§ 905. Combination of New York wagers with wagers made in other states or foreign countries. 1. The combination of New York wagers with wagers of the same type made in other states or foreign countries is hereby authorized pursuant to rules and regulations of the commission so as to produce a common pari-mutuel pool for the calculation of odds and the determination of pay-outs from such pool, which payout shall be, as far as may be consistent herewith, the same for all winning bets of such type irrespective of whether a wager is placed in this state or in another state or foreign country.

2. The combination of wagers on New York races. a. The commission may authorize the combination of out-of-state or foreign wagers on horse races in New York state with the same type of wagers made in New York state at the site of the statewide interface designated by the commission for the combination of on-track and off-track wagers made in New York state.

b. In this regard the commission shall enact rules and regulations including but not limited to insuring the following standards: that the out-of-state or foreign wagering operator is duly authorized to conduct such wagering by the laws of the applicable out-of-state or foreign government and is of satisfactory ethical and financial repute; that all such wagers are made in a format consistent with the format for such wagers in New York state as to number of betting entries and the combination of such entries into coupled entries and fields; that if the laws of such other state or foreign country permit, that such wagers shall be subject to the identical retention and breakage rates as pertain at the site of the New York interface; that if the laws of such other state or foreign country prescribe a retention or breakage rate different from that in New York state it would not be contrary to the public interest to compute odds and payouts for such out-of-state or foreign wagers consistent with such law; that if it is consistent with the public interest to compute odds and payouts for such out-of-state or foreign wagers according to retention or breakage rates different from those in New York state, that the site of the New York interface is ready and able to carry out such computations consistent with the formulas hereinafter prescribed; that in regard to foreign wagers, that

for computational purposes all foreign wagers to be combined shall be converted into American dollars at the prevailing exchange rates established by a money center bank on the date of the race (although breakage shall be computed consistent with foreign currency denominations); that other than the variations caused by retention or breakage computations that all odds and pay-outs shall be computed and calculated, refunds or cancellations awarded or allowed, and overpayments or underpayments corrected solely in accordance with the applicable rules in New York state whose laws shall govern all disputes pertinent thereto; that the means, methods and times of transmission of wagering data necessary to the proper implementation of this subdivision shall be as prescribed and approved by the commission; that all entities whose wagers are so combined have agreed that the odds and final pay-offs shall be computed in accordance with the data available for computation at the site of the statewide interface at the start of the race and that pay-off computations in accordance therewith shall be final regardless of mistakes in transmission or failures to transmit or receive all wagers and that the out-of-state or foreign operators shall be solely responsible for claims asserted in that regard for wagers made through such operators; that the out-of-state or foreign operator consents to be subject to audit by the commissioner of taxation and finance or his or her designee to verify the accuracy and completeness of all wagers required to be transmitted by it hereunder; and such other rules and regulations as may be deemed necessary and appropriate by the commission.

c. If different retention or breakage rates than those prevailing at the site of the New York interface are prescribed by the laws governing such out-of-state or foreign betting operator, and the commission is satisfied that it would not be contrary to the public interest to accept such wagers for combination with New York wagers, calculations of the current odds and final pay-off prices shall be made as follows:

(i) All New York state and out-of-state and foreign wagers of the same type shall be combined into single pools for calculation.

(ii) As many tentative payout prices as there are different retention and breakage rates applicable (including the prevailing New York retention rate) shall be calculated on the basis of returning the

appropriate rate of return, less breaks after imposition of each such rate of retention and breaks.

(iii) To each such out-of-state or foreign operator shall be allocated an amount sufficient for it to pay the appropriate pay-off to holders of winning wagers placed with it together with the applicable retention amount on its total wagers.

(iv) To each New York operator shall be allocated an amount sufficient for it to pay the appropriate pay-off to holders of winning wagers placed with it together with the applicable New York retention amount on its total wagers.

(v) The total amount of the combined pool less the combined total of all allocations as determined in subparagraphs (iii) and (iv) of this paragraph shall be credited to a special breakage account. The amount in such account giving appropriate weight to rates established for breakage shall be allocated as breaks among all operators in the combined pool in accordance with the rules and regulations of the commission. Should a minus pool eventuate in which the total combined pool is insufficient to reimburse each operator for the allocation due to it then the allocation due to each such operator shall be reduced as may be appropriate and such operator shall be responsible for satisfying its liability from its own operating capital.

d. No tax or surcharge shall be imposed by this state on any out-of-state or foreign wagering operator participating in any combined pool herein. Nothing in this paragraph, however, shall impair the imposition of any tax or charge by this state on the consideration received from an out-of-state or foreign operator by a New York operator for its consent to wagering on its races, transmitting the simulcast thereof, or the agreeing to combination of bets into its pools.

e. The operator of the site of the statewide interface shall be responsible for the actual collection or transmittal of funds in settlement of the liabilities of all operators participating in the combined pool.

f. Nothing herein shall entitle any operator or person claiming therefrom to participation in any share of the retention or payouts

allocated to another operator participating in the combined pool.

g. Nothing herein shall affect the validity of any surcharge imposed upon the winning pay-offs computed herein as may be prescribed by the laws of this state or another state or foreign country.

h. Nothing herein shall be construed to authorize or prescribe any act contrary to federal law.

3. Combining New York wagers on horse races conducted in other states or foreign countries with wagers on such races made elsewhere.

a. The commission may authorize the combination of wagers made in New York state upon the outcome of out-of-state or foreign horse races with wagers made upon such races elsewhere in accordance with rules and regulations of the commission which shall include but not be limited to the following provisions:

(i) that if such combination is authorized that all New York state operators must participate therein to assure uniform New York odds and pay-outs;

(ii) that if the out-of-state or foreign computation is made on the basis of different retention or breakage rates and (A) such out-of-state or foreign laws do not permit New York wagers to be computed in accordance with New York retention and breakage rates, that such variation does not exceed twenty percent and shall be allocated pro rata among winning wagers in New York state and recipients of such retention and breakage rates in New York state, or (B) if such out-of-state or foreign laws do permit New York bets to be computed in accordance with New York retention and breakage rates that such rates shall be applied and that the out-of-state or foreign operator doing such calculations is willing and able to properly perform such function;

(iii) that the out-of-state or foreign rules governing such wagers are understandable to New York wagerers and in the best judgment of the commission shall not deviate substantially from customary and standard pari-mutuel practice in general;

(iv) that the New York operators are able to perform such transmission and computer retrieval functions as may be required;

(v) that such combination will enhance the best interest of racing generally; and

(vi) such other rules and regulations as may be deemed necessary and appropriate by the commission.

b. Nothing herein shall be construed to authorize or prescribe any act contrary to federal law.

4. In those instances in which the retention rates of the out-of-state track are different from the retention rates authorized in this section, distribution to each of the entities entitled to receive payment under section five hundred twenty-seven or article ten of this chapter after payment of state taxes and regulatory fees shall be adjusted proportionately in an appropriate manner to account for higher or lower retention rates. For purposes of determining payment on out-of-state wagers the retention rate shall be the amount sufficient to pay holders of winning wagers plus any payments required to be made to the out-of-state track which exceeds two percent of handle.