



NYCRR Title 9, Executive

Subtitle T

New York State Gaming Commission

Chapter I

Division of Horse Racing and Pari-Mutuel Wagering

Subchapter F

Off-Track Pari-Mutuel Betting

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PART 4400

Definitions

Section

4400.1 Definitions

§ 4400.1. Definitions.

(a) *Board of directors* means a board of directors of a regional off-track betting corporation.

(b) *Branch office* means the premises maintained and operated by a regional off-track betting corporation, at which premises lawful off-track pari-mutuel wagering may take place.

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

(d) *Corporation* means a regional off-track betting corporation created pursuant to section 502 or section 603 of the Racing, Pari-Mutuel Wagering and Breeding Law.



(e) *Dark* or *dark day* means a day upon which no racing is being conducted at a track. For purposes of this Subchapter, a meeting is deemed not in progress at such track on such day.

(f) *Gambling offenses* means any act proscribed by article 225 of the Penal Law of the State of New York.

(g) *Open* means a day on which racing is being conducted at a track. A meeting is in progress at such track on such day.

(h) *Out-of-state track* means a horse track located outside the State of New York, operated lawfully according to the laws of the state or commonwealth in which such facility is situated.

(i) *Pool constituents*. A pool is deemed to have been constituted entirely upon the day of the race, all advance days' sales being deemed made upon the day such race is contested. All telephone bets shall be deemed to have been made in the county in which the telephone exchange receiving such telephone call bet is located. In this regard, calls into exchanges located in counties not permitted to accept bets upon certain tracks' races shall not be accepted upon such races.

(j) *Region* means a region defined in section 519 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(k) *Track* shall mean the grounds or enclosures within which horse races, at which pari-mutuel betting is permitted, are conducted by any person, corporation or association licensed by the commission.

(l) *Telephone deposit betting center (TDBC)* means the facility of the participating regional corporation for the conduct of pari-mutuel wagering by telephone.

(m) *Unclaimed ticket monies* means the accumulated sum of all valid winning tickets remaining uncashed at the conclusion of the calendar year in which they were issued.

PART 4401

State Gaming Commission

Section

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§ 4401.1. Form of commission decision, directive or order.

A decision, order or directive of the commission shall be issued over the signature of the executive director of the commission, the secretary to the commission, or over the signature of the designee of the executive director.

§ 4401.2. Amendment of this Part.

This Part may be amended from time to time by the commission. An order or directive issued by the commission may likewise be changed or amended by the commission. The commission may waive compliance with any rule or regulation if in the judgment of the commission it shall be deemed in the best interest of racing and off-track pari-mutuel betting in this State, so to do. Such waiver shall not, however, be construed as a precedent in respect of future decisions by the commission.

§ 4401.3. Decision, directive or order of immediate necessity.

A decision, directive or order, subject to an immediate necessity that a decision, directive or order be issued, made, modified or rescinded, may be so issued, modified, rescinded or made by the commission subsequent to a telephonic or other informal communication among the members of the commission. Any such decision, directive or order of immediate necessity shall be issued thereafter in a manner prescribed by section 4401.2 of this Part.

§ 4401.4. Disputes.

Disputes between a regional corporation and a track with respect to the purposes or objectives set forth in section 518 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be submitted in writing to the commission for determination. The commission may make its determination based on the submissions or may hold a hearing on the matter. The commission's determination shall be final.

PART 4403

Formation of Corporations

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§ 4403.1. Condition of operation.

A condition precedent to the exercise of authority by any corporation is strict compliance with each rule, regulation, decision, directive, or order of the commission. The commission may suspend or revoke in whole or in part the operating authority of a corporation.

§ 4403.2. Plan of operation.

Each corporation shall file with the commission a verified petition that shall set forth:

- (a) the plan of operation;
- (b) a feasibility study of the practicability, efficiency and profitability of implementing the plan of operation;
- (c) projections of the costs of operations, potential market, the anticipated impact upon on-track attendance and betting at tracks of the proposed off-track pari-mutuel betting operation;
- (d) proposed intrastate and interstate agreements for the transmission of audio-visual signals of racing events, racing or wagering data of any kind;
- (e) the proposed number and locations of all branch offices together with all plans and specifications therefor then available;
- (f) a description of all computer services and manual, mechanical, electrical or electronic devices to be utilized for the transmission of any data;
- (g) a description of the alternate or back-up system in case of principal system failure of communications equipment for forwarding bets to the central facility;
- (h) a corporate chart of organization; and
- (i) such other details that, in the corporation's judgment, are or may be material or that may be requested of the corporation by the commission.

§ 4403.3. Organizational plan of the corporation.

Each corporation shall submit detailed information concerning the structure, administration and staff arrangements of the corporation, including proposed rates of compensation for its personnel and position descriptions therefor.

§ 4403.4. Additional information.

The commission may require at any time such additional information data or documents as may be deemed necessary in order to properly consider and evaluate such plan. The plan shall not be deemed to be complete for consideration by the commission until all of the commission's requirements have been complied with. The commission shall have the statutory period of time from determining such plan to be complete in which to issue an order approving the plan finally or conditionally, approving it with modifications or denying approval.

§ 4403.5. Job security agreements for track employees.

The plan of operation of a corporation shall set forth specifically or by reference to another document, which shall be appended thereto, the provisions for job security for employees at regional race tracks made and accepted by the employer and the employees involved individually or through their collective bargaining representatives. Such agreements shall cover race tracks affected by off-track betting conducted by the regional corporation, as prescribed by law, and the different classifications of track employees there employed; provided, however, for the purposes of this section, the New York City, Suffolk, Nassau, mid-Hudson and Catskill regions shall constitute a single combined region, and all job security agreements for corporations in this single combined region relating to tracks and their employees located within such single combined region shall be jointly negotiated by the regional corporations existing at the time of such negotiations, and each regional corporation thereafter created within such single combined region shall, at the time of its creation, be deemed a party to previously negotiated existing agreements by other regional corporations and employees in such single combined region, and such existing agreements shall be deemed a part of its proposed plan of operation. All such provisions for job security as concern track employees shall be approved by the commission and when approved shall be deemed a part of the plan of operation of the corporation.

§ 4403.6. Transmission equipment.

The plan of operation shall include a written description and a blueprint or diagram of the locations in branch offices of all equipment capable of the transmission of information, whether mechanical, electrical, manual or electronic.

§ 4403.7. Contracts for audio-visual broadcasts.

The plan of operation shall include any agreement for a radio broadcast or for a television broadcast of any racing program or of any part thereof, or of any other event at a track within or without this State. Each such contract shall include a provision that the contract shall not be effective unless such contract is approved by the commission.

§ 4403.8. Board of directors and officers.

The plan of operation shall include the names of each director and officer of the corporation, together with a report of the professional character, qualifications, fitness and reputation of each such person. In the event of any vacancy, the corporation shall notify the commission that it will submit the name of a person to fill the vacancy. The corporation shall forward such name together with the aforementioned report as to such person's character to the commission.

§ 4403.9. Approval of plan.

The commission may approve a plan of operation finally or conditionally and may provide in such order of approval any limitations or conditions upon the authority of the corporation to operate and conduct off-track betting. Should the commission grant temporary authority, such authority shall be for such limited period of time as may be set forth in its order. The commission may reconsider its action in respect of the approval or disapproval of a plan of operation at any time.

§ 4403.10. Amendment to plan.

A plan of operation may be amended from time to time at the request of the corporation or the commission. Amendments proposed by the corporation shall be submitted in writing to the commission, and the commission shall approve or disapprove of such proposed amendment within 30 days of such proposed amendment's having been submitted. No prepared amendment shall be effective unless the same shall have been approved by the commission and ordered by the commission incorporated in the plan of operation. The commission may at any time propose amendments to a plan of operation. A corporation may request a hearing concerning the rejection by the commission of an amendment proposed by such corporation or the proposal of an amendment by the commission by filing a request therefor with the commission, in writing, within five days of receipt of notification of the commission's action to which the corporation takes exception.

§ 4403.11. Affirmative duty of notification.

Each board of directors has an affirmative duty to report to the commission any change or intended change of any fact or proposal that is part of its plan of operation as submitted to the commission, or of any change that is material to the operation of the corporation. All such changes in the plan of operation shall be of no effect until the same shall have



been approved by the commission in the same manner as an amendment to a plan of operation.

§ 4403.12. Corporation rules and regulations.

A corporation may propose rules and regulations with respect to the implementation of such corporation's plan of operation. Such rules and regulations shall not become effective without the prior approval of the commission.

§ 4403.13. Transmission of racing information.

Except as otherwise provided in the rules or by statute, information concerning races conducted at any pari-mutuel track in New York shall not be transmitted from any such track unless approved by the commission. Furthermore, information concerning races conducted at any track outside New York State shall not be transmitted to an off-track betting facility in New York State unless approved by the commission. The term racing information shall be deemed to include live, delayed or simulated descriptions of a race whether by audio or video transmission, the odds resulting from any betting registered before a race and other types of information including but not limited to entries, program numbers, jockey changes, post positions, scratches, race results, and payoff prices.

(a) In making its determination, the commission shall consider the following criteria, information concerning which must be submitted by the racing association or corporation:

- (1) the nature of racing information as defined herein to be transmitted;
- (2) the location to and from which such racing information is to be transmitted;
- (3) the written approval of the track or tracks whose racing information is to be transmitted;
- (4) the means and method of transmission of racing information;
- (5) the terms of any contracts or agreements relating to the transmission of racing information; copies of all relevant contracts shall be submitted; and
- (6) any other relevant information which may be specifically requested by the commission.

(b) In addition to the foregoing, if an application involves the transmission of racing information to a location other than an off-track betting corporation facility via a cable or closed circuit radio or television transmission, which location is either within a nonparticipating county or within the market area of a regional track then the off-track betting corporation shall notify the clerk of such county and the head of such track in order that such county or track may submit written comments on such application to the commission.



(c) The commission, in the commission's discretion, may order a hearing on any application seeking the commission's approval for the transmission of racing information pursuant to this section.

(d) The commission shall approve an application submitted pursuant to this section only if the commission finds that such application is consistent with the best interest of the racing industry in general.

(e) The commission may suspend or revoke the commission's prior approval of the transmission of racing information and may order the termination of any such transmission for good cause.

§ 4403.14. Combination of New York wagers with wagers made in other states or foreign countries.

Pursuant to section 905 of the Racing, Pari-Mutuel Wagering and Breeding Law, New York wagers may be combined with wagers made in other states or foreign countries if proposed pursuant to a written plan describing the method of operation under each of the criteria set forth under such law and evidence of compliance with each of the requirements of such law is furnished by the applicant. Such application shall be approved by the commission if the commission is satisfied that the statutory criteria have been met and that such operation is consistent with the public interest and the best interests of racing generally.

PART 4404

Operation of a Corporation

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§ 4404.1. Persons prohibited from entry into a branch office.

Any person:

- (a) who has been convicted of a gambling offense;
- (b) who does not intend in good faith to transact business with a corporation;
- (c) who conducts himself or herself in a manner that is offensive or disturbing to other individuals;
- (d) whose acts are inconsistent with the orderly conduct of the business of a corporation;
or
- (e) who is eating or drinking;

may not enter a branch office, or remain there if already in a branch office.

§ 4404.2. Transmission equipment.

No person may bring into a branch office any manual, electrical, mechanical or electronic communications equipment capable of transmitting or receiving

- (a) the results of any race;
- (b) any information with respect to odds or wagering pools;
- (c) information with respect to track conditions, jockeys, drivers or equipment; or
- (d) any other information that concerns a race or pari-mutuel wagering information relative to such races.

§ 4404.3. Telephones prohibited.

No telephone shall be installed upon the premises of any off-track betting facility except with the permission of the corporation.

§ 4404.4. Bets.

A bet may be placed for win, place, or show in each race, or for a daily double, an exacta, a quinella or a triple. All other types of wagering other than those enumerated in this section are prohibited without the prior written approval of the commission.

§ 4404.5. Computation of payment.

Winnings shall be computed on the basis of the odds computed by the track or out-of-state track at which the race is run.

§ 4404.6. Food and beverages.

No food or beverages may be sold, served or consumed, nor merchandise of any kind sold by vending machine or otherwise in the public area of any branch office without the prior approval of the commission.

§ 4404.7. Distribution of printed matter.

No printed or written material that pertains in whole or in part to horse racing, pari-mutuel wagering or any aspect thereof shall be sold or distributed by any person in any branch office, except that a corporation may, with the prior approval of the commission, distribute such material as is appropriate to the proper conduct of off-track betting, or sell official race track programs for no less than the price charged by the racing association to such racing association's patrons.

§ 4404.8. Separate betting pools.

A corporation may furnish its own pari-mutuel pool for wagering on out-of-state races with the prior approval of the commission.

§ 4404.9. Branch offices.

Unless the commission shall approve a branch office otherwise constructed, all such branch offices shall have entrances thereto from the street and shall be constructed so as to afford clear visibility from the exterior and interior of the premises. Window shades or blinds or screens or other materials shall not obstruct the view from the exterior or the interior of the premises. The establishment of temporary sites and/or mobile betting units shall require commission approval.

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

(a) (1) No corporation shall permit any person who is actually or apparently under 18 years of age to enter a branch office. For purposes of this paragraph, a branch office shall not include a simulcast theater, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1001(l), or a branch office operated by an entity other than the corporation (commonly referred to as an EZ Bet location, a Quick Bet location or a similar name).

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

(b) The commission shall penalize a corporation found to have violated paragraph (1) of subdivision (a) of this section or paragraph (2) of subdivision (a) of this section with respect to a simulcast theater, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1001(l) as follows:

- (1) for a first violation, a fine of \$1,000;
- (2) for a second violation within one year of a violation, a fine of \$5,000;
- (3) for a third violation within one year of a violation, a fine of \$10,000; and
- (4) for a fourth or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the corporation's plan of operation.

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

- (1) for a first violation, a written warning of such violation;
- (2) for a second violation within one year of a violation, a fine of \$500;
- (3) for a third violation within one year of a violation, a fine of \$1,000; and
- (4) for a fourth or subsequent violation within one year of a violation, such further action as the commission may deem appropriate, which may include without limitation the revocation of approval of the corporation's plan of operation with respect to such branch office.

§ 4404.11. Telephone betting.

A bet placed by telephone shall be subject to the rules and regulations that govern the placing of all off-track bets.

§ 4404.12. Closing of a branch office.

If a branch office is closed, a sign to that effect shall be displayed prominently at the branch office.

§ 4404.13. Interface agreements.

Each agreement for the combination of all off-track wagers with on-track wagers between a State track or an out-of-state track and a corporation shall be subject to the prior approval of the commission.



§ 4404.14. Branch office location.

(a) Except for good cause shown satisfactory to the commission in individual circumstances, a corporation shall not open or maintain a branch office within 500 feet of an educational institution or place of worship. The measurement of 500 feet shall be along the public road that the branch office faces or to which it has nearest access, and along straight-line courses that a pedestrian may take legally and as of right from the nearest doorway of general access of the branch office to the nearest doorway of general access of the institution or place of worship; provided, however, in cities with a population of 250,000 or more the prohibited area of proximity above noted shall be 200 feet.

(b) No branch office shall be located within one mile of the boundary of any licensed or franchised track except with specific written consent of the track involved and written authorization of the commission.

§ 4404.15. Calculation of odds and payoff prices.

(a) Each corporation shall operate its system of off-track betting so as to result in the combination before the race of all off-track and on-track wagers into single statewide pools. In line with such purpose, each off-track betting corporation shall cause all pools, as are accumulated by such corporation, to be transmitted to the site of the statewide interface of such pool prior to the start of the race, and, in the case of pools carried at in-state tracks, all partial pools, as may be accumulated, to be transmitted to such track prior to such in-state track's first display of mutuel odds so that the on-track odds may accurately reflect all wagers to such time.

(b) If, for any reason, all wagers are not combined into a statewide pool before the start of the race:

(1) The payoff price shall be calculated at the site of the statewide interface upon the basis of all available data at such site at the start of the race, and shall be the payoff price on- and off-track statewide.

(2) Notwithstanding paragraph (1) of this subdivision, if such pool is exotic and conducted exclusively off-track, neither probable payoff prices nor the final payoff price shall be calculated until all statewide wagers have been transmitted to and received at the site of the statewide interface.

(c) (1) If, as a result of paying the statewide price, a corporation's liability for payoff and track settlements is less than its net pool after takeout, such difference shall be added, as most feasible, to the next available statewide net pools of the same type for the same track, unless otherwise ordered by the commission.

(2) If, as a result of paying the statewide price, a corporation's liability for payoff and track settlements will be greater than its net pool after take-out, such payoff and track

settlement nevertheless shall be made, and such loss shall not be set off against monies gained pursuant to paragraph (1) of this subdivision. Nothing herein provided shall deprive any corporation, however, from independently seeking recovery of such liability from any party who may be responsible therefor.

(d) This section shall, whenever applicable, constitute an amendment to any inconsistent provisions in any plan of operation of an off-track betting corporation.

(e) The *site of the statewide interface* shall, in the case of wagers offered at a New York State track be that track, and in the case of other off-track wagers be operations center of the agreed upon off-track betting corporation or as designated by the commission.

§ 4404.16. Restrooms.

(a) Except for good cause satisfactory to the commission, each off-track betting branch facility shall provide restroom facilities for patrons.

(b) In determining good cause, the commission may consider the following factors:

- (1) The physical size of the off-track betting facility;
- (2) The type of services and amenities offered at the off-track betting facility;
- (3) The duration of the existing lease or lease renewal;
- (4) The terms and conditions of an existing lease;
- (5) The adequacy of water supply and waste disposal systems;
- (6) The availability of alternative restroom facilities at or near the off-track betting facility;
- (7) The public's safety, health and welfare.

§ 4404.17. Internet posting to assist compulsive gamblers.

Each corporation that maintains a website on the Internet shall post on its home page a message designed to assist compulsive gamblers. Such posting shall include, but not be limited to, a notice of the availability of one or more organizations approved by the commissioner of mental health, pursuant to the provisions of the Mental Hygiene Law, which offer assistance in dealing with the problem of compulsive gambling.

§ 4404.18. Restrictions on acceptance of public assistance.

Any facility conducting off-track pari-mutuel wagering 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. Such discipline may include one or more of the following actions:

- (a) revocation of a license;
- (b) suspension of a license;
- (c) a fine; or
- (d) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

PART 4405

Miscellaneous

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§ 4405.1. Data processing center.

The commission shall establish a data processing center for the purpose of providing centralized data processing services to a corporation on such terms and conditions as the commission may deem advisable, including and without limitation, the payment of any charge or expense incurred in connection with such operation. Provided, however, that the commission may authorize one or more corporations to use a regional or other independent data processing center for an interim period until centralized statewide data processing services are made available by the commission. No region may establish or expand regional data processing facilities without the prior approval of the commission.

§ 4405.2. Report of criminal activity.

A corporation shall report to the commission any violation of law that occurs at a branch office, or any communication with a law enforcement agency.

§ 4405.3. Transfer of bets.

A branch office shall post conspicuously in the public area notice of any cancellation of any race for which a corporation accepted bets, or of any substitution of races.

§ 4405.4. Posting of results.

The results of each race, and the winnings thereon, shall be posted in the public area of each OTB branch office and teletheater immediately after each race, and remain so posted until the conclusion of the next business day. Each such OTB facility shall maintain therein for public inspection a record of the results, winnings and refunds for each race card for a period of not less than 30 days following the race.

§ 4405.5. Overnight retention of monies.

Cash shall not be retained overnight in any branch office unless the commission shall have determined that adequate safeguards exist with respect to the retention of such monies.

§ 4405.6. Alarm systems.

For the purpose of maintaining a uniformly high standard of branch office security, all branch offices shall be equipped with forced entry alarm systems that shall be approved by the commission prior to installation thereof. Additionally, all branch office cashier locations shall be equipped with alarm systems that shall be approved by the commission prior to installation.

§ 4405.7. State lottery.

Where feasible, a corporation shall maintain a State lottery outlet at a branch office at the direction of the commission and shall receive reasonable compensation therefor on a strict cost reimbursement basis.

§ 4405.8. Inspection.

The commission may inspect a branch office or the corporation offices at any time and shall be accorded full access to all premises of the corporation for such purpose.

§ 4405.9. Implementation.

This Part is intended to implement in part the requirements of Articles V, V-a, and VII of the Racing, Pari-Mutuel Wagering and Breeding Law.

PART 4406

Conduct of Off-Track Betting

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- 4406.5 Presentation for payment
- 4406.6 Sale, exchange of tickets

§ 4406.1. Denial of telephone betting account.

No person who is known or reputed to be a bookmaker or engages in any activity that is deemed to be a gambling offense as defined in article 225 of the Penal Law of the State of New York, or is a fugitive from justice shall, be granted a wagering account with the telephone deposit betting center facility.

§ 4406.2. Minimum payoff.

No less than \$2.10 shall be paid for the redemption of a valid \$2 winning ticket and no less than \$3.15 shall be paid for the redemption of a valid \$3 winning ticket.

§ 4406.3. Posting of entries.

The corporation shall post in the public area of each branch office a schedule of entries and projected closing times for wagers in each pool for which off-track wagers are accepted. Any revision of the aforementioned racing information shall be posted immediately and announced orally to patrons.

§ 4406.4. Calculation of separate pools.

Determination of payoff to winning bettors shall be in the form prescribed by the Racing, Pari-Mutuel Wagering and Breeding Law. The shared pool, or profit, shall be that amount resulting by the deduction of the retained commission and involved breakage from the total pari-mutuel pool.

§ 4406.5. Presentation for payment.

(a) Except for telephone accounts, payment on a winning pari-mutuel wager shall be made only upon presentation and surrender of the ticket representing such wager. In the discretion of the corporation or by direction of the commission, payments may be made by cash or by check to the holder of such winning ticket and identification of any winner may be required by either the commission or the corporation.

(b) All winning pari-mutuel tickets must be presented for payment or refund before April 1 of the year following the year of their purchase and failure to present any such ticket within the prescribed period of time shall constitute a waiver of the right to refund or to participate in the award or dividend. Each corporation shall cause the substance of this subdivision to be imprinted upon each pari-mutuel ticket in words approved by the commission.

§ 4406.6. Sale, exchange of tickets.

No pari-mutuel tickets shall be sold except at regular ticket windows, properly designated by signs showing the types of tickets sold at such windows, except that, tickets may be issued by automated ticket machines, or bets may be sold by designated couriers, according to procedures approved by the commission. No such tickets shall be exchanged.

PART 4407

Employees, Officers and Directors

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§ 4407.1. Background investigations.

Each prospective employee, officer or director of a corporation identified as such, shall be the subject of a background investigation by the corporation prior to his employment, appointment or retention. Such information shall be made available to the commission at the commission's request.

§ 4407.2. Comportment.

Employees who are assigned to branch offices shall dress neatly and shall be courteous to patrons.

§ 4407.3. Bets by personnel.

No individual employed by an off-track betting corporation as a pari-mutuel clerk, cashier or seller shall be permitted to bet during those periods of any day on which such person is actually employed in such capacity.

§ 4407.4. Bets by personnel of other corporations.

No officer, director, or employee of any firm, entity or agency that is retained by a corporation or by the commission for the purpose of supervising the operation or maintenance of the system of off-track betting may place any bet, directly or indirectly at any branch office, whether personally or by telephone, or receive any gratuity from any patron.

§ 4407.5. Approval of special policemen.

Each special policeman of a regional corporation other than New York City, who is to have the status of a peace officer shall be previously approved by the commission. Application for such approval shall be made on the forms supplied by the commission. The term of such appointment shall be set by the commission but may be terminated at any time prior thereto by the commission. The commission may set conditions upon such approval.

§ 4407.6. Limitation on directors and officers of a corporation.

No director or officer shall participate in the corporation, other than within the prescribed duties of his or her title.

§ 4407.7. Shortages.

A corporation may deduct from the wages of a branch unit employee monies owed as a result of such employee's going short on any particular racing day. The term *short* as used in this section means any loss to the corporation arising from amounts missing from funds in the possession, custody or control or under the supervision of any branch unit employee or employees in the course of the performance of his, her or their duties in betting operations.

PART 4408

Records and Reports

Section	
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§ 4408.1. Method of accounting.

Each corporation shall use Generally Accepted Accounting Principles so as to record and summarize financial information in order to produce financial statements and reports and to provide adequate internal fiscal controls.

§ 4408.2. Annual report.

Within 120 days after the end of the fiscal year of the corporation, each corporation shall submit to the commission a copy of its annual report of operations audited by an independent certified public accounting firm in accordance with Generally Accepted

Government Auditing Standards as prescribed by the Comptroller General of the United States for approval prior to its distribution. The report shall include the following supplemental schedules in a form prescribed by the commission:

- (a) Statement of Section 516 Revenues and Expenditures;
- (b) Statement of Revenue and Expense by Branch;
- (c) Capital Acquisition Fund Balance Sheet and Statement of Changes in Section 509-a Capital Acquisition Fund. The report shall include an opinion from the independent certified public accounting firm, in relation to the basic financial statements taken as a whole, on the required supplemental schedules listed above.

§ 4408.3. Quarterly reports.

Each corporation shall file with the commission, within 15 days of the close of each fiscal quarter, a quarterly report of the activities of the corporation in a form prescribed by the commission. The commission may for good cause grant a reasonable extension of time for the filing of any such report

§ 4408.4. Signatures on reports.

Each quarterly report shall be signed by at least one of the corporation's principal officers and by the person who prepared the report.

§ 4408.5. Other reports.

The corporation shall furnish to the commission annual reports that shall include:

- (a) simulcast handle by track including out-of-state and special events;
- (b) a listing of every track with which the corporation conducted simulcasting for the year and the percentage paid to each track;
- (c) a list of directors and of officers and the compensation paid to each;
- (d) a report of any change of directors or of officers;
- (e) the total number of and dollar amount of uncashed tickets at the end of the year;
- (f) the total number of and dollar amount of uncashed vouchers at the end of the year;
and
- (g) a list of the total number of wagering devices by type (e.g. self-service terminal, teller operated terminal, etc.) at each branch and location.

§ 4408.6. Books and records.

The commission may conduct such investigations as it deems necessary in order to effectively carry out the purposes and objectives of off-track pari-mutuel betting as provided by law. The commission may determine the method of accounts, and maintenance of books and records of each corporation, consistent with the powers of the New York State Department of Taxation and Finance and of the Office of the State Comptroller to prescribe uniform methods of accounts, records and books so as to adequately reflect the method of doing business and all financial transactions of the corporation including revenue received and distributions made thereof. Books and records of a corporation shall be maintained by the corporation as ordered by the commission and shall not be destroyed by the corporation or abandoned without the prior approval of the commission.

§ 4408.7. Inspection and delivery.

The commission may inspect the records of a corporation at any time at the office of the corporation. A corporation shall, upon appropriate notice, deliver promptly to the office of the commission any records that the commission shall request.

PART 4409

Surtax

Section

- 4409.1 Surtax imposed
- 4409.2 Determination of surtax
- 4409.3 Transmission of pool data
- 4409.4 Disposition of revenues
- 4409.5 Distribution of surcharge revenues
- 4409.6 Maintenance of depositories for surcharge revenues
- 4409.7 Dispute resolution
- 4409.8 Maintenance of books and records
- 4409.9 One percent increase in surcharge for capital acquisition fund
- 4409.10 Determination of breakage

§ 4409.1. Surtax imposed.

Pursuant to the authority of section 131 of chapter 439 of the Laws of 1974, and local law INT 544 of the New York City Council, a five percent surcharge on the portion of pari-mutuel wagering pools distributable to persons having placed bets at off-track betting facilities has been imposed upon all off-track pari-mutuel wagering in the State.

§ 4409.2. Determination of surtax.

The surcharge plus the breaks will not be deducted from any pool if to do so would result in a payoff basis of less than \$2.10 for a \$2 wager. Thus, where a payout is greater than \$2.10 but would be reduced to less than \$2.10 upon deduction of the full surcharge, a surcharge will be imposed and deducted only insofar as such surcharge will allow a minimum payoff of \$2.10 for each \$2 wager.

§ 4409.3. Transmission of pool data.

To ensure the segregation of monies in the distributable pool on which the surcharge is imposed, all pools transmitted to racetracks must be maintained intact until the race results to which they relate are received by the Off-Track Betting Corporation, commission or other authorized organization from the racetrack. A payout report will be transmitted to such regional corporation, commission or organization, as the basis for the surcharge calculation.

§ 4409.4. Disposition of revenues.

All revenues derived from the surcharge plus the breaks shall be held separate and apart from any monies otherwise authorized to be retained from pari-mutuel pools and shall be separately distributed from monies for any other purpose.

§ 4409.5. Distribution of surcharge revenues.

All revenues received from the surcharge pursuant to section 532 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be distributed in accordance with the provisions of section 532 and, as applicable, section 516 of such law.

§ 4409.6. Maintenance of depositories for surcharge revenues.

Each regional corporation shall establish and maintain separate interest-bearing accounts in trust for distribution to the political subdivisions entitled thereto, and in banking institutions approved by the Comptroller of the State of New York, in which all surcharge revenues originating within such corporation shall be deposited on a calendar-week basis within three days after the end of such calendar week.

§ 4409.7. Dispute resolution.

Disputes between any regional corporation, commission or other organization authorized to conduct off-track pari-mutuel betting in the State and any track or other person, association or corporation with respect to the collection or payment of the surcharge, shall be submitted in writing to the commission for determination.



§ 4409.8. Maintenance of books and records.

All books, records and accounts relative to the collection or disposition of surcharge revenues by any regional corporation, commission or other organization authorized to conduct off-track pari-mutuel betting in this State shall be kept and preserved at the principal place of business of such corporation, commission or organization for a period of three years.

§ 4409.9. One percent increase in surcharge for capital acquisition fund.

(a) The surcharge of five percent provided for in section 532 of the Racing, Pari-Mutuel Wagering and Breeding Law has been increased by a supplemental one percent surcharge on the portion of pari-mutuel wagering pools of multiple, exotic and super exotic bets distributable to persons having placed bets at off-track betting facilities.

(b) Such supplemental surcharge shall be imposed prior to any calculation of breakage.

(c) If the applicable corporation has created a capital acquisition fund, pursuant to section 509-a or 609-a of the Racing, Pari-Mutuel Wagering and Breeding Law and has designated such fund to receive such supplemental surcharge, such supplemental surcharge shall be distributed to such fund when it accrues.

(d) If the applicable corporation has not created such fund, or has not designated such fund to receive such supplemental surcharge, such supplemental surcharge shall be distributed monthly with the surcharge and breakage that such supplemental surcharge supplements.

§ 4409.10. Determination of breakage.

(a) On thoroughbred races, the breaks on surcharge shall be calculated based on the formula established in subdivision one of Section 238 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(b) On harness races, the breaks on surcharge shall be calculated based on the formula established in subdivision one of Section 318 of the Racing, Pari-Mutuel Wagering and Breeding Law.

PART 4410

Pari-Mutuel Pool Calculations

Section	
4410.1	Applicable rules
4410.2	Out-of-state double exacta
4410.3	Off-track pick four pool conducted solely off-track
4410.4	Off-track pick three pool conducted solely off-track
4410.5	Parlay betting

§ 4410.1. Applicable rules.

Unless otherwise provided in this Part, the formulas, methods of distribution and other provisions regarding pari-mutuel pools at in-State tracks under the jurisdiction of the commission shall constitute the rules governing pools conducted by off-track betting corporations on racing at such tracks.

§ 4410.2. Out-of-state double exacta.

(a) The double exacta (or other approved name) is a form of pari-mutuel wagering conducted by an off-track betting corporation on out-of-state races. Each bettor selects, in order, the first and second placed horses in each of the two races designated and advertised by the corporation as the double exacta races. To win, except as hereinafter provided, a ticket must bear, in exact order, the first and second placed horses in each double exacta race as designated on the ticket. The double exacta pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, triple or other wagering pool.

(b) Resale of double exacta tickets from one individual to another is prohibited, shall be grounds for ejection, and may be deemed illegal gambling.

(c) Races in which double exacta pools shall be conducted shall be approved by the commission and shall be clearly designated in the program and racing cards and mutuel tickets issued by the corporation.

(d) The design of double exacta tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(e) *Scratch.*

(1) If a horse is scratched or declared a nonstarter in either of the two races designated as the double exacta races before the running of the first of those races, no further double exacta tickets may be issued designating such horse and all double exacta tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

(2) Should any horse be scratched or declared a nonstarter in the second half of the double exacta after the first half of the double exacta has been raced, all tickets combining the scratched horse with the winning combination of the first half shall become consolation tickets and shall be paid at a price per dollar bet determined as follows: the net double exacta pool (gross pool less commission) shall be divided by the total purchase price of all double exacta tickets combining the winners of the first half of the double exacta, and the result obtained shall constitute the consolation prize to be paid per dollar bet. The total amount payable on consolation tickets shall be deducted from the net double exacta pool.

(f) *Failure to select a winning combination.*

(1) If no double exacta ticket is sold combining the winner and second place horse in order in the first half of the double exacta, all double exacta tickets designating the winner to win in the first half shall be considered a winning combination and shall be eligible for participation in the second half of the double exacta. In the event one horse only finishes and is declared winner, all double exacta tickets designating that horse to win in the first half shall be considered winning combinations and shall be eligible for participation in the second half of the double exacta.

(2) If no double exacta ticket is sold designating the winner of the first half of the double exacta to win, all double exacta tickets shall be eligible for participation in the second half.

(3) If the first half of the double exacta is cancelled or declared “no race”, the double exacta shall be declared off and the gross pool refunded.

(4) If no double exacta ticket is sold combining the winner and second place horse in order in the second half of the double exacta, the net double exacta pool shall be distributed to holders of double exacta tickets designating the winning combination of the first half and the second half winner to win. If no double exacta ticket is sold designating the winning combination of the first half and the winner to win in the second half of the double exacta, the net pool shall be distributed as a win pool to holders of those tickets designating the winning combination of the first half of the double exacta.

(5) If for any reason, the second half of the double exacta races is cancelled or declared “no race”, the net pool shall be distributed as in a win pool to holders of tickets designating the winning combination of the first half of the double exacta.

(g) *Dead heats.*

(1) In the event of a dead heat for win in the first half of the double exacta, all double exacta tickets designating the winners in any combination are eligible for participation in the second half of the double exacta pool in accordance with established pari-mutuel practice relative to dead heats in win pools.

(2) In the event of a dead heat for win in the second half of the double exacta, the double exacta pool shall be distributed to each combination of winners separately as in a win pool dead heat in accordance with established pari-mutuel practice relative to dead heats.

(3) In the event of a dead heat for place in the first half of the double exacta, all double exacta tickets combining the winner with each second place horse are eligible for



participation in the second half of the double exacta pools in accordance with established pari-mutuel practice relative to dead heats in win pools.

(4) In the event of a dead heat for place in the second half of the double exacta, the double exacta pool shall be divided as in a win pool dead heat among holders of double exacta tickets combining the winner with each second place horse in accordance with established pari-mutuel practice relative to dead heats.

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

(i) Coupled entries and fields for betting purposes shall not be allowed in the double exacta, and all horses, even if so coupled at the out-State track, shall be deemed separate betting interests by the corporation; provided, however, that such fact shall be advertised to the public in each betting facility.

(j) Copies of this section shall be made available free of charge to the public in each betting facility of the corporation.

(k) Placing of horses shall follow the official placing for betting purposes at the out-of-state track and such placing shall be conclusive for distribution purposes herein.

(l) Pools of all off-track betting corporations conducting a double exacta on the same races shall be combined into a single statewide pool for the calculation of odds and the determination of payouts which shall be uniform throughout the State.

§ 4410.3. Off-track pick four pool conducted solely off-track.

(a) When approved by the commission after filing of the required written consent of the track affected, an off-track betting pool designated a pick four pool may be conducted by one or a combination of off-track betting corporations in a single off-track pool, which pool is not combined with any pool at a track.

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

(c) The pick four is not a parlay and has no connection with nor relation to the other betting pools for the respective races. The pick four pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, triple or other wagering pool.



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

(e) Races in which pick four pools shall be conducted shall be approved by the commission and shall be clearly designated in the program and racing cards issued by the corporation.

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

(g) *Scratched horses and nonstarters.* At any time after wagering begins on the pick four pool, should an entire betting entry or field be scratched or declared a nonstarter in any pick four race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the pick four pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the site of the statewide interface in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field with the lowest program number shall be designated.) Wagers in the pick four pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except that if totalisator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), is employed, then the wagers upon scratched constituent horses will be deemed wagers upon the "designated horse" in such race. In case no starter remains representing any betting entry or field, wagers upon such entry or field, shall be deemed wagers upon the "designated horse" in the race affected by the scratch. Should the balance of a betting entry or field race as a nonbetting starter for purposes of other pari-mutuel pools at the site of the statewide interface, wagers upon such entry or field shall be deemed wagers upon the "designated horse" for such race. Should a programmed starter be scratched or declared a non-starter in any pick-four race prior to the start of the first leg, the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg.

(h) *Failure to select a winning combination.*

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

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



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

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

(5) If any of the designated races are cancelled or declared "no race," the pick four will be determined by the winners of the remaining race or races.

(i) *Dead heats.* In the event of a dead heat for win in any or all pick four races, all pick four tickets designating either horse to win in said race or races shall be eligible for participation in the remaining pick four races, and the net pool shall be equally distributed to the winners, that is, the net pool will be divided by the total amount represented by all winning tickets and the resulting price, per dollar, and after breakage, shall be the payoff price, which shall be uniform for any winning combination.

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

(k) Copies of this section shall be made available free of charge to the public in each betting facility of the corporation.

(l) Placing of horses shall follow the official placing for betting purposes at the track, and such placing shall be conclusive for distribution purposes herein.

§ 4410.4. Off-track pick three pool conducted solely off-track.

(a) When approved by the commission after filing of the required written consent of the track affected, an off-track betting pool designated a pick three pool may be conducted by one or a combination of off-track betting corporations in a single off-track pool, which pool is not combined with any pool at a track.

(b) The pick three (or other approved name) is a form of pari-mutuel wagering conducted by an off-track betting corporation on three consecutive races run at any track, specifically designated as the pick three races by the commission. Each bettor selects, in order, the first placed horse in each of the three races designated and advertised by the corporation as the pick three races, in the order so designated by the commission.



(c) The pick three is not a parlay and has no connection with nor relation to the other betting pools for the respective races. The pick three pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, triple or other wagering pool.

(d) Resale of pick three tickets from one individual to another is prohibited, shall be grounds for ejection, and may be deemed illegal gambling.

(e) Races in which pick three pools shall be conducted shall be approved by the commission and shall be clearly designated in the program and racing cards issued by the corporation.

(f) The design of the pick three tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(g) *Scratch.*

(1) If a horse is scratched or declared a nonstarter in any of the three races designated as the pick three races before the running of the first of those races, no further pick three tickets may be issued designating such horse and all pick three tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

(2) Should any horse be scratched or declared a nonstarter in any race of the designated pick three races, the race in which the late scratch has occurred will be declared "no race" for purposes of the pick three pool only, and the net pools shall be distributed equally to the holders of tickets who have designated the winners of the remaining pick three races.

(h) *Failure to select winning combination.*

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

(2) If no pick three ticket is sold combining the winners of either three or two races of the pick three races, all pick three tickets designating one winner shall be considered winning tickets and the net pool distributed equally to holders of said tickets.

(3) If no pick three ticket is sold designating any winner to win in the designated pick three races, the pick three shall be declared off and the gross pool refunded.

(4) If any of the designated races are cancelled or declared "no race," the pick three will be determined by the winners of the remaining race or races.

(i) *Dead heats.* In the event of a dead heat for win in any or all pick three races, all pick three tickets designating either horse to win in said race or races shall be eligible for



participation in the remaining pick three races, and the net pool shall be equally distributed to the winners, that is, the net pool will be divided by the total amount represented by all winning tickets and the resulting price, per dollar, and after breakage, shall be the payoff price, which shall be uniform for any winning combination.

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

(k) Copies of this section shall be made available free of charge to the public in each betting facility of the corporation.

(l) Placing of horses shall follow the official placing for betting purposes at the track and such placing shall be conclusive for distribution purposes herein.

§ 4410.5. Parlay betting.

(a) When consistent with the public interest and the best interests of racing generally, with permission of the commission, an off-track operator may offer parlay betting as a service to the betting public involving races at tracks similarly offering such service.

(b) The parlay is not a pari-mutuel pool, but is a series of bets combining betting entries in win, place or show pools in each of two or more separate races in chronological order. The initial amount bet constitutes the bet on the first betting entry in the first parlay race (leg); if successful, the payoff from winning the first leg (to the lowest penny) is then bet on the betting entry designated in the second leg; if again successful, and if the parlay continues, the payoff from winning the second leg is then bet (to the lowest penny) in the third leg; etc.

(c) A parlay bet may combine any of the races on a daily program and must combine at least two and not over six races. Bets are limited to win, place or show pool types for which a corresponding pool is conducted on the race selected. The races in a parlay must be chronological but need not be consecutive nor combine the same type pool. The parlay shall be designated on one pari-mutuel ticket which may also evidence other parlay bets combining the same races.

(d) A parlay bet may not combine bets in the same race or earlier races (so-called reverse bets) nor on races on other day's programs.

(e) While payoffs inserted as bets in subsequent races are broken to the lowest penny (unlike regular payoffs), payoffs to the parlay bettor shall be broken to the lowest dime.

Resulting parlay breakage shall be reported separately and added to regular breakage at the end of the program for the purpose of taxation and distribution.

(f) Parlay payoffs will be so inserted as bets in subsequent pools by the off-track operator that the amount of such bets, including their effect on the betting odds, will be displayed as soon as possible after the initial change of the morning line display at the track. (Bet totals in such pools shall be displayed in truncated fashion, to the lowest dollar.)

(g) If any taxing authority requires the withholding of any portion of a winning parlay payoff prior to the completion of all bets in the parlay, such parlay shall thereupon terminate at such point and be payable to the ticket holder without further completion, selections in future races being voided. Such consequence shall be publicly announced and prominently displayed by the off-track operator who shall inform the public by explanation and examples of the operation of this subdivision before the start of a day's program.

(h) Parlay wagers may be cancelled by the ticket holder, in accordance with track policy on cancellations, only prior to the start of the first parlay race in which a parlay selection starts. Thereafter, the parlay must either be completed or be terminated by operation of these rules in order to be entitled to a payoff. The holder of the parlay ticket shall not have the option to cash in such bet prior to completion after a designated parlay entry actually starts in a race.

(i) If a race, pool or betting entry in a parlay is scratched (which includes an entry being declared a nonstarter for betting purposes, or a race or pool being declared "off") the parlay shall be constituted by the remaining legs; if there are no remaining legs, the parlay terminates.

(j) A bet on a coupled entry or field is considered a bet on the remaining part of such coupled entry or field in the event any part of such entry or field starts for pari-mutuel purposes in accordance with the rules governing the track where the race is held. Parlay tickets incorporating an entry or field in which a scratch occurs are refundable only in accordance with subdivision (h) of this section.

(k) Surcharge shall only accrue when a parlay becomes payable to the holder.

(1) Copies of this section shall be made available to the public by the off-track betting off-track operator in each of its branches.

PART 4411
[Repealed]