers' cage in one of those video lottery gaming areas to serve as the central location for the functions set forth in subdivision (a) of this section for all of the video lottery gaming areas; provided, however, that the video lottery gaming agent shall be required to operate such satellite cages in each video lottery gaming area as the commission may deem necessary.

**§ 5121.5. Accounting controls for the cashiers' cage, satellite cages.**

(a) The assets for which the general cashiers are responsible shall be maintained on an imprest basis. The imprest balance of each general cashier's bank will be identical and such balance will be the same at the end of the shift as it is at the beginning of the next shift.

(b) At the opening of every shift, in addition to the imprest funds normally maintained by the general cashiers, the video lottery gaming agent shall have on hand in the cage or readily available thereto, a reserve cash bankroll in a minimum amount approved in writing by the commission.

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

(1) General cashiers shall operate with individual imprest inventories of cash and such cashiers functions shall include, but are not limited to, the following:

- (i) receive cash, vouchers, cash equivalents, complimentary gifts;
- (ii) receive reserve cash cashiers documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage;
- (iii) prepare forms for the completion of payments for video lottery gaming prizes;

(2) Reserve cash (main bank) cashiers functions shall include, but are not limited to, the following:

- (i) receive cash, vouchers, and cash equivalents from general cashiers in exchange for cash;
- (ii) receive cash from the count room;
- (iii) prepare the overall cage reconciliation and accounting records;
- (iv) prepare the daily bank deposit for cash;
- (v) receive from general cashiers, documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage;
- (vi) be responsible for the reserve cash bankroll;
- (vii) receive unsecured currency from accounting department representatives;



(d) Signatures and employee license numbers of those attesting to the accuracy of the information contained on the cashiers' count sheet shall be, at a minimum, of the following cashiers after preparation of the cashiers' count sheet:

- (1) the general cashiers assigned to the incoming and outgoing shifts; and
- (2) the reserve cash cashiers assigned to the incoming and outgoing shifts;

(e) At the end of each gaming day, at a minimum, a copy of the cashiers' count sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories, agreement of amounts thereon to other forms, records, and documents required by these regulations.

**§ 5121.6. Count room; characteristics.**

(a) The video lottery gaming facility shall have, adjacent to the cashiers' cage a room, an area to be known as the "count room," specifically designated, designed and used exclusively for counting unverified cash.

(b) The count room shall be designed and constructed to provide maximum security for the materials housed therein and for the activities conducted therein. The video lottery gaming agent shall design and construct a count room with, at a minimum, the following security measures:

- (1) a metal door or door of other construction approved by the commission installed on each entrance and exit;
- (2) each entrance and exit door shall be equipped with:
  - (i) two separately keyed locks; and
  - (ii) an alarm device, approved in writing by the commission, that audibly signals the surveillance department and the security department whenever a door to the count room is opened;
- (3) each lock required by subparagraph (i) of paragraph (b) of subdivision (2) of this section shall be controlled by a key that is different from:
  - (i) the key to the other lock on that door;
  - (ii) the keys to the locks securing the contents of each drop box;
- (4) the key to one of the locks required by subparagraph (i) of paragraph (2) of subdivision (b) of this section shall be maintained and controlled by the security department in a secure area within the security department, access to which may be

gained only by a security department supervisor, and the key to the other lock shall be maintained and controlled by the video lottery gaming department; and

(5) the security department shall establish an internal control procedure approved in writing by the commission regarding the signing-out of all keys removed from the security department.

(c) Located within the count room shall be:

(1) a table constructed of clear glass or similarly clear material used for the emptying, counting, and recording of the contents of drop boxes that shall be known as the “count table”;

(2) closed circuit television cameras and microphone wired to the surveillance department capable of, but not limited to, the following:

(i) effective and detailed audio-video and/or digital monitoring and recording of the entire count process; and

(ii) effective, detailed video or digital monitoring and recording of the interior of the count room, including storage cabinets or trolleys used to store bill acceptor drop boxes; and

(iii) no disposal containers or such shall be allowed at any time in the room.

**§ 5121.7. Drop boxes, transportation to and from video lottery terminals; storage.**

(a) Each video lottery gaming agent shall place on file with the commission a schedule setting forth the specific times at which the drop boxes will be brought to or removed from the bill acceptors in video lottery terminals. Each video lottery gaming agent shall also maintain and make available to the commission upon request, the names and employee license numbers of all employees participating in the transportation of such drop boxes. If the commission requires that a commission representative be present for transportation of drop boxes, no drop box shall be brought to or removed from any video lottery terminal or removed from any bill acceptor at other than the time specified in such schedule except with the express written approval of the commission. Notwithstanding the foregoing, the video lottery gaming agent may develop and utilize a plan for removing the drop boxes from the terminals under exigent circumstances. If a video lottery gaming agent alters procedures for removing drop boxes due to unforeseen exigent circumstances, the video lottery gaming agent must timely notify the commission of the reasons for the change in procedures and the details of how the drop boxes were removed.

(b) Except as otherwise provided in paragraph (3) of this subdivision, all drop boxes removed from video lottery terminals shall be transported directly to and secured in the count room by at least one video lottery gaming security department member.

(1) Upon the removal of a drop box from a video lottery terminal, such drop box shall be immediately placed in an enclosed trolley that is secured by two separately keyed locks. The key to one lock shall be maintained and controlled by a video lottery gaming department member. The key to the second lock shall be maintained and controlled by the video lottery gaming security department in a secure location. Access to the video lottery gaming security department's key shall be limited to supervisors in that department and shall be controlled, at a minimum, by a sign-out and sign-in procedure approved in writing by the commission. The video lottery gaming security department key shall be returned to such key's secure location immediately upon the completion of the collection and transportation of the drop boxes.

(2) Prior to the movement of any trolley containing drop boxes from the video lottery gaming floor, a video lottery gaming supervisor shall verify in writing that the number of drop boxes being removed from the gaming area equals the number of drop boxes that have been loaded on the trolley, and that the lock controlled by the video lottery gaming security department has been activated. If a trolley is being transported from the gaming floor to the count room, a video lottery gaming supervisor shall also verify that the gaming department lock on the trolley has been activated.

(3) A drop box being replaced by an emergency drop box shall be transported directly to and secured in the count room by at least one video lottery gaming security department member and one video lottery gaming supervisor, and the use of a trolley shall not be required.

(c) Except as provided in subdivision (d) of this section, all drop boxes not attached to a video lottery terminal, including emergency drop boxes that are not actively in use, shall be stored in the count room or other secure area outside the count room approved in writing by the commission, in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the video lottery gaming security department and the key to the second lock shall be maintained and controlled by a video lottery gaming department employee. Access to the video lottery gaming security department's key shall be limited to a supervisor of that department.

(d) Notwithstanding subdivision (c) of this section, the supervisor of the video lottery gaming security department may, immediately prior to the commencement of the count process, issue the key to the storage cabinet or trolley to a count room supervisor for the purpose of gaining access to the drop boxes to be counted. Any key removed from the video lottery gaming security department shall be returned immediately following the conclusion of the count of the drop boxes and the return of any empty emergency drop boxes to their respective storage cabinet or trolley. The video lottery gaming security department shall establish a sign-out and sign-in procedure approved in writing by the commission for all such keys removed. Each video lottery gaming agent that permits the video lottery gaming security department key to be issued to a count room supervisor

shall submit for review and written approval internal control procedures governing the control over the key when the count team takes a break.

**§ 5121.8. Opening, counting and recording of drop box contents.**

(a) The contents of the drop boxes shall be counted and recorded in the count room in conformity with this section unless the commission has expressly approved in writing an alternative plan submitted by the video lottery gaming agent. Under no circumstances shall the video lottery gaming agent conduct counting and recording of the drop box contents in a manner that does not comply with the one set forth in these regulations or one that has been expressly approved in writing by the commission.

(b) The video lottery gaming agent shall place on file with the commission the specific times during which the drop boxes are to be removed from video lottery terminals and the specific times during which the contents of the drop boxes are to be counted and recorded. Drop boxes shall be removed from video lottery terminals and be counted and recorded with sufficient frequency to allow daily electronic funds transfers of all money owed to the commission and the State, including tax and other withholdings, as applicable.

(c) The opening, counting, and recording of the contents of drop boxes shall be performed in the presence of a count room supervisor. To gain entrance to the count room, an employee shall present a video lottery gaming credential with photograph.

(d) All persons present in the count room during the counting process shall wear a full-length short-sleeve (mid-forearm), one-piece pocket-less outer garment with openings only for the arms, feet, and neck, unless another type of garment is approved in writing by the commission.

(e) No person present shall:

(1) carry a pocketbook or other container unless it is transparent; or

(2) remove his or her hands from or return them to a position on or above the count table unless both the backs and palms of his or her hands are first held straight out and exposed to the view of other members of the count team and the closed circuit television camera.

(f) Immediately prior to the commencement of the count:

(1) the doors to the count room shall be securely locked;

(2) a count team member shall notify a person assigned to the surveillance department closed circuit television monitoring room that the count is about to begin, after which such person shall make an audio-video and/or digital recording, with the time and date inserted thereon, of the entire counting process, which recording shall

be retained by the surveillance department for at least 21 days from the date of recordation unless otherwise directed in writing by the commission; and

(3) the count room supervisor, or his or her supervisor, shall record, in writing, the name and employee license number of each person who shall participate in the counting process and whether each such individual is scheduled to:

- (i) be present in the count room during the entire counting process;
- (ii) enter the count room during the counting process; or
- (iii) leave the count room prior to the conclusion of the counting process.

(g) No person shall be permitted to enter or leave the count room during the counting process, except in an emergency, unless such person's name is on the written notice required by paragraph (3) of subdivision (f) of this section.

(1) If the video lottery gaming agent permits a member of the count team to enter or leave the count room during the counting process, any employee remaining in the count room shall be required to display his or her hands in accordance with subdivision (e) of this section and to step away from the count table until the count team member has entered or left the count room.

(2) The counting and recording process shall be discontinued whenever less than three count team members are present in the count room.

(3) Once the counting process has been started, the count room supervisor shall be required to notify the surveillance department closed circuit television monitoring room whenever a count room door will be opened, prior to the opening of such door.

(h) Procedures and requirements for conducting the count shall be as follows:

(1) as each drop box is placed on the count table, one count team member shall orally announce, in a volume of voice to be heard by all persons present and to be recorded by the audio-video and/or digital recording device, the game, video lottery terminal number, and shift marked thereon for drop boxes;

(2) in full view of the closed circuit television cameras located in the count room, the contents of each drop box shall be emptied on the count table and either manually counted separately on the count table or counted on a currency counting machine that is located in a conspicuous location on, near or adjacent to the count table;

(3) immediately after the contents of a drop box are emptied onto the count table, the inside of the drop box shall be held up to the full view of a closed circuit television camera and shall be shown to a second employee to assure that all contents of the

drop box have been removed. The drop box shall then be locked and placed in the storage area for drop boxes approved in writing by the commission;

(4) the contents of each drop box shall be segregated by a count team member into separate stacks on the count table by each denomination of currency by type, record or document, except that the commission may permit the utilization of a machine to sort currency automatically by denomination;

(5) each denomination of currency shall be counted separately by one count team member who shall place individual bills of the same denomination on the count table in full view of a closed circuit television camera, after which the currency shall be counted by a second count team member who shall be unaware of the result of the original count and who, after completing this second count, shall confirm the accuracy of the total, either orally or in writing, with that reached by the first count team member, except that the commission may permit the video lottery gaming agent to perform aggregate counts by denomination of all currency collected in substitution of the second count by drop box, if the commission is satisfied that the original counts are being performed automatically by a machine that counts and automatically records the amount of currency, and that the accuracy of the machine has been suitably tested and proven. The commission may permit the utilization of currency counting machines if prior to the start of the first use of the counting machine each gaming day, except for subparagraphs (i) and (ii) of paragraph (5) of this subdivision, the count room supervisor shall:

(i) verify that the counting machine has a zero balance on such machine's terminal unit display panel and has a receipt printed that denotes "-0- cash on hand" and "-0- notes in machine," or some other means to indicate that the machine has been cleared of all currency;

(ii) visually check the counting machine to be sure there are no bills remaining in the various compartments of the machine;

(iii) supervise a count team member who shall randomly select a drop box and place the entire contents of that drop box into the first counting machine, which shall count the currency by denomination and produce a print out of the total amount of currency by denomination. Any soiled or off-sorted bills shall be re-fed into the machine and manual adjustments shall be made to the total. The total as recorded on the counting machine and any adjustments made thereto shall not be revealed to anyone until the final verification process is completed;

(iv) supervise a second count team member, independent of the team member performing the initial count by machine, who shall manually count and summarize the currency from each drop box counted in accordance with subparagraph (iii) of paragraph (5) of this subdivision. This total shall be posted and maintained separately from the total posted in subparagraph (iii) of paragraph (5) of this



subdivision and shall not be revealed to anyone until the final verification process is completed;

(v) supervise the second count team member's passing of the currency to a count team member, who shall be unaware of the results of the manual count. The count team member shall count the contents of that drop box counted in subparagraph (iii) of paragraph (5) of this subdivision (h) using a second counting machine. Such machine shall produce a printout of the total amount of currency contained in the drop box. Any soiled or off-sorted bills shall be re-fed into the machine and manual adjustments shall be made to the total. The total as recorded on the counting machine and any adjustments thereto shall not be revealed to anyone until the final verification process is completed;

(vi) following the completion of the test procedures, compare the totals from the test receipts of both counting machines, as computed in subparagraphs (iii) and (v) of paragraph (5) of this subdivision (h), to the manual total computed in subparagraph (iv) of paragraph (5) of this subdivision. If the three totals compared above are in agreement, the count room supervisor shall sign and date and record his or her employee license number on his or her test receipts and forward such receipts to the accounting department at the end of the count process;

(vii) if the three totals do not agree, appropriate repairs shall be made to the counting machine and the procedures in subparagraphs (i) through (vi) of paragraph (5) of this subdivision shall be repeated until all totals are in agreement. The counting machine shall not be used until these totals are in agreement.

(6) as the contents of each drop box are counted, a count team member shall manually record or cause a computer system to record, in a manner approved in writing by the commission, the following information on the master game report or other supporting documentation by video lottery terminal identification number:

- (i) the amount of each denomination of currency counted;
- (ii) the amount of all denominations of currency counted;
- (iii) the gaming date of the items being recorded and the date the Master Gaming Report is being prepared or generated.

(7) after the contents of each drop box are counted and recorded, a member of the count team shall manually record or cause the computer to record on the master game report, by game, the total amount of currency together with such additional information as may be required on the master game report by the commission or the video lottery gaming agent.

(8) notwithstanding any inconsistent requirements in paragraphs (1) through (7) of this subdivision, if the video lottery gaming agent's system of internal controls provides for the count team functions to be comprised only of counting and recording currency, the video lottery gaming agent's accounting department employees shall perform all other counting, recording and comparing duties required by this section.

(9) after preparation of the master game report, the count team members performing the banking functions and the count room supervisor shall sign and record their employee license number on the reports attesting to the accuracy of the information recorded thereon. All other count team members shall either sign and record their employee license number on the master game report or such other document as approved in writing by the commission as evidence of their participation in the counting of the drop boxes. Any person who, in accordance with subdivision (f) of this section, is scheduled to leave the count room prior to the completion of the entire count process, shall also sign and record such person's employee license number and shall record the time that such person exited the count room. Any person who enters or leaves the count room due to an emergency shall sign and record their name, employee license number, and time of the entry or exit on the master game report, or such other document as approved in writing by the commission, except that, if the person exiting the count room is unable to sign the document due to the nature of the emergency, the count room supervisor shall record the person's name, employee license number, the time of exit and a notation describing the emergency on the document.

(i) After the contents of all drop boxes have been counted:

(1) All cash shall be presented in the count room by a count team member to a main bank cashier or cage supervisor who, prior to having access to the information recorded on the master game report and in the presence of a count team member shall recount, either manually or mechanically, the cash presented and attest by signature and employee license number on the master game report the amounts of cash counted, after which the employee shall sign the report evidencing such employee's presence during the count and the fact that both the cashier or cage supervisor and the count team have agreed on the total amounts of cash counted. The video lottery gaming agent may, if approved in writing by the commission, present the main bank cashier or cage supervisor with the cash obtained from the count of the drop boxes either:

(i) at the same time, in which event the cash shall be presented immediately after both counts have been concluded; provided, however, that the video lottery gaming agent shall set forth in such agent's system of internal controls the procedures for segregating and securing the cash from the first count that is concluded until presented to the main bank cashier or cage supervisor after the conclusion of the second count; or

(ii) separately, in which event the cash from each count shall be presented immediately after the conclusion of the count; provided, however, that if the cash from the first count that is concluded is presented while the second count is in progress:

(a) there shall be no cash in the count room removed from an opened box that has not already been counted at least once; and;

(b) all count room employees shall be required to step away from the count table until the presentation is completed and the cash and promotional coupons from the first count are removed from the count room.

(2) The master game report, after signing, shall be transported directly to the accounting department and shall not be available to any cashiers' cage personnel.

(j) In addition to the procedures for conducting the count by the count team set forth under paragraphs (4), (5) and (6) of subdivision (h) of this section, and the procedures for conducting the recount by a main bank cashier or cage supervisor set forth under subparagraph (i) of paragraph (1) of subdivision (i) of this section, in the event of a variance attributable to intermixed denominations of cash, an adjustment shall be made to the master game report reflecting the amount and source (identified to a video lottery terminal) of such variance.

(k) The originals and copies of the master game report shall, on a daily basis, in the accounting department be:

(1) compared for agreement with each other, on a test basis if the originals are received from the count room, by persons with no recording responsibilities and, if applicable, to triplicates or stored data;

(2) reviewed for the appropriate number and propriety of signatures on a test basis;

(3) accounted for by series numbers, if applicable;

(4) tested for proper calculation, summarization, and recording;

(5) subsequently recorded; and

(6) maintained and controlled by the accounting department as a permanent accounting record.

#### **§ 5121.9. Delivery station specifications.**

(a) The video lottery gaming agent shall provide a secure structure for all of the following purposes:

- (1) armored car cash deliveries;
  - (2) armored car cash pickups; and
  - (3) the delivery and pickup of other valuables as may be needed from time to time.
- (b) The structure shall be designated the “secured delivery station” and shall be covertly surveilled and monitored during all hours of operation. One-on-one continuous surveillance shall be conducted when deliveries and pickups are made.
- (c) A secured delivery station shall comply with all the following provisions:
- (1) be located out of the general view of patrons, non-surveillance employees, and non-security employees;
  - (2) have a garage door that is electronically controlled from the Surveillance Room; and
  - (3) have a secure room between the secured delivery station and the gaming facility. The room shall have secure doors with bulletproof glass that are programmed so that both doors cannot be open at the same time, and neither door can open unless the garage door to the secured delivery station is closed and secured.
  - (4) have color cameras and monitors that are in compliance with the specifications for surveillance equipment in these regulations and that survey and monitor activities in all of the following areas:
    - (i) the secured delivery station;
    - (ii) the secured room immediately adjacent to the secured delivery station;
    - (iii) the area outside the garage door to the secured delivery station; and
    - (iv) the area inside the gaming facility.
- (d) Surveillance personnel shall advise security officers and other video lottery gaming agent personnel in advance of deliveries and pick-ups so the officers and personnel can provide foot escorts to and from secured areas within the video lottery gaming facility. Delivery personnel who are not duly licensed and authorized video lottery gaming agent employees shall not be allowed to enter the secured areas, or restricted areas of the video lottery gaming facility without an escort.



## **PART 5122**

### **Capital Improvements**

Section

- 5122.1 Capital investments accounts
- 5122.2 Deposits into capital investments account
- 5122.3 Capital improvement plan
- 5122.4 Capital improvement plan implementation and withdrawals from the capital investments account

#### **§ 5122.1. Capital investments accounts.**

(a) *Requirements.* In accordance with the act, each video lottery gaming agent shall maintain a segregated capital investments account. The funds from such account shall be used exclusively for capital project investments to improve the facilities of the video lottery gaming agent that promote or encourage increased attendance at the video lottery gaming facility, including, without limitation, hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance the facility amenities; provided that such capital investments shall be subject to approval by the commission and that such video lottery gaming agent demonstrates that such capital expenditures will increase patronage at such agent's facilities and increase the amount of revenue generated to support State education programs.

(b) *Divestment.* Any agent that has received a vendor's capital award or has withdrawn funds from its capital investments account that divests the capital improvement toward which the award or withdrawn funds was applied, prior to the full depreciation of the capital improvement, in accordance with generally accepted accounting principles, or ceases to use such asset from gaming purposes or transfers such asset to a related party, shall deposit into the capital investments account amounts equal to the total of any such awards or withdrawals from the capital investments account or the fair market value of such asset, as Tax Law section 1612(b)(1-a)(iii) may require.

(c) *Commission supervision.* All such capital improvement and expenditures shall be subject to the overall supervision of the commission.

#### **§ 5122.2. Deposits into capital investments account.**

(a) *Deposits.* Each video gaming agent shall be responsible to deposit the portion of its vendor fee set forth in Tax Law section 1612(b)(1) daily into a segregated capital investments account restricted for the collection and authorized use of such funds.

(b) *Account statements.* Each agent shall provide monthly bank statements for the segregated capital investments account to the commission for independent verification of deposits and withdrawals from the account.

(c) *Loss or theft.* The commission is not responsible for the loss or theft of any money in any account to which capital investments funds are deposited.

### **§ 5122.3. Capital improvement plan.**

Each agent shall prepare a capital improvement plan for the video lottery gaming facility. Such capital improvement plan shall provide sufficient detail to describe anticipated capital projects for which the agent will seek permission to withdraw funds from the capital investments account. Such capital improvement plan shall be submitted electronically to the commission for review and may be amended by the video lottery gaming agent from time to time as planned capital projects are modified.

### **§ 5122.4. Capital improvement plan implementation and withdrawals from the capital investments account.**

(a) *Request for approval.* Prior to the commencement of each capital improvement project, the agent shall submit to the commission a request for project approval in a standard format as prescribed by the commission. Such request shall:

(1) describe the overall capital project, including the reasons for implementing the project, the estimated total project cost and the estimated start and completion date for the project; and

(2) describe how the capital project will increase attendance at the video gaming facility and increase the amount of revenue generated in support of education aid.

(b) *Time limits to request approval.* The commission shall approve withdrawals from the capital investments account only for capital project construction or improvements commenced on or after April 1, 2008, or the portion of a project completed after April 1, 2008 for projects, or phases of projects, commenced before April 1, 2008.

(c) *Requirements for approval.* Not later than 15 days from receipt of a capital project request for approval, the commission shall review the request and provide the commission's approval or denial of the project. Each project shall qualify as an approved use of the funds from the capital investments account if such project meets the following guidelines:

(1) the capital project includes the addition of tangible, permanent assets in the form of land, buildings, or equipment; or the project includes the restoration of such existing assets;

(2) project assets purchased or restored, are to be used in the operation of video gaming and are expected to have a useful life of two years or more, providing a reasonable benefit throughout the assets useful life;



(3) the capital expenditure is of significant value, consistent with standard accounting policies for the recording of capital assets; and

(4) the capital project will increase patronage at the video gaming facility and increase the amount of revenue generated to support education aid.

(d) *Approved projects.* Commission approval of a capital project shall entitle the video lottery gaming agent to withdraw the amount of associated costs of such approved project from such video lottery gaming agent's capital investments account, for which the video lottery gaming agent obtains substantiation that the costs are reasonable within the industry for the size and scope of the project. Competitive bidding shall be required for all single-component project costs in excess of \$50,000, provided, however, that certain sole-source and professional services, such as architectural and engineering services and construction manager services where the construction manager does not perform construction work itself, may be excluded from the competitive bid requirements. Any firm exempt from competitive bidding must be at arm's length from the video lottery gaming agent.

(e) *Denial of approval.* In the event the commission does not approve a capital project request, the video lottery gaming agent shall be so notified in writing and any costs incurred for the project shall be the sole responsibility of such video lottery gaming agent and shall not be withdrawn from the capital investments account.

(f) *Withdrawal of funds for approved projects.* Upon receiving the commission's approval of a capital project, a video lottery gaming agent may at any time submit requests to withdraw the amounts associated with the approved project. Any such request shall be submitted in writing to the commission and shall be accompanied by supporting documentation in the form of invoices and cancelled checks, or other documents as may be required to show proof of payment for capital expenditures associated with the approved project. Upon receiving the commission's approval, a video lottery gaming agent shall be authorized to withdraw the approved funds from the segregated capital investments account.

(g) *Review of books and records.* The commission or the commission's representative may, at the discretion of the commission, review the books and records of a video lottery gaming agent to determine additional needs for assurance in regard to use of the capital award. Each agent shall maintain sufficient documentation and a clear audit trail to support the expenditures from the segregated capital investments account.

(h) *Violations.* The failure of a video lottery gaming agent to submit any report required by this Part shall be a violation of such video lottery gaming agent's license, the act and this Part.

(i) *Inquiries.* Exceptions, discrepancies, or questionable spending the commission identifies must be explained by the video lottery gaming agent in a timely manner to the

satisfaction of the commission, but in no event later than 30 days from the date of the commission inquiry. A failure by the video lottery gaming agent to adequately respond to any inquiry of the commission shall be a violation of this Part.

(j) *Detail of expenses.* The agent shall prepare each report in a professional manner, detailing the use of funds from capital investments account. Appropriate penalties may be applied if the commission determines that a video lottery gaming agent has submitted expenses that do not qualify as a capital expense.

(k) *Sanctions.* In the event an expenditure or discrepancy the commission raises cannot be adequately explained by the video lottery gaming agent, or in the event any violation of this Part remains uncured for a period of up to 30 days, the commission, in addition to any other remedy permitted by this Subtitle, may take any or all of the following actions:

(1) rescind or withhold approval of capital projects, in which event no further withdrawal from the capital investments account shall be permitted until such violation is cured;

(2) deny the cost and deduct the amount thereof from the balance of any succeeding approved capital improvement project;

(3) require the agent to reimburse the capital investments account in an amount equal to the discrepancy; and

(4) reimburse the commission for the cost of the commission's expenses related to researching and investigating such expenditure.

(l) *Insufficient expense reports.* In the event any expense reports are deemed insufficient at the commission's sole discretion, the commission may require an agent to provide the following information:

(1) a full and complete reconciliation of the capital improvement expenses and associated costs incurred; and

(2) an accounting for the cash spending related to the capital improvement funds.

(m) *Documentation.* Each agent shall maintain sufficient documentation to support the withdrawals made from such agent's capital investments account.